



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[Redacted]
[Redacted]
c/o [Redacted]
[Redacted]
[Redacted]

DECISION

FCP/165774

PRELIMINARY RECITALS

Pursuant to a petition filed April 20, 2015, under Wis. Admin. Code § DHS 10.55, to review a decision by the Waukesha County Health and Human Services department and the Waukesha County Aging and Disability Resources Center in regard to Medical Assistance and the Family Care Program, a hearing was held on June 09, 2015, at Waukesha, Wisconsin. The record was held open to Petitioner's representative a chance to submit documents as to what the family submitted to the agencies involved and when.

This case was originally coded as a general Medicaid eligibility case but that was not the issue, the actual substantive issue is whether the Family Care enrollment date is correct so this appeal is recoded as a Family Care case.

The issues for determination are whether this appeal is timely as to a February 17, 2015 denial and whether the effective date of Family Care enrollment was correctly established.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[Redacted]
[Redacted]
c/o [Redacted]
[Redacted]
[Redacted]

Petitioner's Representative:

[Redacted]
[Redacted]
[Redacted]

Respondent:

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

By: Rebecca Tollefson
Waukesha County Health and Human Services
514 Riverview Avenue
Waukesha, WI 53188

ADMINISTRATIVE LAW JUDGE:

David D. Fleming
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Waukesha County.
2. An application for Medicaid was filed on behalf of Petitioner by her daughters AK and NM-H acting, respectively, as power of attorney and authorized representative, on or about January 13, 2015 when the Waukesha County Aging and Disability Resource Center (ADRC) forwarded the application to economic support.
3. The application process involved here began in August 2014 with the Waukesha County ADRC. The ADRC had Petitioner's family/representatives sign that application in August 2014. That application reported a mailing address for her POA – AK, above under parties but further stated that the representative was NM-H and that her address was in [REDACTED]. She moved to [REDACTED] in late October 2014 but the August 2014 application was not changed and the economic support agency not made aware of NM-H's new address.
4. The January 13, 2015 application noted at Finding # 2 was filed as part of the application process for the Family Care Program. Petitioner was residing in a residential care apartment complex (RCAC).
5. The ADRC forwarded the January 13, 2015 application to the economic support unit with a Waukesha County LTC [Long Term Care] Program Referral to Economic Support transmittal form faxed to the Central Processing Document Unit. That transmittal form indicated that the representative for Petitioner was NM-H and at the [REDACTED] address.
6. A written request for verification, dated February 6, 2015 was sent to NM-H at the [REDACTED] address. It noted a due date of February 16, 2015. Instructions were provided as to where to mail the verification, or alternatively, where to deliver it in person. The mail location was the Centralized Document Processing Unit in Janesville.
7. There was no evidence presented at the hearing to demonstrate that the requested verification, again noted at Finding # 6, was received by the economic support agency or the Central Document Processing Unit by the February 16, 2016 due date though documents sent by Petitioner's representative after the hearing seem to show that the ADRC had the documents as early as the January 13, 2015 application. The record does not indicate when or whether the ADRC forwarded those documents to economic support.
8. A Notice of Decision, dated February 17, 2015, was sent to NM-H at the [REDACTED] address. It noted denials of Medicaid, Community Waivers and Medicare Premium Assistance because of income in excess of program limits and for not providing verification in response to the February 6, 2015 request for verification. The record does not contain proof that written notices were sent to Petitioner or to her POA.
9. The February 17, 2015 Notice of Decision does note an appeal deadline of April 6, 2015.
10. A second application was submitted on behalf of Petitioner, again seeking Medicaid coverage for the purposes of enrolling in the FCP, on March 9, 2015. That application was processed on March 31, 2015.
11. A written request for verification, dated April 1, 2015, was sent to NM-H at the above address.
12. Verification was submitted and Petitioner found Medicaid eligible. That was communicated to the county ADRC on April 7th or 8th, 2015 but the ADRC did not actually enroll Petitioner until April 13, 2015. It appears that Medicaid eligibility began February 1, 2015 as backdating had been requested. *(Backdating of Medicaid itself is permitted to the first day of the third month prior to the month of application if all eligibility factors are met. See Medicaid Eligibility Handbook, §2.8.2)*
13. This appeal was filed on April 20, 2015.
14. Petitioner's family seeks backdated Family Care benefits to February 1, 2015.

