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

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In the Matter of

[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

DECISION

FCP/147485

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**PRELIMINARY RECITALS**

Pursuant to a petition filed February 20, 2013, under Wis. Admin. Code, §DHS 10.55, to review a decision by the Community Care Inc. to deny a service under the Family Care Program (FCP), a hearing was held on April 4, 2013, by telephone.

The issue for determination is whether the agency correctly denied a request for counseling services.

**PARTIES IN INTEREST:**

Petitioner:

[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

Respondent:

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

By: Rebecca Gulbrandsen  
Community Care Inc.  
4435 W. Lawrence St.  
Appleton, WI 54914

**ADMINISTRATIVE LAW JUDGE:**

Brian C. Schneider  
Division of Hearings and Appeals

**FINDINGS OF FACT**

1. Petitioner is a 26-year-old resident of Outagamie County who receives services under FCP. His Managed Care Organization (MCO) is Community Care, Inc.
2. Petitioner is diagnosed with developmental delays. He is considered to be mentally incompetent and has a guardian appointed to assist him.

3. In late 2012 petitioner was having difficulties with his twin brother, with whom he lived and who also is developmentally delayed. Petitioner's guardian referred him to a counselor to assist him with his problems with his brother, to address issues with his father's influence, and to develop coping skills other than marijuana.
4. Community Care denied the request because petitioner and his brother were moving to separate apartments and because petitioner expressed no interest in quitting marijuana.
5. In early January petitioner met with a counselor at Fox Cities Community Health Center. She identified petitioner's problems as experiencing a loss and going through the grief process and improving his relationship with his brother. A plan was developed on January 16 to attend six counseling sessions over the ensuing three months.
6. On January 8, 2013 petitioner's guardian again requested the counseling services. Community Care denied the services by a notice dated January 18 because he had not experienced a recent loss (the loss was stated to be his mother, who died ten years ago), his relationship with his brother was improving since they agreed to separate (which they did in late January), and because petitioner did not express a major desire to attend the counseling. The agency team decided that counseling would not be a cost effective means to work on petitioner's problems.

### 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 MCO must develop an Individual Service Plan (ISP) in partnership with the client. Wis. Admin. 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 MCO 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. Admin. 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 MCO over any decision, omission, or action of the MCO. The grievance committee shall review and attempt to resolve the dispute. If the dispute is not resolved to the participant's satisfaction, he may then request a hearing with the Division of Hearings and Appeals. If the person chooses to not grieve a decision or omission and appeals directly, the decision must be reviewed by the Department's MCO monitoring unit. Wis. Stat., §46.287(2)(b).

The issue in this case is whether the MCO acted appropriately in denying petitioner's request for counseling. 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. Admin. Code, §DHS 107.02(3)(e).

I conclude that the decision to deny was reasonable. The care team has a full understanding of petitioner's care needs, and I found their explanation of the denial to be credible. The care team was surprised that the counselor saw grief issues that they had not seen before. The relationship with the

brother was working out without counseling, and petitioner himself did not appear to desire intervention with his marijuana smoking (I have to admit to wondering where he gets the marijuana, but that is not my issue). That petitioner's guardian went ahead with the counseling despite the denial was questionable, and I cannot order payment simply because some of the sessions went ahead.

**CONCLUSIONS OF LAW**

The FCP agency's decision to deny requested counseling services was reasonable.

**THEREFORE, it is ORDERED**

That the petition for review herein be and the same 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 10th day of April, 2013

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\sBrian C. Schneider  
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 April 10, 2013.

Community Care Inc.  
Office of Family Care Expansion