

**COURT OF APPEALS
DECISION
DATED AND FILED**

March 12, 2002

Cornelia G. Clark
Clerk of Court of Appeals

NOTICE

This opinion is subject to further editing. If published, the official version will appear in the bound volume of the Official Reports.

A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. See WIS. STAT. § 808.10 and RULE 809.62.

**Appeal No. 01-2618-FT
STATE OF WISCONSIN**

Cir. Ct. No. 00-CV-674

**IN COURT OF APPEALS
DISTRICT III**

MILDRED PLISCH,

PETITIONER-APPELLANT,

v.

**WISCONSIN DEPARTMENT OF HEALTH &
FAMILY SERVICES,**

RESPONDENT-RESPONDENT.

APPEAL from a judgment of the circuit court for Marathon County:
RAYMOND F. THUMS, Judge. *Affirmed.*

Before Cane, C.J., Hoover, P.J., and Peterson, J.

¶1 PER CURIAM. Mildred Plisch appeals a judgment affirming a decision of the Wisconsin Department of Health & Family Services to commence

Plisch's benefits on March 1, 2000, not February 1, 2000 as she contends.¹ She argues that the Marathon County Department of Social Services violated its own policy regarding removal from a waiting list for terminally ill patients, contrary to the Community Options Program (COP) Manual. She seeks a refund of the \$3,650 fee she paid to a community based residential facility for her care in February 2000. We conclude that the department correctly construed and applied the waiting list rules.

¶2 Plisch was a resident of a community based residential facility funded in part by the department through COP. The county is responsible for administering COP funds based on State guidelines. The guidelines are stated in the COP manual and allow each county to establish procedures for removing applicants placed on the waiting list. Placement on the list occurs when the county has committed its funding for the year.

¶3 Plisch applied for COP funded services in May 1999. Although she was determined eligible, she was placed on the waiting list. In January 2000, her doctor diagnosed her condition as terminal. On February 11, 2000, her husband submitted a letter from her doctor verifying her terminal illness. After meeting with Plisch and her husband, a social worker developed an "Individual Service Plan" setting forth the resources and services Plisch would receive and their costs. Under the plan, the start date for Plisch's COP services was March 1, 2000.

¶4 The parties agree that this court reviews de novo the construction of the waiting list policy. That policy provides in relevant part:

¹ This is an expedited appeal under WIS. STAT. RULE 809.17. All references to the Wisconsin Statutes are to the 1999-2000 version unless otherwise noted.

Applicants will be removed from the waiting list on a first-come, first-served basis, as funding permits. The exceptions to the first-come, first-served waiting list removal practice will take place when at least one of the following occurs ... the person has a terminal illness diagnosed by a physician.

Plisch contends that this language required that she be removed from the waiting list and the county begin payment for services immediately upon documentation of her terminal illness.

¶5 The waiting list policy tells how an individual is removed from the waiting list. It does not specify any particular time when the funding will commence. Because each applicant has different needs, it is reasonable to expect funding to commence when an Individual Service Plan is established. The language “as funding permits” suggests that funding is not automatic and should not be expected immediately upon application, even for the terminally ill. Plisch’s suggestion that payments should include the month of February ignores the fact that the department did not receive the letter informing it of Plisch’s condition until February 14. It is not a reasonable construction of the written policy to expect a commitment for unidentified services to commence when the patient is informed of her condition, weeks before the department was informed. The department correctly determined that funding should commence under the written policy when the Individual Service Plan was established.

By the Court.—Judgment affirmed.

This opinion will not be published. See WIS. STAT. RULE 809.23(1)(b)5.