DISCUSSION

The first question here is whether this appeal is timely as to the February 17, 2015 denial of the January 13, 2015 application.

The Division of Hearings and Appeals cannot make a decision on the merits of a matter unless it has jurisdiction or authority to do so. The Division of Hearings and Appeals loses authority to make a decision where an appeal is not submitted within time limits. In order to be timely a hearing request concerning Medical Assistance matters must be filed within 45 days of the notice of the county agency decision:

(5) Appeal.

(a) Any person whose application for medical assistance is denied or is not acted upon promptly or who believes that the payments made in the person's behalf have not been properly determined or that his or her eligibility has not been properly determined may file an appeal with the department pursuant to par. (b). Review is unavailable if the decision or failure to act arose more than 45 days before submission of the petition for a hearing.

§49.45(5)(a), Wis. Stats.; also see §HA 3.03(3), Wisconsin Administrative Code.

As this appeal was filed on April 20, 2015, after the April 6, 2015 appeal deadline for the February 17, 2015 denial, at first blush it does not appear that the Division of Hearings and Appeals has authority to make a determination on the merits of the February denial. Petitioner's representative argues that she did not get the request for verification until February 17, 2015 when the new owners of the [REDACTED] home told them of it and there was then no time respond and then she left the country for about 2 weeks. She did not get the denial notice either. These facts by themselves do not make the appeal timely as I cannot attribute this to agency error. There is no extension of the appeal time limits in the statutes or Administrative Code and the Division of Hearings and Appeals does not have authority to create exceptions. Nonetheless, I am finding the appeal timely because there is no evidence to show that the POA or Petitioner herself were ever sent the denial notice and, therefore, never knew of the denial or appeal time limits so as to give them time to appeal in the representative's absence. The appeal is also timely as to the family care enrollment date.

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/her functional eligibility, then his/her financial eligibility, and if s/he meets both standards, to certify him/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).

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. The Medicaid Eligibility Handbook (MEH) indicates that policy followed this. *MEH, §29.5.1, release 14-02 for the time period involved here.* The policy has changed as of June 10 to permit backdating to the first of the month but that policy was not effective until June 10, 2015 so is not applicable here. *See MEH, §38.2, release 15-01.*

Petitioner's representatives are quite frustrated with the application processing time lines and requests for verification. The problem for this decision is that there is no way for the Division of Hearings and Appeals to now know if all verification was submitted to the ADRC and then forwarded to the economic support consortium. No one subpoenaed or otherwise requested an appearance at the hearing by an ADRC representative and it is not documented in the hearing record if, or if, precisely when, the ADRC turned over the financial documents supplied to it by the family to the economic support agency. Thus there is no way to know when the FCP eligibility date would or should have begun. It would be a guess based on what seems equitable and the Division of Hearings and Appeals is not imbued with that authority. *See, e.g., Wisconsin Socialist Workers 1976 Campaign Committee v. McCann, 433 F. Supp. 540, 545 (E.D. Wis.1977).*

The economic support agency and the ADRC are going to have to review this case and see if and when all verification was in the hands of one agency or the other and determine whether the FCP enrollment date must be corrected.

Finally, Petitioner's representative sent in a fair volume of information post hearing. It is not clear this was also sent to the economic support agency. If not, this information must be submitted to the economic support agency so that it can carry out the remand below.

CONCLUSIONS OF LAW

1. That this appeal is timely with respect to a February 17, 2015 denial of an application for Medicaid because there is no evidence to show that Petitioner and her POA were sent notices of denial thereby triggering an opportunity to appeal.
2. That the effective date of Family Care enrollment must be redetermined as the record suggests that the ADRC had the financial verification needed by the economic support agency but it is not clear if or when it supplied that information to the economic support unit.

THEREFORE, it is

ORDERED

That this matter is remanded to the economic support unit involved here and the Waukesha County ADRC to redetermine the Family Care enrollment date. This is to be done with 10 days of the date of this decision or within 10 days of the receipt of the documents from Petitioner's representative that were provided to the Division of Hearings and Appeals post hearing.

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 Milwaukee,
Wisconsin, this 14th day of July, 2015

\sDavid D. Fleming
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 July 14, 2015.

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