



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[Redacted case name]

DECISION

FCP/164032

PRELIMINARY RECITALS

Pursuant to a petition filed February 18, 2015, 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 March 19, 2015, at Milwaukee, Wisconsin.

The issues for determination are (1) whether the respondent correctly calculated the community spouse asset share and denied petitioner's Family Care Program eligibility as a result; and (2) whether the respondent correctly determined that the effective date of petitioner's eligibility was April 1, 2015.

There appeared at that time the following persons:

PARTIES IN INTEREST:

Petitioner:

[Redacted petitioner name]

Petitioner's Representative:

[Redacted representative name]

Respondent:

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

By: [Redacted signature]
Milwaukee Enrollment Services
1220 W Vliet St, Room 106
Milwaukee, WI 53205

ADMINISTRATIVE LAW JUDGE:

Peter McCombs (telephonically)
Division of Hearings and Appeals

FINDINGS OF FACT

- 1. Petitioner (CARES # [Redacted]) is a resident of Milwaukee County.

2. Petitioner applied for Family Care MA on November 20, 2014. On November 28, 2014, petitioner received an Application Summary, which petitioner corrected and returned to the respondent.
3. The petitioner received a notice dated January 19, 2015, identifying the community spouse allocation, but referencing an outdated community spouse allocation amount.
4. On January 9, 2015, the respondent recorded electronic case comments indicating that it was awaiting petitioner's provision of verification pertaining to a life insurance policy. That documentation was provided to the respondent on January 16, 2015.
5. On January 21, 2015, the respondent denied petitioner's Family Care MA application. The denial notice referenced an incorrect application date.
6. On February 25, 2015, the respondent conceded an incorrect calculation of petitioner's community asset share, which resulted in an incorrect denial of petitioner's Family Care MA application.
7. On March 4, 2015, petitioner was notified of eligibility for Family Care MA effective April 1, 2015.

### 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 his functional eligibility, then his financial eligibility, and if he meets both standards, to certify him as eligible. Then he 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.

As to the eligibility issue, the parties have resolved that issue, and petitioner has been found eligible. As such, for purposes of this discussion the eligibility issue is moot.

With regard to the effective 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. Notably, §DHS 10.36(3) provides that an eligible person may purchase services privately from the MCO "while waiting for enrollment." There is no provision in the rules for backdating MCO responsibility prior to enrollment. However, the issue here is not a request to backdate, but instead a request that the effective date be corrected following an error by the respondent.

At hearing, the respondent's representative testified that, since verifications were received on January 16, 2015, she could "...see a February 1<sup>st</sup> enrollment date." *Testimony of* [REDACTED] (March 19, 2015). The petitioner's representative noted that a February 1, 2015 enrollment date would be an acceptable compromise. I concur, as I consider that to be the correct result. The respondent has admitted to its error in denying the petitioner's Family Care MA application, and has presented testimony that enrollment would have commenced February 1, 2015, had the erroneous denial not occurred. The

respondent presented testimony and corroborating evidence that final required verifications were received on January 16, 2015. Exhibit 3-a-3. As such, I will remand this matter to the respondent to establish the effective date of petitioner's Family Care eligibility as February 1, 2015.

### CONCLUSIONS OF LAW

1. The respondent incorrectly calculated the community spouse asset share and incorrectly denied petitioner's Family Care Program eligibility as a result.
2. The respondent corrected the erroneous denial of petitioner's Family Care application on March 4, 2015.
3. The effective date of petitioner's Family Care eligibility is February 1, 2015.

**THEREFORE, it is**

**ORDERED**

That this matter shall be remanded to the respondent to establish February 1, 2015, as the effective date of petitioner's Family Care eligibility. All actions required by this Order shall be completed within 10 days of the date of this Decision.

### **REQUEST FOR A REHEARING**

You may request a rehearing if you think this decision is based on a serious mistake in the facts or the law or if you have found new evidence that would change the decision. Your request must be **received within 20 days after the date of this decision**. Late requests cannot be granted.

Send your request for rehearing in writing to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400 **and** to those identified in this decision as "PARTIES IN INTEREST." Your rehearing request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and explain why you did not have it at your first hearing. If your request does not explain these things, it will be denied.

The process for requesting a rehearing may be found at Wis. Stat. § 227.49. A copy of the statutes may be found online or at your local library or courthouse.

### **APPEAL TO COURT**

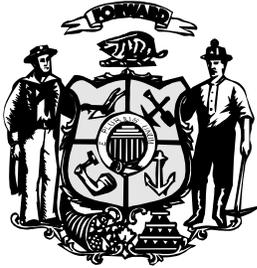
You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Health Services, 1 West Wilson Street, Room 651, Madison, Wisconsin 53703, **and** on those identified in this decision as "PARTIES IN INTEREST" **no more than 30 days after the date of this decision** or 30 days after a denial of a timely rehearing (if you request one).

The process for Circuit Court Appeals may be found at Wis. Stat. §§ 227.52 and 227.53. A copy of the statutes may be found online or at your local library or courthouse.

Given under my hand at the City of Madison,  
Wisconsin, this 7th day of May, 2015

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\sPeter McCombs  
Administrative Law Judge  
Division of Hearings and Appeals



**State of Wisconsin \DIVISION OF HEARINGS AND APPEALS**

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The preceding decision was sent to the following parties on May 7, 2015.

Milwaukee Enrollment Services  
Office of Family Care Expansion  
Attorney [REDACTED]