



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

(petitioner)

DECISION

FCP-40/59594

PRELIMINARY RECITALS

Pursuant to a petition filed September 8, 2003, under Wis. Stat. §46.287 (2001-02) and Wis. Adm. Code § HFS 10.55 (October 2000) to review a decision by the Milwaukee County Department of Human Services (County) concerning the Family Care Program (FCP), a hearing was held on December 2, 2003 at the 235 West Galena Street in Milwaukee, Wisconsin. At petitioner's request the record of the December 2nd hearing was held open until January 15, 2004. A hearing scheduled for November 10, 2003 was rescheduled at petitioner's request.

The issues for determination are:

whether the law, contract, and policy timelines within which the County processed petitioner's FCP application violate either: (I) the "reasonable promptness" provision of 42 U.S.C. § 1396a(a)(8); (II) Chapter HFS 10 of the Wisconsin Administrative Code; or, (III) section 227.10 of the Wisconsin Statutes; and, (IV) whether petitioner is entitled to retroactive benefits.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:
(petitioner)

Represented by:
Carol J. Wessels
Attorney at Law
SeniorLaw
Legal Action of Wisconsin, Inc.
Room 800
230 West Wells Street
Milwaukee, Wisconsin 53203

Wisconsin Department of Health and Family Services
P.O. Box 7850
Madison, Wisconsin 53707-7850
BY: Karla Fajembola, ES Supervisor

Chester Kuzminski, Resource Center Manager
Teresa Smith, Quality Information (QI) Coordinator
David Wilson, ESS
Milwaukee County Department of Human Services
Department on Aging
Suite 180
235 West Galena Street
Milwaukee, Wisconsin 53212-3948

ADMINISTRATIVE LAW JUDGE:

Sean P. Maloney
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (SSN xxx-xx-xxxx, CARES #xxxxxxxxxx) is a resident of Milwaukee County.
2. On July 9, 2003 a referral for FCP was made to the County on behalf of petitioner; petitioner applied for FCP on August 5, 2003 when an application was signed; on September 4, 2003 the County informed petitioner additional information concerning her assets was needed to process her FCP application; on September 8, 2003 the additional asset information was received by the County; on September 8, 2003 the County confirmed that petitioner was eligible for FCP and her cost sharing requirement; petitioner was enrolled in a Care Management Organization (CMO) effective October 1, 2003 and started to receive FCP benefits on that date. Exhibits #2 & #3.
3. Requirements found in law, contract, and policy mandate in excess of 11 steps before an FCP applicant can be determined eligible, enrolled in a CMO, and start to receive benefits; these steps include: a home visit for options counseling, completion of a functional screen, a home visit for Medical Assistance (MA) application, and a meeting with the applicant by an enrollment consultant. Exhibits #1, #4 & #5.

DISCUSSION

Petitioner argues that she should have been enrolled in a CMO and begin receiving FCP benefits on September 1, 2003 instead of October 1, 2003. She acknowledges that the long process that resulted in her FCP benefits beginning October 1, 2003 was not due to inaction or delay on the part of the County, but argues that the lengthy processing time is a result of the timelines established in FCP contracts and policies. She argues that the FCP timelines contained in law, contract, and policy violate the "reasonable promptness" provision of 42 U.S.C. § 1396a(a)(8), Chapter HFS 10 of the Wisconsin Administrative Code, and section 227.10 of the Wisconsin Statutes.

(I) REASONABLE PROMPTNESS

Federal law requires that FCP "be furnished with reasonable promptness to all eligible individuals." 42 U.S.C. § 1396a(a)(8). Petitioner makes no argument as to what time period constitutes "reasonable promptness."

First, it must be pointed out that petitioner applied for FCP when she signed the application on August 5, 2003 and that her FCP eligibility was determined within the 45-days from date of application allowed by federal regulation. 42 C.F.R. §§ 435.911(a)(2) & (b) (2002). Petitioner's FCP eligibility was also determined within the 30-days from date of application, plus time due to "delay in securing necessary information", allowed by state law. Wis. Admin. Code §§ HFS 10.31(6)(a) & (b) (October 2000).

Second, FCP is available to eligible persons only through enrollment in a CMO under contract with DHFS. Wis. Stat. § 46.286(3)(a) (2001-02); Wis. Admin. Code § HFS 10.41(1) (October 2000).¹ Thus, petitioner could not begin receiving FCP until she became enrolled in a CMO. In this case petitioner was enrolled in a CMO and started receiving FCP benefits within 23 days of the time she was determined eligible (she was determined eligible on September 8, 2003 and begin receiving benefits effective October 1, 2003). By any definition this meets the "reasonable promptness" standard of federal law.

