



FH  
[REDACTED]

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

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In the Matter of

[REDACTED]  
[REDACTED]  
c/o [REDACTED]  
[REDACTED]  
[REDACTED]

DECISION

FCP/154740

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**PRELIMINARY RECITALS**

Pursuant to a petition filed January 08, 2014, under Wis. Admin. Code § DHS 10.55, to review a decision by the Western Wisconsin Cares-FCP in regard to Medical Assistance, a telephonic hearing was held on February 03, 2014, at La Crosse, Wisconsin. At the request of the parties, the record was held open for one month for the submission of closing argument by the Family Care Program (FCP), and then a response by petitioner’s representative to DHA. The FCP timely submitted its closing to DHA which is received into the hearing record. However, petitioner’s representative did not submit any response to DHA even by the date of this decision.

The issue for determination is whether the Family Care Program correctly discontinued the petitioner’s Day Services at [REDACTED] effective November 10, 2013, due to petitioner’s needs could be more cost-effectively met by the supervision, care, and services provided by staff at her Adult Family Home.

There appeared at that time and place the following persons:

**PARTIES IN INTEREST:**

Petitioner:

[REDACTED]  
[REDACTED]  
c/o [REDACTED]  
[REDACTED]  
[REDACTED]

Representative:

[REDACTED] [REDACTED], guardian and step-sister  
[REDACTED]  
[REDACTED]

Respondent:

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

By: Alice Benson, Family Care quality manager  
Western Wisconsin Cares-Family Care Program  
1407 [REDACTED] Andrew Street  
La Crosse, WI 54603

ADMINISTRATIVE LAW JUDGE:

Gary M. Wolkstein  
Division of Hearings and Appeals

### FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a 43 year old resident of La Crosse County.
2. Petitioner was residing at the [REDACTED]'s Nursing home during the period of December, 2011.
3. On December 9, 2011, petitioner enrolled in the Western Wisconsin Family Care Program (FCP). At that time, she was demonstrating "acting out" (including aggressive) behaviors.
4. On April 9, 2012, FCP enrolled the petitioner in 9 hours per week of Day Services at [REDACTED], Inc. in an attempt to help petitioner with "acting out" behaviors, and as a preparation for a different residential setting.
5. On May 7, 2012, FCP increased the petitioner's Day Services at [REDACTED] to 15 hours per week.
6. On June 26, 2012, petitioner moved to an Adult Family Home, [REDACTED] Services (CCLS). There are four adult women in this group home, and there is one or two staff members on duty 24 hours per day. The staff at CCLS provides activities and services for each of the four residents.
7. Petitioner's Day Services are increased from 15 to 20 hours as of July 10, 2012, and then increased again to 24 hours per week as of September 26, 2012.
8. Petitioner's Day Services are reduced from 24 to 20 hours as of February 1, 2013, reduced again from 20 hours to 16.25 hours as of April 1, 2013, and then again reduced from 16.25 to 9 hours per week as of October 21, 2013.
9. The underlying basis for the Day Services reductions are that petitioner has been doing much better since moving to CCLS, has lost weight, is more engaged with her surroundings, and participates in social outings each week. Her "acting out" behaviors have continued to decrease and [REDACTED] staff, CCLS staff, and petitioner's guardian all agree that petitioner is doing well and making progress.
10. On or about October 22, 2013, the Family Care program staff discussed petitioner's progress with the CCLS adult family home regarding whether Day Services continue to be needed for petitioner as petitioner's "acting out" behaviors have continued to reduce. There is also indication that [REDACTED] day services may be "duplicative" of day services which are or could be provided by the Adult Family Home at no additional cost.
11. The Family Care Program sent an October 24, 2013 Notice of Action to the petitioner stating that effective November 10, 2013, her Day Services at [REDACTED] would discontinue because continued day services are duplicative of the Adult Family Home, and are not the most cost-effective way to support petitioner's progress.
12. FCP has continued 9 hours of Day Services for petitioner during the appeal process for this case.

### DISCUSSION

The Family Care program is supervised by the Wisconsin Department of Health Services (DHS), and is designed to provide appropriate long-term care services for elderly or disabled adults. It is authorized at Wis. Stat. § 46.286, and is further described at Wis. Admin. Code, ch. DHS 10.

