



**STATE OF WISCONSIN
Division of Hearings and Appeals**

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

DECISION

FCP/159036

PRELIMINARY RECITALS

Pursuant to a petition filed July 15, 2014, under Wis. Admin. Code § DHS 10.55, to review a decision by the Milwaukee Enrollment Services in regard to Medical Assistance, a hearing was held on August 21, 2014, at Milwaukee, Wisconsin.

The issue for determination is whether the effective date of a Family Care contract was correctly established.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

Respondent:

Department of Health Services
1 West Wilson Street, Room 651
Madison, Wisconsin 53703

By: Desiree Pollard-Badji
Milwaukee Enrollment Services
1220 W Vliet St, Room 106
Milwaukee, WI 53205

ADMINISTRATIVE LAW JUDGE:

David D. Fleming
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Milwaukee County.
2. An application for Family Care was filed by or on behalf of Petitioner on April 16, 2014. The case was processed, asset questions were resolved and medical remedial expense information submitted.

3. Petitioner was found Medicaid asset eligible in early May 2014 and income eligible as of May 28, 2014 as a group C participant (meaning her medical remedial expenses brought her income below the medically needy income limit). That eligibility information was forwarded to the managed care organization (MCO) by early June 2014.
4. Per the summary provided by the economic support agency (letter of August 7, 2014 part of agency omnibus Exhibit # 2) Petitioner was enrolled in the Family Care Program (FCP) on June 6, 2014 but with an effective date of June 15, 2014. Case notes support that.
5. The reason eligibility began on June 15, 2014 rather than the June 6, 2014 enrollment date was that MCO personnel thought Petitioner was not Medicaid eligible until June 15, 2014.

DISCUSSION

The Family Care program, which is supervised by the Department of Health Services, is designed to provide appropriate long-term care services for elderly or disabled adults. It is authorized in the Wisconsin Statutes, §46.286, and is described comprehensively in the Wisconsin Administrative Code, Chapter DHS 10.

Wis. Admin. Code, §DHS 10.33(2) provides that an FCP applicant must have a functional capacity level of comprehensive or intermediate (also called nursing home and non-nursing home). The process contemplated for an applicant is to test her functional eligibility, then her financial eligibility, and if she meets both standards, to certify her as eligible. Then she is referred to a Managed Care Organization (MCO) for enrollment in the MCO. See Wis. Admin. Code, §§DHS 10.33 – 10.41. The MCO then drafts a service plan using MCO selected providers, designing a care system to meet the needs of the person, and the person executes the service plan. At that point the person's services may begin.

With regard to the start date, Wis. Admin. Code, §DHS 10.36(1), provides that a person who meets all conditions of eligibility is entitled to enroll in an MCO. §DHS 10.36(2) provides that entitlement to the FC benefit first applies on the effective date of the contract between the MCO and the applicant:

- ...
- (a) *Effective date.* Except as provided in pars. (b) and (c), within each county and for each CMO target population, entitlement to the family care benefit first applies on the effective date of a contract under which a CMO accepts a per person per month payment to provide services under the family care benefit to eligible persons in that target population in the county.
- ...

Wis. Admin Code, §DHS 10.36(2)(a).

This appeal was filed on behalf of Petitioner seeking to have the effective date of the FCP contract established as at least June 6, 2014 – the apparent date of the signing of the contract. Petitioner had resided in an assisted living facility and seeks payment from June 15 back to at least June 6, 2014.

The terms 'enrollment date' and 'effective date' seem to have been used with less precision in the documentation of this case than contemplated by the law noted in the Administrative Code provision quoted above. Nonetheless, under law established in the Wisconsin Administrative Code, FCP benefits eligibility begins on the effective date of the contract between the MCO and the applicant. Here that effective date seems to be based on an erroneous assumption of the date of Medicaid eligibility. It is clear, however, that Petitioner was Medicaid eligible as of May 28, 2014 and that this was communicated to the MCO by the economic support agency thus there is no reason why the effective date of the contract should not have been June 6, 2014.

CONCLUSIONS OF LAW

That the effective date of the Family Care contract at issue here should have been June 6, 2014.

THEREFORE, it is

ORDERED

That this matter is remanded to the Family Care Program with instructions to make the effective date of the contract at issue June 6, 2014. This is to be done with 10 days of the date of this decision.

REQUEST FOR A REHEARING

This is a final administrative decision. If you think this decision is based on a serious mistake in the facts or the law, you may request a rehearing. You may also ask for a rehearing if you have found new evidence which would change the decision. Your request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and tell why you did not have it at your first hearing. If you do not explain these things, your request will have to be denied.

To ask for a rehearing, send a written request to the Division of Hearings and Appeals, P.O. Box 7875, Madison, WI 53707-7875. Send a copy of your request to the other people named in this decision as "PARTIES IN INTEREST." Your request for a rehearing must be received no later than 20 days after the date of the decision. Late requests cannot be granted.

The process for asking for a rehearing is in Wis. Stat. § 227.49. A copy of the statutes can be found at your local library or courthouse.

APPEAL TO COURT

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be served and filed with the appropriate court no more than 30 days after the date of this hearing decision (or 30 days after a denial of rehearing, if you ask for one).

For purposes of appeal to circuit court, the Respondent in this matter is the Department of Health Services. After filing the appeal with the appropriate court, it must be served on the Secretary of that Department, either personally or by certified mail. The address of the Department is: 1 West Wilson Street, Room 651, Madison, Wisconsin 53703. A copy should also be sent to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400.

The appeal must also be served on the other "PARTIES IN INTEREST" named in this decision. The process for appeals to the Circuit Court is in Wis. Stat. §§ 227.52 and 227.53.

Given under my hand at the City of Milwaukee,
Wisconsin, this 2nd day of December, 2014

\sDavid D. Fleming
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

Brian Hayes, Administrator
Suite 201
5005 University Avenue
Madison, WI 53705-5400

Telephone: (608) 266-3096
FAX: (608) 264-9885
email: DHAmail@wisconsin.gov
Internet: <http://dha.state.wi.us>

The preceding decision was sent to the following parties on December 2, 2014.

Milwaukee Enrollment Services
Office of Family Care Expansion