



STATE OF WISCONSIN  
Division of Hearings and Appeals

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In the Matter of

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█  
█

DECISION

FCP/155454

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**PRELIMINARY RECITALS**

Pursuant to a petition filed February 13, 2014, under Wis. Admin. Code § DHS 10.55, to review a decision by the Continuum in regard to Medical Assistance, a hearing was held on March 19, 2014, at █ Falls, Wisconsin.

The issue for determination is whether the petitioner is entitled to additional hours of work at a sheltered workshop.

There appeared at that time and place the following persons:

**PARTIES IN INTEREST:**

Petitioner:

█ █  
█  
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Respondent:

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

By: T.J. Adkins  
Continuum  
28526 US Hwy 14  
Lone Rock, WI 53556

**ADMINISTRATIVE LAW JUDGE:**

Michael D. O'Brien  
Division of Hearings and Appeals

**FINDINGS OF FACT**

1. The petitioner is a resident of █ County.
2. The petitioner receives Family Care medical assistance through her CMO, Continuum.
3. The petitioner is a developmentally-disabled 32-year-old woman. She can communicate without difficulty, gets along with others, can prepare her own meals, take her medication, and (with

assistance) do her own laundry. She has no memory impairments. She requires assistance making decisions, managing her money, and making medical appointments. She has a history of being in or creating unsafe situations.

4. The petitioner has held employment at a regular job as a dishwasher two days per week. She had done this work for 14 years until she quit at the end of 2013.
5. The petitioner receives subsidized employment at [REDACTED] [REDACTED] [REDACTED] ([REDACTED]), a sheltered workshop.
6. The petitioner seeks to replace her regular with two additional days at [REDACTED].
7. The petitioner is physically and mentally capable of continuing to hold regular employment if she is given proper supervision.
8. Continuum has offered the petitioner training from the Department of Vocational Rehabilitation to help her increase her work skills. She has not accepted this offer, but it remains available to her.

### DISCUSSION

The Family Care Program provides appropriate long-term care services for elderly or disabled adults. It is supervised by the Department of Health and Family Services, authorized by Wis. Stat. § 46.286, and comprehensively described in Chapter DHS 10 of the Wisconsin Administrative Code. The process contemplated for an applicant is to test functional eligibility, then financial eligibility, and if both standards are met, to certify eligibility. The applicant is then referred for enrollment in a Care Management Organization (CMO), which drafts a service plan that meets the following criteria:

The CMO, in partnership with the enrollee, shall develop an individual service plan for each enrollee, with the full participation of the enrollee and any family members or other representatives that the enrollee wishes to participate. ... The service plan shall meet all of the following conditions:

1. Reasonably and effectively addresses all of the long-term care needs and utilizes all enrollee strengths and informal supports identified in the comprehensive assessment under par. (e)1.
2. Reasonably and effectively addresses all of the enrollee's long-term care outcomes identified in the comprehensive assessment under par. (e)2 and assists the enrollee to be as self-reliant and autonomous as possible and desired by the enrollee.
3. Is cost-effective compared to alternative services or supports that could meet the same needs and achieve similar outcomes. ...

Wis. Adm. Code § DHS 10.44(2)(f).

The petitioner is a 32-year-old developmentally disabled woman who lives in the community. Since she was 18 years old, she has washed dishes. Until the end of last year, she washed dishes two days a week in a local restaurant. She quit because she is tired of washing dishes and her boss treats her poorly. She continues to work three days a week in a sheltered workshop. She seeks to work another two days a week there. One of her goals is to earn enough money to buy things for herself. Continuum denied her request for additional days at the sheltered workshop because she is capable of working at regular employment. It did offer her training in prevocational skills through DVR so that she could develop skills that would allow her to do work other than wash dishes.

I understand why the petitioner is tired of washing dishes and does not wish to work for an unpleasant boss. But working additional days at a sheltered workshop does not meet her long-term needs or outcomes and is not cost-effective. A sheltered workshop is meant to provide employment to those who cannot carry on regular employment or to provide an intermediate step in which to prepare one for regular employment. The petitioner has already shown that she can perform regular employment. Because the

sheltered workshop pays less than the minimum wage, regular employment more effectively helps her meet her goal of having money to buy herself things. She testified that she wishes to do some type of work other than wash dishes. She has been working at the sheltered workshop three days a week and apparently has not developed any skills that will allow her to meet this goal, so it is unlikely that two more days a week there will help her meet it.

What is more likely to help the petitioner develop the skills to do work other than wash dishes is the training offered by the DVR. The petitioner is apprehensive about doing this because it means she must change her routine, which is difficult for her. While I understand her apprehension, she is going to have to do some things that are temporarily uncomfortable to move beyond washing dishes and make money to buy herself things. Before the hearing, she talked about her successful athletic endeavors. I am sure that these were difficult at first—and probably continue to be. But she has worked hard and succeeded at them. I have no doubt that she can use the work ethic she has shown in sports to develop new skills from training at DVR. Continuus’s denial of her request for additional days at a sheltered workshop is upheld.

### CONCLUSIONS OF LAW

Continuus correctly denied the petitioner’s request for additional hours of employment at a sheltered workshop because those hours are not medically necessary.

**THEREFORE, it is**

**ORDERED**

The petitioner's appeal is 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 4th day of April, 2014

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\sMichael D. O'Brien  
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 4, 2014.

Continuus  
Office of Family Care Expansion