



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

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In the Matter of

[REDACTED]

DECISION

FCP/142696

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**PRELIMINARY RECITALS**

Pursuant to a petition filed July 26, 2012, under Wis. Admin. Code § DHS 10.55, to review a decision by the Community Care Inc. in regard to Medical Assistance/Family Care, a hearing was held on September 12, 2012, at Milwaukee, Wisconsin.

The main issue for determination is whether the petitioner's appeal is moot as a matter of fact and law.

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: Lori Marquez  
Community Care Inc.  
1555 S. Layton Ave.  
Milwaukee, WI 53215

**ADMINISTRATIVE LAW JUDGE:**

Debra Bursinger  
Division of Hearings and Appeals

**FINDINGS OF FACT**

1. Petitioner is a resident of Milwaukee County. Petitioner is enrolled in Family Care.
2. On May 29, 2012, the Petitioner submitted a request to her care management organization, Community Care, for a new air conditioner for her apartment.

3. On June 13, 2012, Community Care conducted a Resource Allocation Decision review of the Petitioner's request. Community Care denied the Petitioner's request on the grounds that the Petitioner currently had a working air conditioner in her apartment's living area, Petitioner could go to her air-conditioned day program 5 days/week, Petitioner could purchase her own air conditioner or the Petitioner could move the air conditioner to her bedroom. Community Care found that the most effective option was for the Petitioner to continue to use her current air conditioner and go to her day program 5 days/week.
4. On July 10, 2012, a local appeal meeting was held. On July 18, 2012, the local appeal committee affirmed Community Care's decision to deny the Petitioner's request for a new air conditioner.
5. On July 20, 2012, the Petitioner filed an appeal with the Division of Hearings and Appeals.
6. On August 31, 2012, Petitioner dis-enrolled from Community Care. On September 1, 2012, Petitioner was enrolled in Family Care with Milwaukee County Family Care.

### **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. Whenever the local Family Care program decides that a person is ineligible for the program, or when the CMO discontinues an ongoing service in the service plan, the client is allowed to file a fair hearing request. Wis. Admin. Code §DHS 10.55(1).

In this case, the Petitioner dis-enrolled from Community Care on August 31, 2012, after the CMO decision to deny her an air conditioner and after filing her appeal. A matter is moot if the review sought cannot have a practical effect on the existing controversy. See *Racine v. J-T Enterp.*, 64 Wis. 2d 691, 702; 221 N.W. 2d 869, 875 (1974). Because she is no longer enrolled with Community Care, I cannot order Community Care to now provide her with benefits, in this case an air conditioner. Therefore, the issue is moot. Nothing in this decision prohibits the Petitioner from filing a request with her new CMO.

### **CONCLUSIONS OF LAW**

The issue is moot as a matter of fact and law.

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

That the petition be, and hereby 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 Milwaukee,  
Wisconsin, this 4th day of October, 2012

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Debra Bursinger  
Administrative Law Judge  
Division of Hearings and Appeals

c: Community Care Inc. - email  
Department of Health Services - email



**State of Wisconsin\DIVISION OF HEARINGS AND APPEALS**

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The preceding decision was sent to the following parties on October 4, 2012.

Community Care Inc.  
Office of Family Care Expansion