



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

In the Matter of

██████
c/o ██████ ██████, Rep
██████
████████████████████

DECISION

FCP/148458

PRELIMINARY RECITALS

Pursuant to a petition filed April 03, 2013, under Wis. Admin. Code § DHS 10.55, to review a decision by the Lakeland Care District ["Lakeland"] in regard to Medical Assistance ["MA"], a Hearing was held on May 22, 2013.

The issue for determination is whether petitioner has a need to be placed in a Community Based Residential Facility ["CBRF"] with 24-hour supervision.

There appeared at that time via telephone the following persons:

PARTIES IN INTEREST:

Petitioner:

██████ (not present at May 22, 2013
Hearing)
c/o ██████ ██████, Rep
██████
████████████████████

Represented by:

██████ ██████, Guardianship
Representative
████████████████████
██████
██████
████████████████████

Respondent:

Department of Health Services
1 West Wilson Street
Madison, Wisconsin 53703
By: Kathy Burghardt, Care Management Supervisor, Lakeland
Lakeland Care District
500 City Center
Oshkosh, Wisconsin 54901

OTHER PERSONS PRESENT:

- ██████████, Care Manager, Lakeland
- ██████████, petitioner’s sister
- ██████████, Registered Nurse [“RN”], Care Manager, Lakeland
- ██████████, Care Manager, Lakeland

ADMINISTRATIVE LAW JUDGE:

Sean P. Maloney
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (age 61 years) is a resident of Winnebago County.
2. Petitioner is eligible for the MA Family Care Program [“FCP”]; he is enrolled in a Care Management Organization [“CMO”] (Lakeland).
3. On March 11, 2013 petitioner’s guardian and petitioner’s family requested that Lakeland place petitioner in a CBRF with 24-hour supervision.
4. By a *Notice of Action* dated March 20, 2013 Lakeland denied the request to place petitioner in a CBRF with 24-hour supervision.
5. *An Examining Physician’s or Psychologist’s Report*, dated March 26, 2012, completed for the Winnebago County, Wisconsin Circuit Court by a Psychologist concludes that petitioner lacks evaluative capacity to make decisions, that his personal safety is at risk, that he is incompetent and needs a guardian, that he should be placed in at least a CBRF but may need a locked unit if he is threatening and does not cooperate with caregivers, and that he needs proactive placement for his own safety; the report provides, among others, the following examples of petitioner’s behaviors: refuses medical care; does not take medication; uses marijuana; drinks alcohol; falls repeatedly in his motorized wheelchair; hit by a car while in his wheelchair; sets beard on fire; does not do well with authority and does not want people to tell him what to do.
6. A report, dated May 7, 2012, completed for the Winnebago County, Wisconsin Circuit Court by a Psychiatrist concludes that petitioner “is suffering from Cognitive Disorder secondary to Multiple Scoliosis [sic] versus Dementia, early onset secondary to Multiple Scoliosis [sic]. This is characterized by impairment in the areas of memory, cognitive function, judgment and insight. This impairs his ability to recognize reality, ability to care for self with potential danger to self. . . . [Petitioner] does not have the capacity to achieve the basic understanding of medical care, nutrition, clothing, shelter, hygiene, safety and financial management. . . . [Petitioner] is considered to be not competent and an appropriate candidate to proceed with Permanent Guardianship under Chapter 54/55 as well as Protective Placement. Without 24 hour structure and supervision he is likely to put himself in a life-threatening situation which is well documented in the records.” The report went to state that petitioner “can be placed in a facility such as a CBRF where there would be appropriate structure and supervision.” The report notes that petitioner’s “physical and mental health has deteriorated to the point that he spends most of his time in a motorized wheelchair, has sustained several falls, he has been hit by a car while on the street, he is neglecting his personal hygiene and grooming and he is unable to care for himself and has not been cooperative in accepting help from family members and others except lately he has allowed someone to come and clean his apartment once a week. . . . He smokes constantly and had lit his beard on fire at least once and he himself admitted that he had gotten hurt. There is significant concern regarding his safety and ability to care for self which has resulted in family members requesting help.” The report also notes that petitioner “feels people are afraid of him

and also claimed that he had been shot and because of that, he keeps a gun under his pillow but it was difficult to say whether he keeps the gun loaded or not. He has a large collection of guns and knives.”

