



FH  
[REDACTED]

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

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In the Matter of

[REDACTED]  
[REDACTED]  
[REDACTED]

DECISION

FCP/152868

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**PRELIMINARY RECITALS**

Pursuant to a petition filed October 17, 2013, under Wis. Admin. Code § DHS 10.55, to review a decision by the Milwaukee County Department of Family Care - MCO in regard to Medical Assistance, a hearing was held on November 20, 2013, at Milwaukee, Wisconsin.

The issue for determination is whether respondent has permanently placed petitioner in a nursing facility and has properly responded to petitioner's requests for payment of certain items.

There appeared at that time and place the following persons:

**PARTIES IN INTEREST:**

Petitioner:

[REDACTED]  
[REDACTED]  
[REDACTED]

Respondent:

Department of Health Services  
1 West Wilson Street, Room 651  
Madison, Wisconsin 53703

By: Lillian Alford

Milwaukee County Department of Family Care - MCO  
901 N 9th St  
Milwaukee, WI 53233

**ADMINISTRATIVE LAW JUDGE:**

Peter McCombs (telephonically)  
Division of Hearings and Appeals

**FINDINGS OF FACT**

1. Petitioner (CARES # [REDACTED]) is a resident of Milwaukee County; he resides with his adult daughter who left her last employment to provide care for her father full time.
2. Following hospitalization in September, 2013, petitioner was temporarily placed at a nursing home for rehabilitation purposes.

**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 issues on appeal were difficult to discern. Paperwork submitted by petitioner framed the appeal as:

I, [REDACTED], disagree with the decision to be in a nursing home. I want to be in rehab and go home. I want my rent paid so I can go home. I do not want to live in a nursing home.

See, Exhibit 1. And:

I, [REDACTED], do not plan or intend to be a resident at [REDACTED]. I am here for rehab only and want to go home to my own apartment. [REDACTED] in error has me here as a resident. Please correct.

See, Exhibit 3.

The respondent replied, in its Summary of Action Leading to Appeal, that,

Mr. [REDACTED] was hospitalized into intensive care on 9-25-2013. The hospital discharged member to nursing home on 1-14-2013 for rehabilitation. Mr. [REDACTED] and his daughter, [REDACTED], are appealing member's placement at the nursing home. No notice regarding member's nursing home stay has been provided to member informing him that he has to remain in the nursing facility post rehabilitation.

See, Exhibit 2.

There does not appear to be any issue related to petitioner's nursing facility stay, as he is not required to remain there post rehabilitation.

At hearing, the remaining issue questioned whether or not the respondent should be paying for rent, utilities, and cable at petitioner's residence that he shares with his adult daughter, while he is in the nursing facility. Petitioner's daughter lost her last job to care for her father full time.

The respondent argued that the petitioner indicated at one point that he would like his own apartment, and rent was initially withheld to allow for petitioner to save for a security deposit on a new apartment. Testimony indicated much conflicting opinion regarding the respondent's intentions in this regard; the record does not contain enough evidence for me to make any determination as to petitioner's state of mind. As petitioner's name is on the lease, and the record includes statements indicating petitioner's desire to return to his home, I find that the respondent has correctly continued to pay the rent.

Next, respondent argues that the payment of utilities was denied because that bill is in the name of petitioner's daughter. Payment of cable, while in the name of the petitioner, was denied because that is considered a luxury.

I am concerned by the terribly low level of discourse among the parties on this score. The respondent noted that bills have been requested for cable and utilities monthly, but petitioner's daughter has not provided these; the last bill received was in May, according to respondent's representative. As petitioner's representative, his daughter, has not provided current bills, I cannot find that the respondent has failed to pay. As petitioner was absent from the residence, it was not unreasonable for the respondent to request verification of the amounts due and owing.

### **CONCLUSIONS OF LAW**

1. Respondent has properly continued to pay rent on petitioner's residence while he temporarily resides in a nursing facility.
2. Respondent has properly declined to pay utility and cable charges that petitioner's daughter has requested, but failed to verify.

**THEREFORE, it is**

**ORDERED**

That petitioner's appeal 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, Room 651, 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 26th day of December, 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 December 26, 2013.

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