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[REDACTED]

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

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In the Matter of

[REDACTED]

DECISION

FCP/143891

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**PRELIMINARY RECITALS**

Pursuant to a petition filed September 17, 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 telephonic hearing was held on January 16, 2013, at Milwaukee, Wisconsin. At the request of petitioner, hearings set for November 6, 2012, November 20, 2012, and December 18, 2012 were rescheduled. At the request of the parties, the record was held open for two weeks for the submission of closing arguments and a possible stipulation by the parties to the Division of Hearings and Appeals (DHA). The partial stipulation offer by the Family Care Program was not dispositive, and was disputed by petitioner's attorney.

The issue for determination is whether the Family Care Program (FCP) correctly denied the petitioner's request for approval and payment for a bathroom modification remodel project in her home.

There appeared at that time and place the following persons:

**PARTIES IN INTEREST:**

Petitioner:

[REDACTED]

Petitioner's Representative:

[REDACTED] ombudsman  
Disability Rights of Wisconsin  
6737 West Washington St Suite 3230  
Milwaukee, WI 53214

Respondent:

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

By: Patti Mueller, Family Care case manager  
Milwaukee County Department of Family Care  
901 N. 9<sup>th</sup> Street, Room 307A  
Milwaukee, WI 53233

**ADMINISTRATIVE LAW JUDGE:**

Gary M. Wolkstein  
Division of Hearings and Appeals

**FINDINGS OF FACT**

1. Petitioner (CARES # [REDACTED]) is a 19 year old resident of Milwaukee County who resides independently in her own apartment.
2. The petitioner has a complex medical history. During September, 2010, petitioner suffered acute meningoencephalitis (her own antibodies attacking her brain) which caused brain damage and she was transferred from Children's Hospital to the Brian Injury rehabilitation Center of Milwaukee during December, 2010. Over time, petitioner lost her ability to assist in activities of daily living including walking and speaking. She was transferred to a nursing home unit at [REDACTED].
3. The petitioner also has other diagnoses: aphasia, diabetes mellitus, hypertension, neurogenic bladder, and dystonia.
4. The petitioner is incontinent and requires at least daily bathing to prevent bedsores, skin breakdown, and infection (which occurred at the nursing home with less than daily baths). Dr. Jeffrey Katt stated that [REDACTED] requires access to a full bath seven days a week in order to keep her sufficiently clean and prevent further breakdown. See Exhibit 5.
5. After she turned 18, [REDACTED] became enrolled in the Family Care program with MCDFC as her Managed Care Organization (MCO).
6. On or about June 1, 2012, petitioner's mother/guardian, [REDACTED], requested that the Family Care Program MCO, MCDFC, help to move her daughter back into their home. On March 14, 2012, an occupational therapist assessment took place at [REDACTED]'s home to determine what needed to be changed to make the home accessible to petitioner - including lift/ramp and bathroom modifications.
7. On June 14, 2012, MCDFC approved the installation of a lift/ramp to petitioner's mother's home.
8. The contractor total bids for petitioner's bathroom remodel are \$12,560 and \$18,990.
9. The petitioner requested that the Family Care program approve the bathroom modification as the most cost effective and appropriate for her outcome of successfully living at home to allow her to bathe at home, as many times as necessary for her health, safety and psychological well-being.
10. The Milwaukee County Department on Aging (Department) sent a June 14, 2012 Notice of Action to the petitioner stating that it was denying the petitioner's request for bathroom modification remodel. The sole basis for the denial on that notice was that the service requested was not the most cost effective way to support petitioner's outcomes. See Exhibit 3.
11. MCDFC asserted that the most cost effective option to support petitioner's long term goal (outcome) of living at home is to transport her three to five days a week from her home to Curative Day Center where she would receive a whirlpool bath by Curative staff, and have her receive bed baths on the days she did not bath off-site.
12. The transportation time and cost make off-site bathing an inappropriate and not cost-effective or time effective choice for petitioner: for the following reasons a) the travel time by Transit Plus to an off-site bath would be about 1 hour, 20 minutes (with a 25 minute "arrival" window). The total travel time with a bath would take about 4 hours for the petitioner (rather than about one hour for a bath to be completed at home); b) petitioner suffered sexual abuse in her life and prefers to have any intimate cares (such as bathing) provided by a trusted family member or trusted female individual; and c) off-site bathing is not effective in creating a stable and reasonable bathing routine to help [REDACTED] be successful in her goal of living at home.
13. The cost of the transportation to and from the off-site and the cost of staff bathing of her at Curative Day Center would cost as much as the bathroom remodel in 1 -2 years.

14. The Department submitted a proposed partial stipulation in which it also indicated areas of concern regarding petitioner returning home and the need for a 45 trial period.
15. Petitioner's attorney submitted a January 29, 2013 response to the Department's proposed partial stipulation, persuasively responded to its areas of concern, and confirmed the cost effectiveness and the appropriateness of the bathroom remodel for petitioner to pursue her goal of returning to reside in her home.

