



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

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In the Matter of

(petitioner) (deceased)

DECISION

FCP-40/64127

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**PRELIMINARY RECITALS**

Pursuant to a petition filed July 3, 2004, 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 August 24, 2004 at the 235 West Galena Street in Milwaukee, Wisconsin.

The issue for determination is whether petitioner may receive FCP benefits prior to June 10, 2004.

There appeared at that time and place the following persons:

**PARTIES IN INTEREST:**

Petitioner:

(petitioner) (not present at August 24,  
2004 hearing)

Represented by:

(redacted), petitioner's daughter and  
Power of Attorney (POA)

Wisconsin Department of Health and Family Services

P.O. Box 7850

Madison, Wisconsin 53707-7850

BY: Karla Fajembola, ES Supervisor

Teresa Smith, Quality Information (QI) Coordinator

Carolyn Stevens, Quality Assurance

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 # xxxxxxxxxxxx; DOB (redacted)) was a resident of Milwaukee County; petitioner died on August 24, 2004.
2. Petitioner signed an FCP application on April 28, 2004; the County processed her application and petitioner was enrolled in a Care Management Organization (CMO) on June 10, 2004 and begin receiving FCP benefits [including Medical Assistance (MA) benefits] on that date.

## DISCUSSION

Petitioner argues that she should have been enrolled in a CMO and begin receiving FCP benefits (including MA benefits) prior to June 10, 2004. She is requesting a backdate of FCP benefits (including MA benefits) to at least May 27, 2004. She does not argue that the June 10, 2004 start date for her FCP benefits was due to inaction or delay on the part of the County. However, she argues that when she spoke to the FCP enrollment consultant on May 28, 2004 she was informed neither that the FCP benefit included MA nor that that she could request an FCP start date that was earlier than June 10, 2004. She argues that the FCP enrollment consultant just told her that June 10, 2004 was the start date. The County acknowledges that FCP (including MA) could have started as early as May 27, 2004 but maintains that what was agreed to was the June 10, 2004 start date.

It is true that an FCP resource center must provide information that is timely, factual, through, accurate, unbiased and appropriate to the individual's needs and situation including advantages and disadvantages of the various options in light of the individual's situation, values, capacities, knowledge and resources and the urgency of the individual's situation. Wis. Admin. Code §§ HFS 10.23(2)(c)intro. & (c)4. (October 2000); See also, Wis. Admin. Code §§ HFS 10.23(2)(d) & (h) (October 2000); Wis. Admin. Code § HFS 10.51(1)(f) (October 2000). The contract that the Wisconsin Department of Health and Family Services (DHFS) has with organizations operating FCP resource centers must specific sanctions that may be taken if certain contract provisions are not met, including the withholding or deduction of funds. Wis. Admin. Code § HFS 10.21(2) (October 2000).

However, 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 June 10, 2004 her FCP may not begin until that date. This is true even though it might be the case that petitioner was informed neither that the FCP benefit included MA nor that she could request an FCP start date that was earlier than June 10, 2004.

## CONCLUSIONS OF LAW

For the reasons discussed above petitioner may not receive FCP benefits prior to June 10, 2004.

**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 15th day of  
September, 2004

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