



STATE OF WISCONSIN  
Division of Hearings and Appeals

In the Matter of



DECISION

FCP/150688

**PRELIMINARY RECITALS**

Pursuant to a petition filed July 16, 2013, under Wis. Admin. Code § DHS 10.55, to review a decision by the Milw Cty Dept Family Care - MCO in regard to Medical Assistance, a hearing was held on October 08, 2013, at Milwaukee, Wisconsin.

The issue for determination is whether Petitioner’s daily living skill services were correctly discontinued by the Family Care Program (FCP).

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: Jennifer Froemming of MCFI on behalf of and Lillian Alford for  
Milw Cty Dept Family Care – MCO  
901 N 9th St  
Milwaukee, WI 53233

**ADMINISTRATIVE LAW JUDGE:**

David D. Fleming  
Division of Hearings and Appeals

**FINDINGS OF FACT**

1. Petitioner (CARES # ) is a resident of Milwaukee County.
2. Petitioner enrolled in the Family Care Program (FCP) in September 2011. He has received daily living skill services through the FCP since that time.
3. Petitioner filed this appeal to contest the discontinuance of the daily living skill service.

- 4. Petitioner is in his mid-20s and living in the community with his parents. He is independent as to all activities of daily living (ADLs) but requires assistance with his instrumentalities of daily living (IADLs). He does have safety awareness and can be alone at home for several hours.
- 5. Petitioner was notified that his daily living skill service was to be terminated in July 2013 because Petitioner had plateaued as to IADLs and because the service was being used for socialization skills rather than daily living skills.

**DISCUSSION**

The Family Care Long Term Care program (FCP) is a long-term care benefit for the elderly, people with physical disabilities and those with developmental disabilities. *Medicaid Eligibility Handbook (MEH)*, §29.1. It is authorized in the Wisconsin Statutes, §46.286, and is described comprehensively in the Wisconsin Administrative Code at Chapter DHS 10. Also see *Medicaid Eligibility Handbook (MEH)*, §29.1. The FCP has a standard contract (Contract) that further delineates the operation of the program by the agencies that implement the FCP. See <http://www.dhs.wisconsin.gov/mltc/2013/2013Contract.htm>.

‘Daily living skills’ are defined in the Contract as:

8. Habilitation Services

- a. **Daily living skills training** is the provision of training services to teach members the skills involved in performing activities of daily living, including skills intended to increase the member’s independence and participation in community life. May include money management, home care maintenance, food preparation, mobility training, self-care skills and the skills necessary for accessing and using community resources. Daily living skills training may involve training the participant or the natural support person.

...  
*2013 Family Care Programs Contract, Addendum XII [Benefit Package Service Definitions], A. [HCBW Services], §8.a.*

Though not spelled out in detail in this provision alone, when read together with the following it is apparent that daily living skills refer to ADLs and IADLs:

...  
2. **Activities of Daily Living or ADLs:** bathing, dressing, eating, mobility, transferring from one surface to another such as bed to chair and using the toilet.

...  
61. **Instrumental Activities of Daily Living or IADLs:** management of medications and treatments, meal preparation and nutrition, money management, using the telephone, arranging and using transportation and the ability to function at a job site.

...  
*2013 Family Care Programs Contract, §I [Definitions], #s 2 and 61; also see Wis. Admin. Code, §DHS 10.13(1m) and (32).*

\*\*\*                    \*\*\*                    \*\*\*                    \*\*\*                    \*\*\*                    \*\*\*

- b. **Day center service/treatment** is the provision of regularly scheduled activities in a non-residential setting (day center) to enhance social development and to develop skills in performing activities of daily living and community living. Day services include services primarily intended for adults with disabilities. ...

...  
*2013 Family Care Programs Contract, Addendum XII [Benefit Package Service Definitions], A. [HCBW Services], §8.b.*

The agency maintains that Petitioner has plateaued as to his IADLs and that the daily living skill services are used for taking Petitioner to such activities as a gym for exercise, outdoor walking trails, yoga, golf, the museum, the mall and going out to eat. As can be seen in the provisions above these are for the most part socialization skills, not IADLs. The services have been used for job application and interview role-playing but this does not seem to be the primary function and, regardless, the agency notes a leveling off of IADL skills. The FCP has offered other services for socialization.

Petitioner's representatives did not so much contest the discontinuance of the daily living skills as express unhappiness with personnel changes and offerings by the FCP provider for the socialization. The individual who had been working with Petitioner for most, if not all, of Petitioner's daily living skill service has left the provider and two people have replaced him - a man and a young lady. Petitioner's family believes she is too young and inexperienced to work with Petitioner and that the male is not available enough. The Division of Hearings and Appeals does not, however, have authority under the Contract or Administrative Code to direct FCP agency personnel matters.

Given the law and policy outlined above and the case presented by the FCP, I am concluding that Petitioner's daily living skill services were correctly discontinued.

**CONCLUSIONS OF LAW**

That the available evidence does not indicate that daily living skill training continues to be used effectively for IADL skills for Petitioner thus is correctly discontinued.

**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 13th day of November, 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 November 13, 2013.

Milw Cty Dept Family Care - MCO  
Office of Family Care Expansion