



FH  
[REDACTED]

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

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In the Matter of

[REDACTED]

DECISION

FCP/142630

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**PRELIMINARY RECITALS**

Pursuant to a petition filed July 27, 2012, under Wis. Admin. Code § DHS 10.55, to review a decision by the Milwaukee County Department of Family Care in regard to Medical Assistance, a telephone hearing was held on September 19, 2012, at Milwaukee, Wisconsin.

The issue for determination is whether the agency erred in discontinuing funding for home-delivered meals.

There appeared at that time and place the following persons:

**PARTIES IN INTEREST:**

Petitioner:

[REDACTED]

Respondent:

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

By: Lillian Alford

Milw Cty Dept Family Care  
901 N. 9<sup>th</sup> St.  
Milwaukee, WI 53233

**ADMINISTRATIVE LAW JUDGE:**

John P. Tedesco  
Division of Hearings and Appeals

**FINDINGS OF FACT**

1. Petitioner (CARES # [REDACTED]) is a resident of Milwaukee County.

2. Petitioner had previously received funding for home-delivered meals through the Family Care Program.
3. On May 11, 2012, the Family Care Program team met with petitioner for a quarterly home visit at which time the petitioner's living situation and need for home delivered meals was discussed. Petitioner is now living with family members, at least one of which is not employed and has a schedule that allows her to prepare meals for petitioner.
4. Petitioner has diabetes and hypertension and has some diet restrictions and recommendations such as a low-sodium diet. The restrictions are such that a home-prepared meal can be prepared consistent with petitioner's dietary needs.
5. The agency discontinued the benefit of the delivered meals by notice dated June 8, 2012, effective on June 23, 2012.
6. Petitioner appealed the termination to the MCO Grievance Committee which affirmed the termination.
7. Petitioner filed a request for hearing with the Division of Hearings and Appeals on July 27, 2012.

### **DISCUSSION**

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.

The CMO must develop an Individual Service Plan (ISP) in partnership with the client. Wis. Adm. Code § DHS 10.44(2)(f). The ISP must reasonably and effectively address all of the client's long-term needs and outcomes to assist the client to be as self-reliant and autonomous as possible, but nevertheless must be cost effective. While the client has input, the CMO does not have to provide all services the client desires if there are less expensive alternatives to achieve the same results. Wis. Admin. Code § DHS 10.44(1)(f); DHS booklet, Being a Full Partner in Family Care, page 9. ISPs must be reviewed periodically. Adm. Code, §DHS 10.44(j)(5).

Wis. Stat., §46.287(2)(a)1 provides that a person may request a fair hearing to contest the reduction of services under the FCP program, among other things, directly to the Division of Hearings and Appeals. In addition, the participant can file a grievance with the CMO over any decision, omission, or action of the CMO. The grievance committee shall review and attempt to resolve the dispute. If the dispute is not resolved to the participant's satisfaction, she may then request a hearing with the Division of Hearings and Appeals.

The issue in this case is whether the CMO erred in its denial of petitioner's continuing request for home-delivered meals. As has been noted many times in the past, there are no standards written in the law or policy on how to make such a determination. It comes down to the general criteria for determining authorization for services – medical appropriateness and necessity, cost effectiveness, statutory and rule limitations, and effectiveness of the service. See Wis. Adm. Code Ch. DHS § 107.02(3)(e).

The question really presented here is whether any alternative proposed by the Family Care Case Management Organization (CMO) is cost-effective compared to alternative services or supports that could meet the same needs and achieve similar outcomes?

While it is correct to say that the standard under Wis. Admin. Code § DHS 10.44(2)(f)3 specifically includes that the ISP should assist the enrollee to be as self-reliant and autonomous “as possible *and* desired” by the enrollee, it is also the long-standing position of the Department, as affirmed in many fair hearing decisions, that the Family Care participant does not have “unfettered choice” in deciding what supports Family Care provides that will serve her, what living arrangements will be provided by Family Care, and exactly how the care plan is to be configured.

In this case, while the meals provided by the service may be more healthful than those petitioner’s children prepare for her, there is no reason to find that they are medically necessary based on this record. Instead, the record reflects that the delivered meals are a preference because she enjoys the types of meals that are delivered, and because petitioner does not want to make demands upon her family members regarding diet and meal preparation. Petitioner states that she does not like the meals her family prepares such as hot dogs, hamburgers, and baloney sandwiches. While these may not be the most appropriate choices, it is an issue that petitioner should be able to address with her family members who care for her. Such a solution is more cost-effective and appropriate than the proposed expense associated with delivered meals.

### **CONCLUSIONS OF LAW**

The agency did not err in denying continued funding for delivered meals.

**THEREFORE, it is** **ORDERED**

That this appeal is dismissed.

### **REQUEST FOR A REHEARING**

This is a final administrative decision. If you think this decision is based on a serious mistake in the facts or the law, you may request a rehearing. You may also ask for a rehearing if you have found new evidence which would change the decision. Your request must explain what mistake the Administrative Law Judge 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.

To ask for a rehearing, 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 for a rehearing must be received no later than 20 days after the date of the decision. Late requests cannot be granted.

The process for asking for a rehearing is in Wis. Stat. § 227.49. A copy of the statutes can be 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 with the appropriate court no more than 30 days after the date of this hearing decision (or 30 days after a denial of rehearing, if you ask for one).

For purposes of appeal to circuit court, the Respondent in this matter is the Department of Health Services. After filing the appeal with the appropriate court, it must be served on the Secretary of that Department, either personally or by certified mail. The address of the Department is: 1 West Wilson Street, Room 651, Madison, Wisconsin 53703. A copy should also be sent to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400.

The appeal must also be served on the other "PARTIES IN INTEREST" named in this decision. The process for appeals to the Circuit Court is in Wis. Stat. §§ 227.52 and 227.53.

Given under my hand at the City of Madison,  
Wisconsin, this 8th day of October, 2012

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John P. Tedesco  
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 October 8, 2012.

Milw Cty Dept Family Care  
Office of Family Care Expansion