



FH
[REDACTED]

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

In the Matter of

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

DECISION ON REHEARING

FCP/165619

PRELIMINARY RECITALS

Pursuant to a petition filed April 24, 2015, under Wis. Admin. Code § DHS 10.55, to review a decision by the Milw Cty Dept Family Care - MCO in regard to Medical Assistance(MA), a telephonic hearing was held on July 16, 2015. The record was held open post-hearing to allow the agency and the petitioner's guardian/mother to submit additional information, all of which was received.

The issue is whether the Division of Hearings and Appeals has jurisdiction over this appeal.

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: Lillian Alford, QI Coordinator
Milw Cty Dept Family Care - MCO
901 N 9th St
Milwaukee, WI 53233

ADMINISTRATIVE LAW JUDGE:

Kelly Cochrane
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Milwaukee County and is enrolled in the Family Care Program.

DISCUSSION

Wisconsin Medicaid is a state/federal program that provides health coverage for Wisconsin residents who are elderly, blind, or disabled (EBD) or receive Wisconsin Well Woman Medicaid. Medicaid is also known as Medical Assistance, MA, and Title 19. The Family Care Program is a subprogram of Medicaid which is supervised by the Department of Health Services and is designed to provide appropriate long-term care services for elderly or disabled adults in Wisconsin. See Wis. Stat. §46.2805(4) and Wis. Admin. Code §DHS 10.13(21). The Family Care Program procedures and eligibility requirements are found in the Wisconsin Administrative Code, Chapter DHS 10, available online at http://docs.legis.wisconsin.gov/code/admin_code/dhs/001/10/_1.

The issue in this case is whether the Division of Hearings and Appeals has jurisdiction over this matter. Wis. Stat., §46.287(2)(a)1 and (b) provide that a person may appeal the following Family Care (FC) issues within 45 days of the notice of the action:

- a. Denial of eligibility.
- b. Determination of cost sharing.
- c. Denial of entitlement once eligibility has been determined.
- d. Failure to provide timely services and support items included in the plan of care.
- e. Reduction of services or support items.
- f. Development of a plan of care is unacceptable.
- g. Termination of the FC benefit.
- h. Imposition of ineligibility for FC due to a finding of divestment.
- i. Denial or reduction of the FC benefits due to treatment of trusts.
- j. Spousal impoverishment determinations.
- k. Recovery by the Department of incorrectly paid FC benefit payments.

...

(b) An enrollee may contest a decision, omission or action of a care management organization other than those specified in par. (a), or may contest the choice of service provider. In these instances, the enrollee shall first send a written request for review by the unit of the department that monitors care management organization contracts. This unit shall review and attempt to resolve the dispute. If the dispute is not resolved to the satisfaction of the enrollee, he or she may request a hearing under the procedures specified in par. (a) 1. (intro.).

In this particular case extensive amount of time was spent at hearing trying to understand the issue for determination. There was no notice to show any negative action taken against the petitioner. The petitioner, by way of her guardian/mother, stated that the issue was that she wanted the petitioner to be switched to Title 19 yet keep her enrollment in the Family Care Program. Not only does this not fall into one of the appealable categories above, it is a non-issue, as the Family Care Program *is a waiver program under Title 19*. If petitioner wishes to simply enroll in “regular” Title 19, she was advised as to how she can request a disenrollment from the Family Care Program. I highly recommend that petitioner’s guardian/mother contact a Family Care Ombudsman so that her grievances can be addressed and questions answered from someone in addition to and other than the Family Care team. According to the information supplied by the agency, Disability Rights Wisconsin acts as an Ombudsman in Milwaukee and can be reached at 1-800-708-3034. I also note that their website provides the following information:

Toll Free Number for Consumers and Family: 800-928-8778

Milwaukee

6737 W. Washington St., Suite 3230

Milwaukee, WI 53214

414-773-4646

Fax: 414-773-4647

Based on the foregoing, I must conclude the Division of Hearings & Appeals does not have jurisdiction to consider petitioner's appeal.

CONCLUSIONS OF LAW

The Division of Hearings and Appeals does not have jurisdiction over this appeal.

THEREFORE, it is

ORDERED

The petition for review herein be dismissed.

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 Milwaukee,
Wisconsin, this 5th day of August, 2015

\sKelly Cochrane
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 August 5, 2015.

MY Choice Family Care
Office of Family Care Expansion