### 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 denies a requested service, the client is allowed to file a local grievance. The petitioner did apparently file a local grievance, per Wis. Admin. Code §DHS 10.53, and the original service denial was upheld in that review. The petitioner then appropriately sought a fair hearing for a further, *de novo* review of the denial decision.

I conclude that the Family Care Program (FCP) incorrectly denied the petitioner's request for bathroom modification remodel. The state code language on the scope of permissible services for the FC reads as follows:

**DHS 10.41 Family Care services . . .**

(2) SERVICES. Services provided under the family care benefit shall be determined through individual assessment of enrollee needs and values and detailed in an individual service plan unique to each enrollee. As appropriate to its target population and as specified in the department's contract, each CMO shall have available at least the services and support items covered under the home and community-based waivers under 42 USC 1396n(c) and ss.46.275, 46.277 and 46.278, Stat., the long-term support services and support items under the state's plan for medical assistance. In addition, a CMO may provide other services that substitute for or augment the specified services if these services are cost-effective and meet the needs of enrollees as identified through the individual assessment and service plan.

Wis. Admin. Code §DHS 10.41(2) (June, 2009).

The general legal guidance that pertains to determining the type and quantity of daily care services that must be placed in an individualized service plan (ISP) is as follows:

**DHS 10.44 Standards for performance by CMOs .**

...

(2) CASE MANAGEMENT STANDARDS. The CMO shall provide case management services that meet all of the following standards:

...

(f) The CMO, in partnership with the enrollee, shall develop an individual service plan for each enrollee, with the full participation of the enrollee and any family members or other representatives that the enrollee wishes to participate. . . . **The service plan shall meet all of the following conditions:**

1. **Reasonably and effectively addresses all of the long-term care needs** and utilizes all enrollee strengths and informal supports identified in the comprehensive assessment under par. (e)1.

2. *Reasonably and effectively addresses all of the enrollee's long-term care outcomes* identified in the comprehensive assessment under par. (e)2 and **assists the enrollee to be as self-reliant and autonomous as possible and desired by the enrollee.**

3. *Is cost-effective compared to alternative services or supports* that could meet the same needs and achieve similar outcomes.

...  
(Emphasis Added)

Wis. Admin. Code §DHS 10.44(2)(f).

During the January 16, 2013 hearing, the Department representative testified that the Family Care Program was denying the petitioner's request for bathroom modification remodel for the reasons set forth in Finding of Fact #10 and #11 above.

Petitioner's representative [REDACTED] provided persuasive testimony and evidence to establish that the requested bathroom remodel would increase the petitioner's self-reliance and independence, and would help her achieve her goal to return home. In her testimony and exhibits, Ms. [REDACTED] established clear reasons for why the remodel should be approved. See Findings of Fact #9, #12, #13, and #15. Ms. [REDACTED] argued convincingly that the Family Care Program incorrectly denied the bathroom modification remodel which would increase petitioner's self-reliance and independence which are both clearly stated goals of the Family Care Program as confirmed above in Wis. Admin. Code §DHS 10.44(2)(f).

The Department was unable to refute that testimony or evidence. In its statement of concerns which was inappropriately placed within a proposed stipulation, the Department voiced some concerns regarding medical and non-medical concerns for petitioner to return home. The Department also suggested a 45 trial period before petitioner return home. Some trial period might be a good idea to provide for a smoother transition home. However, those concerns are not the issue for this hearing.

The hearing issue is whether the Family Care Program (FCP) correctly denied the petitioner's request for approval and payment for a bathroom modification remodel project in her home. The FCP already has approved the installation of a lift/ramp of petitioners' mother's home for the return of petitioner. While the Family Care program may have concerns about the readiness for her return, such return is clearly the outcome sought by the petitioner. The requested bathroom remodel has been established to be the most cost effective option, reasonable in price (less expensive in the long term), and the most effective at reaching [REDACTED]'s outcome of moving home successfully. Accordingly, based upon the entire hearing record, I conclude that the Family Care Program (FCP) incorrectly denied the petitioner's request for approval and payment for a bathroom modification remodel project in her mother's home.

**CONCLUSIONS OF LAW**

The Family Care Program (FCP) correctly denied the petitioner's request for approval and payment for a bathroom modification remodel project in her mother's home.

**THEREFORE, it is**

**ORDERED**

The matter is remanded to the Department on Aging and/or MCO with instructions to: a) confer with the petitioner's representative regarding the most appropriate, cost-effective, and timely bathroom remodel for the petitioner's mother's home; and b) take the necessary action to begin the process to approve and purchase such appropriate and cost-effective bathroom remodel for the petitioner, within 10 days of the date of this Decision.

**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 7th day of March, 2013

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\sGary M. Wolkstein  
Administrative Law Judge  
Division of Hearings and Appeals



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The preceding decision was sent to the following parties on March 7, 2013.

Milw Cty Dept Family Care  
Office of Family Care Expansion  
[elizabethm@drwi.org](mailto:elizabethm@drwi.org)