(II) CHAPTER HFS 10

Petitioner argues that "[t]he Family Care process as presently structured violates Wis. Admin. Code HFS 10.31(6) in that it well exceeds 30 days." Petitioner is mistaken about what is required by section HFS 10.31(6) of the Wisconsin Administrative Code. That section requires only that the agency determine the applicant's eligibility and cost sharing requirements not later than 30-days from the date of application -- except for delays "because of a delay in securing necessary information". Wis. Admin. Code § HFS 10.31(a) & (b) (October 2000). As explained above, that code section has been satisfied in this case.

(III) CHAPTER 227

Petitioner argues that the timelines under which the County processed petitioner's FCP application are invalid insofar as they are partly contained in contract and policy and are, to that extent, not properly promulgated as administrative rules. See, Wis. Stat. §§ 46.288 & 227.227.10(10) (2001-02). This issue need not be decided here.² Petitioner will not be entitled to the remedy she seeks even if she is correct. Petitioner seeks to have her FCP benefits start effective September 1, 2003. If the timelines contained in contract and policy are invalid because they are not properly promulgated rules, then there are few, if any, timelines to bind the

¹ A person may be eligible for FCP, but yet not entitled to enroll in a CMO. Wis. Admin. Code § HFS 10.36(1) (October 2000). A person who is found eligible for FCP but who does not meet certain conditions is not entitled to FCP benefits. Wis. Admin. Code § HFS 10.36(3) (October 2000). Such persons may pay privately for CMO services. Wis. Admin. Code §§ HFS 10.36(3) & 10.37 (October 2000).

² Although it should be noted that the Wisconsin Department of Health and Family Services (DHFS) is mandated by state law to "[p]rescribe by rule and contract and enforce performance standards for operation of resource centers and care management organizations." Wis. Stat. § 46.281(1)(g)1. (2001-02) (underline added).

County in the FCP application process. It would not follow from this that petitioner is entitled to FCP benefits effective September 1, 2003.

(IV) RETROACTIVE BENEFITS

Finally, petitioner argues that, as with other MA programs, petitioner is entitled to retroactive benefits and, therefore, she is entitled to have her FCP benefits start September 1, 2003. See, 42 U.S.C. § 1396a(a)(34); 42 C.F.R. § 435.914(a) (2002). However, as noted above, Wisconsin law is clear that FCP is available to eligible persons only through enrollment in a CMO under contract with DHFS. Wis. Stat. § 46.286(3)(a) (2001-02); Wis. Admin. Code § HFS 10.41(1) (October 2000). This is because an essential part of FCP is the management of care provided by the CMO.

As an Administrative Law Judge (ALJ) for the State of Wisconsin I am bound to follow Wisconsin law. Therefore, since petitioner was not enrolled in an HMO until October 1, 2003 her FCP may not begin until that date.

CONCLUSIONS OF LAW

For the reasons discussed above: the law, contract, and policy timelines within which the County processed petitioner's FCP application do not violate: (I) the "reasonable promptness" provision of 42 U.S.C. § 1396a(a)(8); (II) Chapter HFS 10 of the Wisconsin Administrative Code; or, (III) section 227.10 of the Wisconsin Statutes; and, (IV) petitioner is not entitled to retroactive benefits.

NOW, THEREFORE, it is

ORDERED

That the petition for review herein be and the same is hereby DISMISSED.

REQUEST FOR A NEW HEARING

This is a final fair hearing decision. If you think this decision is based on a serious mistake in the facts or the law, you may request a new hearing. You may also ask for a new hearing if you have found new evidence which would change the decision. To ask for a new hearing, 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 must explain what mistake the examiner 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.

Your request for a new hearing must be received no later than twenty (20) days after the date of this decision. Late requests cannot be granted. The process for asking for a new hearing is in sec. 227.49 of the state statutes. A copy of the statutes can 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 filed no more than thirty (30) days after the date of this hearing decision (or 30 days after a denial of rehearing, if you ask for one).

Appeals for benefits concerning Family Care Program must be served on Department of Health and Family Services, P.O. Box 7850, Madison, WI, 53707-7850, as respondent.

The appeal must also be served on the other "PARTIES IN INTEREST" named in this decision. The process for Court appeals is in sec. 227.53 of the statutes.

Given under my hand at the City of
Madison, Wisconsin, this 5th day of
February, 2004

/sSean P. Maloney
Administrative Law Judge
Division of Hearings and Appeals
129/SPM