



STATE OF WISCONSIN  
Division of Hearings and Appeals

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In the Matter of

██████ ██████  
██████████████████  
████████████████████

DECISION

FCP/147315

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**PRELIMINARY RECITALS**

Pursuant to a petition filed February 13, 2013, under Wis. Admin. Code § DHS 10.55, to review a decision by the Western Wisconsin Cares-Family Care Program (FCP) in regard to Medical Assistance, a hearing was held on May 06, 2013, at La Crosse, Wisconsin.

The issue for determination is whether respondent correctly denied petitioner's request for home delivered meals.

There appeared at that time and place the following persons:

**PARTIES IN INTEREST:**

Petitioner:

██████ ██████  
██████████████████  
████████████████████

Respondent:

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

By: Alice Benson  
Western Wisconsin Cares-FCP

**ADMINISTRATIVE LAW JUDGE:**

Peter McCombs  
Division of Hearings and Appeals

**FINDINGS OF FACT**

1. Petitioner is a resident of La Crosse County.
2. Petitioner participates in the FC program, and, on October 25, 2012, he requested home delivered meals. Respondent's initial denial was appealed to Western Wisconsin Cares' Grievance Committee. In correspondence dated January 11, 2013, the Committee upheld the decision to deny home delivered meals.

3. Petitioner timely appealed the Grievance Committee decision.

### DISCUSSION

The Family Care program, which is supervised by the Department of Health and Family 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.

#### **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.

**Note: The services that typically will be required to be available include adaptive aids; adult day care; assessment and case planning; case management; communication aids and interpreter services; counseling and therapeutic resources; daily living skills training; day services and treatment; home health services; home modification; home delivered and congregate meal services; nursing services; nursing home services, including care in an intermediate care facility for the mentally retarded or in an institution for mental diseases; personal care services; personal emergency response system services; prevocational services; protective payment and guardianship services; residential services in an RCAC, CBRF or AFH; respite care; durable medical equipment and specialized medical supplies; outpatient speech; physical and occupational therapy; supported employment; supportive home care; transportation services; mental health and alcohol or other drug abuse services; and community support program services.**

Wis. Admin. Code §DHS 10.41(2) (June, 2009). Home delivered meal services are included in the list of covered services in the statutory note above. The petitioner disagrees with the CMO's denial of his request for home delivered meals, which will allegedly make it a challenge to remain in his home. The 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.

...

Wis. Admin. Code §DHS 10.44(2)(f) (*emphasis added*).

In applying the code service plan standards, I conclude that the prospect of home delivered meals could reasonably be concluded to address long term care needs and outcomes for the petitioner. I am less able to determine whether the same could be said of the cost-effectiveness. Petitioner's caregiver testified that the petitioner would be open to a reduction in the time he has been allotted for meal prep via supportive home care hours, in exchange for home delivered meals. The record before me does not disclose whether or not this subject was discussed by the parties before the instant appeal was filed. I believe that it does raise an interesting issue – would the reduction in meal prep time offset the cost of home delivered meals for the petitioner? Unfortunately, the record does not provide a concise answer.

Ultimately, the respondent has presented credible arguments and appropriate documentation justifying its denial of the home delivered meals request. The record does not demonstrate that the petitioner has successfully established any error on the part of the respondent in denying the request. Thus, the preponderance of the credible evidence supports the agency's position. Still, I recommend that the petitioner further research the cost-effectiveness of home delivered meals, and follow up with future requests for services as may be warranted.

### **CONCLUSIONS OF LAW**

The respondent correctly denied petitioner's request for home delivered meals.

**THEREFORE, it is**

**ORDERED**

That the petition for review is hereby 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 7th day of June, 2013

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\sPeter McCombs  
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 June 7, 2013.

Western Wisconsin Cares-FCP  
Office of Family Care Expansion