



FH  
[REDACTED]

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

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In the Matter of

[REDACTED]

DECISION

FCP/143626

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**PRELIMINARY RECITALS**

Pursuant to a petition filed September 05, 2012, under Wis. Admin. Code § DHS 10.55, to review a decision by the Care Wisconsin in regard to Medical Assistance, a hearing was held on October 31, 2012, at Wautoma, Wisconsin.

The issue for determination is whether the Department and its FamilyCare agent CMO erred in the denial of funding for the Sicare Pilot system.

There appeared at that time and place the following persons:

**PARTIES IN INTEREST:**

Petitioner:

[REDACTED]

Respondent:

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

By: Connie Becker  
Care Wisconsin  
2802 International Lane  
Madison, WI 53708-0017

**ADMINISTRATIVE LAW JUDGE:**

John P. Tedesco  
Division of Hearings and Appeals

**FINDINGS OF FACT**

1. Petitioner (CARES # [REDACTED]) is a resident of Waushara County.
2. Petitioner is a member of the FamilyCare Program. He is 58 years old. He is a quadriplegic living in his own home.

3. The FamilyCare Program provides funding for 24-hour, 7 day per week caregiver presence in petitioner's home.
4. On May 4, 2012 petitioner requested that the Program provide funding for a Sicare Pilot system at a cost of \$11,931.47. This system is a voice operated environmental control system that allows a person to use voice commands to control electronics, such as turning on and off lights, television, changing TV channels, etc.
5. Care Wisconsin issued a notice on May 15, 2012 informing petitioner that it denied the request.
6. Petitioner filed an appeal of the denial.

### 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 request for a Sicare Pilot system at a cost of nearly \$12,000. 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).

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 him or her, what living arrangements will be provided by Family Care, and exactly how the care plan is to be configured.

The Sicare Pilot system appears to be convenient and might allow for petitioner to have some increased freedom to turn lights on, change TV channels, etc. without needing to ask his caregiver

to help. Indeed, it may be beneficial for petitioner in other ways. But, I have no doubt that there are countless number of items for sale in the marketplace that would be convenient and beneficial for petitioner. But, there must be some threshold degree of necessity and cost-effectiveness in order to be an appropriate expense for the FamilyCare program. The program already provides for a person to be with petitioner at all times to assist him. It was clear from petitioner's testimony that at least a part of his desire for this system is that he feels his caregivers have a lot to do and believes that having the system will make it easier for them to do their jobs because he would not need to ask for their help. The Sicare system is not a necessity. It is a duplication of services already provided in that the paid caregiver can assist petitioner with his electronic needs. Furthermore, the system is not cost-effective due to the other supports in place.

### **CONCLUSIONS OF LAW**

The Department and its agent did not err in the denial of the request for funding for the Sicare Pilot system.

**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 served and 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, 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 14th day of November, 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 November 14, 2012.

Care Wisconsin  
Office of Family Care Expansion