



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[Redacted]
[Redacted]
c/o [Redacted]
[Redacted]
[Redacted]

DECISION

FCP/157114

PRELIMINARY RECITALS

Pursuant to a petition filed April 24, 2014, under Wis. Admin. Code § DHS 10.55, to review a decision by the Western Wisconsin Cares-FCP in regard to Medical Assistance, a hearing was held on October 06, 2014, at La Crosse, Wisconsin. At the request of the petitioner the record was held open to allow for the submission of further documentation. Said documentation was timely received.

The issue for determination is whether respondent correctly seeks to terminate petitioner's placement in a corporate adult family home.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[Redacted]
[Redacted]
c/o [Redacted]
[Redacted]
[Redacted]

[Redacted]
[Redacted]
[Redacted]

Respondent:

Department of Health Services
1 West Wilson Street, Room 651
Madison, Wisconsin 53703
By: Carrie Horstman
Western Wisconsin Cares-FCP

ADMINISTRATIVE LAW JUDGE:

Peter McCombs
Division of Hearings and Appeals

FINDINGS OF FACT

- 1. Petitioner (CARES # [Redacted]) is a resident of La Crosse County. He has diagnoses of oppositional defiance disorder, Attention Deficit Hyperactivity Disorder, PDD, anxiety, hypothyroidism, and autism.

2. The Petitioner has been residing in a corporate adult family home.
3. Petitioner requires some supervision with some his ADL's and some of his instrumental activities of daily living (IADL's) including grooming/bathing, financial management, food preparation, medication, and transportation.
4. Petitioner has exhibited aggressive behaviors in the past, and has expressed an interest in guns and swords.
5. On January 15, 2014, the respondent issued a Notice of Action indicating that it intended to terminate petitioner's present level of service, i.e., corporate adult family home placement, effective February 1, 2014. The respondent proposes petitioner live more independently with appropriate supports.

### DISCUSSION

The Family Care Program (FCP) which is supervised by the Department of Health and Family Services, is designed to provide appropriate long-term care services for elderly or disabled adults. WI Stats § 46.2805(4); WI Admin Code § DHS 10.13(21). The Family Care (FC) benefit is available to eligible persons only through enrollment in a case management organization (CMO). See, WI Admin Code § DHS 10.41(1). Application for the Family Care benefit must be made to the agency serving the county, tribe or family care district in which the person resides. WI Stats § 46.287(2)(a)1; WI Admin Code § DHS 10.55(3). The Family Care Program procedures and eligibility requirements are found in the Wisconsin Administrative Code, Chapter DHS 10.

When a person enrolls in FC and is eligible, the agency must perform an assessment to identify the person's needs, strengths, and long term outcomes. See, WI Admin Code, §DHS 10.44(2)(e). Based on that assessment, the agency then develops an ISP based on criteria found in WI Admin Code § DHS 10.44(2)(f).

(f) 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 CMO shall provide support, as needed, to enable the enrollee, family members or other representatives to make informed service plan decisions, and for the enrollee to participate as a full partner in the entire assessment and individual service plan development process. 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.
4. Is agreed to by the enrollee, except as provided in subd. 5.
5. If the enrollee and the CMO do not agree on a service plan, provide a method for the enrollee to file a grievance under s. DHS 10.53, request department review under s. DHS 10.54, or request a fair hearing under s. DHS 10.55. Pending the outcome of the grievance, review or fair hearing, the CMO shall offer its service plan for the enrollee, continue negotiating with the enrollee and document that the service plan meets all of the following conditions:
  - a. Meets the conditions specified under subds. 1. to 3.
  - b. Would not have a significant, long-term negative impact on the enrollee's long-term care outcomes identified under par. (e) 2.
  - c. Balances the needs and outcomes identified by the comprehensive assessment with reasonable cost, immediate availability of services and ability of the CMO to develop alternative services and living arrangements.

d. Was developed after active negotiation between the CMO and the enrollee, during which the CMO offered to find or develop alternatives that would be more acceptable to both parties.

See WI Admin Code § DHS 10.44(2)(f).

The ISP must then address the long-term cares necessary to permit the enrollee to be as self-reliant and autonomous as possible but the ISP must also be cost-effective compared to alternative services or supports that could meet the same needs and achieve similar outcomes. The problem in this case is that the Petitioner wants the CMO to continue to fund the Petitioner's residency in a specific corporate adult family home but the respondent has concluded that the Petitioner can reside in the community with supportive services.

Based on the record before me, I do not concur with either the respondent's contention that Petitioner could safely reside independently, or the termination of the Petitioner's present housing arrangement. The Petitioner presented a good deal of testimony contesting the termination of his housing, including letters from his treating physician, treating psychiatrist, and karate instructor. See, Exhibits 5, 6, and 7. All three letters expressed the same expectation that the Petitioner would someday be able to transition to a more independent setting, but all three concluded that he was not there yet. Petitioner's brother also provided crucial, and admittedly concerning, testimony regarding the petitioner's interest in guns and swords. He testified that the Petitioner is not permitted to have weapons in his present residence, but that he is certain to obtain a weapon if living independently. I note that the petitioner responded to this testimony affirmatively by stating that he would only use such weapons at a gun range.

As noted above, an individual service plan (ISP) must address the long-term cares necessary to permit the enrollee to be as self-reliant, safe, and autonomous as possible. The ISP must also be cost-effective compared to alternative services or supports that could meet the same needs and achieve similar outcomes. I have reviewed the petitioner's medical records that have been submitted, along with his RAD Report, Member Centered Plan, and Case Note Report. See, Exhibit 2. All of the documents reference petitioner's actual and potential for aggression. While the respondent has indicated its ability to address petitioner's ADL and IADL needs through community supports, I have seen nothing what would address the petitioner's potential for aggression or his ability to purchase weaponry. In this case the evidence weighs in favor of continuing to support the petitioner in his current corporate adult family home.

### **CONCLUSIONS OF LAW**

That the case management organization's termination of current service, i.e., Petitioner's placement in a corporate adult family home, was incorrect because the evidence is not sufficient to support the conclusion that the placement of Petitioner in a more independent living situation would reasonably and effectively address Petitioner's long-term care needs.

**NOW, THEREFORE, it is**

**ORDERED**

This matter is remanded to the respondent to rescind the January 15, 2014, Notice of Action terminating Petitioner's current service, i.e., Petitioner's placement in a corporate adult family home. All actions required by this Order shall be completed within 10 days following issuance of this Decision.

## 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 25th day of November, 2014.

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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 November 25, 2014.

Western Wisconsin Cares-FCP  
Office of Family Care Expansion