The CMO must develop an Individual Service Plan (ISP) in partnership with the client. Wis. Admin. Code § DHS 10.44(2)(f). The ISP must reasonably address all of the client's long-term needs to assist the client to be as autonomous as possible, while also being cost effective. While the client has input, the

CMO does not have to provide all services the client desires if there are less expensive alternatives to achieve the same results. *Id.*, 10.44(1)(f). ISPs must be reviewed periodically. *Id.*, 10.44(j)(5).

The issue here is whether the CMO erred in discontinuing the petitioner's [REDACTED] Day Services as of November 10, 2013 with the intention that the staff of the Adult Family Home could provide those day services for petitioner. There are no standards written in the law 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. *Id.*, § DHS 107.02(3)(e).

While it is correct that the standard under Wis. Adin. Code § DHS 10.44(2)(f)(3) specifically includes that the ISP should assist the enrollee to be as self-reliant and autonomous “as possible and desired” by the enrollee, it is also the long-standing position of the Department, affirmed in many fair hearing decisions, that the FC participant does not have “unfettered choice” in deciding what supports Family Care provides to serve him/her, what living arrangements will be provided by Family Care, and exactly how the care plan is to be configured.

In this case, the petitioner has received Day Services at [REDACTED] from April 9, 2012 until the present. The above Findings of Fact make clear that petitioner has made very good progress in reducing her acting out behaviors, and her hours of day services have been reduced from 24 to 9 hours per week as of October, 2013. While petitioner's guardian had some concerns about the Adult Family Home, those concerns appear to have been addressed by the Family Care Program, and FCP encouraged the guardian to promptly notify them of any new problems for the petitioner at CCLS.

During the hearing, the Family Care witnesses testified to the petitioner's progress and that day services through [REDACTED] were duplicative and not cost effective to the services provided at no additional cost by CCLS. The petitioner's representative agreed that petitioner has done very well at CCLS, and has made substantial progress. While the record was held open, the FCP submitted a detailed and persuasive chronology to demonstrate the careful increase and then reduction of day services for the petitioner over about a two year period. The petitioner's guardian failed to refute FCP's case or to submit any response to the Family Care Program's chronology.

It has now been six months since the October 24, 2013 Notice of Action was sent to petitioner to discontinue his Day Services as of November 10, 2013 and FCP continued 9 hours of Day Services until this decision is issued. While the guardian's advocacy is commendable, the guardian has not established with any reliable evidence that the petitioner continues to need Day Services at this time. If the petitioner does regress in her behaviors when [REDACTED] is discontinued, she may re-apply for Day Services at that time with the Family Care Program. In any case, based upon the above, I conclude that the Family Care Program correctly discontinued the petitioner's Day Services at [REDACTED] effective November 10, 2013, due to petitioner's needs could be met by the supervision, care, and services provided by staff at her Adult Family Home in a more cost-effective way and without duplication of services.

### **CONCLUSIONS OF LAW**

The Family Care Program correctly discontinued the petitioner's Day Services at [REDACTED] effective November 10, 2013, due to petitioner's needs could be met by the supervision, care, and services provided by staff at her Adult Family Home in a more cost-effective way and without duplication of services.

**THEREFORE, it is**

**ORDERED**

The petition for review herein be and the same is hereby Dismissed.

**REQUEST FOR A REHEARING**

You may request a rehearing if you think this decision is based on a serious mistake in the facts or the law or if you have found new evidence that would change the decision. Your request must be **received within 20 days after the date of this decision**. Late requests cannot be granted.

Send your request for rehearing in writing to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400 **and** to those identified in this decision as "PARTIES IN INTEREST." Your rehearing request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and explain why you did not have it at your first hearing. If your request does not explain these things, it will be denied.

The process for requesting a rehearing may be found at Wis. Stat. § 227.49. A copy of the statutes may be found online or 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 filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Health Services, 1 West Wilson Street, Room 651, Madison, Wisconsin 53703, **and** on those identified in this decision as "PARTIES IN INTEREST" **no more than 30 days after the date of this decision** or 30 days after a denial of a timely rehearing (if you request one).

The process for Circuit Court Appeals may be found at Wis. Stat. §§ 227.52 and 227.53. A copy of the statutes may be found online or at your local library or courthouse.

Given under my hand at the City of Madison,  
Wisconsin, this 8th day of May, 2014

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\sGary M. Wolkstein  
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 May 8, 2014.

Western Wisconsin Cares-FCP  
Office of Family Care Expansion