



FH  
[REDACTED]

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

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In the Matter of

[REDACTED]

DECISION

FCP/146140

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**PRELIMINARY RECITALS**

Pursuant to a petition filed December 20, 2012, under Wis. Admin. Code § DHS 10.55, to review a decision by the Milw Cty Dept Family Care in regard to Medical Assistance, a hearing was held on February 05, 2013, at Milwaukee, Wisconsin.

The issue for determination is whether this case is ripe for a decision by the Division of Hearings and Appeals.

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: Rosaida Shrank  
Milw Cty Dept Family Care  
Milwaukee, WI

**ADMINISTRATIVE LAW JUDGE:**

David D. Fleming  
Division of Hearings and Appeals

**FINDINGS OF FACT**

1. Petitioner (CARES # [REDACTED]) is a resident of Milwaukee County.
2. Petitioner filed this appeal to contest an alleged denial of a request for a power wheelchair and for an increase in care services in the home.
3. Petitioner has been a Family Care Program (FCP) participant since August 2012.

4. Petitioner wants a power wheelchair and requested approval for payment via the Medicare program. That request was denied. Petitioner then made the request for payment of the wheelchair from the Medicaid program.
5. Petitioner's prior authorization request for the power wheelchair was approved for Wisconsin Medicaid program payment prior to enrolling in the Family Care Program (FCP). That wheelchair was delivered after FCP enrollment and the provider billed the FCP. The FCP declined to pay for the power wheelchair as it did not have and/or had not yet approved a request for approval of the wheelchair so the provider 'repossessed' the wheelchair.
6. Petitioner's managed care organization now has a request for payment for a power wheelchair for Petitioner and is in the process of determining whether or not it will pay for a power wheelchair for Petitioner. As of the date of the hearing the final step(s) in the decision-making process had not been made. There has been no update to the Division of Hearings and Appeals as the status of that decision as of the date of this decision.
7. As of the date of hearing Petitioner had been approved for up to 45 hours of in-home care by the FCP. This is more than the approximate 35 hours that Petitioner filed the appeal seeking. Filling those hours requires coordination between Petitioner and the managed care organization and, as of the date of the hearing, the managed care organization was seeking to coordinate services with Petitioner.

### DISCUSSION

The general Medicaid hearing right is described in the Wisconsin Statutes:

**(5) APPEAL.** (a) Any person whose application for medical assistance is denied or is not acted upon promptly or who believes that the payments made in the person's behalf have not been properly determined or that his or her eligibility has not been properly determined may file an appeal with the department pursuant to par. (b). Review is unavailable if the decision or failure to act arose more than 45 days before submission of the petition for a hearing.

*Wis. Stats. §49.45(5)*

More specifically, as to the FCP the right is described as follows:

**DHS 10.55 Fair hearing. (1) RIGHT TO FAIR HEARING.**

Except as limited in subs. (1m), (2) and (3) and s. DHS 10.62 (4), a client has a right to a fair hearing under s. 46.287, Stats. The contested matter may be a decision or action by the department, a resource center, county agency or CMO, or the failure of the department, a resource center, county agency or CMO to act on the contested matter within timeframes specified in this chapter or in the contract with the department. The following matters may be contested through a fair hearing:

- (a) Denial of eligibility under s. DHS 10.31 (6) or 10.32 (4).
- (b) Determination of cost sharing requirements under s. DHS 10.34.
- (c) Determination of entitlement under s. DHS 10.36.
- (d) Failure of a CMO to provide timely services and support items that are included in the plan of care.
- (e) Reduction of services or support items in the enrollee's individualized service plan, except in accordance with a change agreed to by the enrollee.
- (f) An individualized service plan that is unacceptable to the enrollee because any of the following apply:
  1. The plan is contrary to an enrollee's wishes insofar as it requires the enrollee to live in a place that is unacceptable to the enrollee.
  2. The plan does not provide sufficient care, treatment or support to meet the enrollee's needs and identified family care outcomes.

3. The plan requires the enrollee to accept care, treatment or support items that are unnecessarily restrictive or unwanted by the enrollee.  
*Wis. Adm. Code, §DCF 10.55(1).*

Here Petitioner's appeal is premature. There is no action by the FCP to deny his request for the power wheelchair. As of the date of the hearing, the FCP was in the final steps of the decision-making process as to that request. There was agreement that Petitioner does qualify for up to 45 hours per week of services in-home; beyond the 35 hours Petitioner was concerned about in his appeal. Arranging those service hours will take some coordination between Petitioner and the provider(s) and the managed care organization is certainly willing to meet with Petitioner to do so.

As for what happened to the power wheelchair approved by fee for service Medicaid, Petitioner may want to check with the provider to see why it did not bill Medicaid.

If the FCP agency denies the power wheelchair request or reduces care hours Petitioner may file another appeal.

### **CONCLUSIONS OF LAW**

That Petitioner's appeal is premature; the FCP agency had not taken a negative action as of the date of the appeal or the hearing.

**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 Milwaukee,  
Wisconsin, this 6th day of March, 2013

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\sDavid D. Fleming  
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 March 6, 2013.

Milw Cty Dept Family Care  
Office of Family Care Expansion