7. In a letter dated May 12, 2013 petitioner’s mother, 2 sisters, and brother all report the following with regard to petitioner: that he has been abused by drug dealers who “entice him to purchase illegal substances” thereby depleting his income; that petitioner “has disregarded rules and requirements of Leases, which have had him expelled from both a County assisted living facility . . . and his apartment . . . These violations have included openly carrying loaded firearms, housing a stockpile of loaded weapons not equipped with locking devices, using illegal substances, and threatening residents;” that he soils his bed and clothing with stool and urine; that the carpeting in his apartment (both around his wheelchair location and around his bed) was burned with hundreds of cigarette burns; that he was hit by a car in his wheelchair in 2012; that he has tipped over dangerously in moving traffic numerous times; that he drives his wheelchair into unsafe conditions that cause his wheelchair to tip expelling him and requiring the help of family members and police; that he frequently drives his wheelchair into snow filled ditches placing himself at risk of hypothermia because he leaves his apartment inadequately dressed for weather conditions (in winter sandals and socks, no hat or mittens). Petitioner’s sister reports that petitioner has left his stove on and left the building and that petitioner is a “habitual liar.”

DISCUSSION

The Family Care Program [“FCP”] is available to eligible persons only through enrollment in a Care Management Organization [“CMO”] under contract with the Wisconsin Department of Health Services [“DHS”]. Wis. Admin. Code § DHS 10.41(1) (November 2009). A person may be eligible for FCP, but yet not entitled to enroll in a CMO. Wis. Admin. Code § DHS 10.36(1) (November 2009). A person who is found eligible for FCP but who does not meet certain conditions is not entitled to FCP benefits. Wis. Admin. Code § DHS 10.36(3) (November 2009). Such persons may pay privately for CMO services. Wis. Admin. Code §§ DHS 10.36(3) & 10.37 (November 2009).

In this case petitioner is eligible for FCP, is enrolled in a CMO (Lakeland), and is receiving FCP benefits. Petitioner appeals because Lakeland contends that he has no need to be placed in a CBRF with 24-hour supervision but, instead, can reside by himself in an apartment with appropriate supports.

Services provided under FCP must be determined through individual assessment of enrollee needs and detailed in an individual service plan unique to each enrollee; services must be cost-effective. Wis. Admin. Code § DHS 10.41(2) (November 2009). In this case, as noted in the above *Findings of Fact*, the evidence is very clear that petitioner is incompetent and likely to put himself in life-threatening danger in the absence of 24-hour structure and supervision. Therefore, Lakeland’s denial of the request to place petitioner in a CBRF with 24 hour supervision cannot be sustained and must be reserved.

Lakeland points to the fact that petitioner himself has expressed a desire to live in the community and does not want to reside in a CBRF or any other long-term facility. However, as noted above, petitioner is not competent and has impairment in the areas of judgment and insight. This impairs his ability to recognize reality and his ability to care for himself. He does not have the capacity to achieve the basic understanding of medical care, nutrition, clothing, shelter, hygiene, safety, and financial management.

Lakeland also points to a *Long Term Care Functional Screen Report* of petitioner with a referral date of February 11, 2013. That report shows that petitioner is independent in bathing, dressing, eating, mobility in the home, toileting, and transferring. However, the primary source of information for that report was petitioner. Petitioner is not competent and has impairment in the areas of judgment and insight. Further, Petitioner’s sister reports that petitioner is a “habitual liar.” Additionally, as detailed in the above

Findings of Fact, there are many ways that petitioner is a danger to himself (and perhaps others) that are related to bathing, dressing, eating, mobility in the home, toileting, and transferring.

CONCLUSIONS OF LAW

For the reasons discussed above, petitioner has a need to be placed in a CBRF with 24-hour supervision.

NOW, THEREFORE, it is ORDERED

That this matter be REMANDED to Lakeland, that petitioner be placed in a CBRF with 24-hour supervision, and that, within 10 days of the date of this *Decision*, Lakeland complete all necessary administrative steps to make this happen.

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 3rd day of June, 2013

\sSean P. Maloney
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

David H. Schwarz
Suite 201
5005 University Avenue
Madison, WI 53705-5400

Telephone: (608) 266-3096
FAX: (608) 264-9885
email: DHAmail@wisconsin.gov
Internet: <http://dha.state.wi.us>

The preceding decision was sent to the following parties on June 3, 2013.

Lakeland Care District
Office of Family Care Expansion