



FH  
[REDACTED]

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

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In the Matter of

[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

DECISION

FCP/157557

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**PRELIMINARY RECITALS**

Pursuant to a petition filed May 08, 2014, 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 May 21, 2014, at Milwaukee, Wisconsin.

NOTE: Supportive Community Services submitted the Letters of Guardianship appointing it the Petitioner's guardian. It has been marked as Exhibit 4 and entered into the record.

The issue for determination is whether the Milwaukee County Department of Family Care (MCDFC) correctly denied the Petitioner's request to be placed in an Adult Family Home.

There appeared at that time and place the following persons:

**PARTIES IN INTEREST:**

Petitioner:

[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

Respondent:

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

By: Rosaida Schrank, Quality Improvement Coordinator, MCDFC  
Milwaukee County Department of Family Care - MCO  
901 N. 9th St.  
Milwaukee, WI 53233

**ADMINISTRATIVE LAW JUDGE:**

Mayumi M. Ishii  
Division of Hearings and Appeals

**FINDINGS OF FACT**

1. Petitioner (CARES # [REDACTED]) is a resident of Milwaukee County.
2. Petitioner participates in the Family Care Program and her long term goals are:
  - a. To have her guardian continue to support her, although she would prefer to be her own guardian,
  - b. To live, “independently in the community and free from abuse, neglect and negative influence from family”, though she would prefer to live with her family in Milwaukee, and
  - c. To work with a pre-vocational service for find a job, though she would like to continue to work at a day program.

(Exhibit 3, pg. 29)

3. Petitioner is 24 years old and suffers from a severe cognitive impairment and requires assistance with toileting during her menses, grooming, meal preparation, medication administration, money management, laundry and chores and transportation. (Exhibit 3, pgs. 4-20)
4. The Petitioner is unable to make change and is unable to utilize public transportation. The Petitioner is not able to read a check and understand how much the check is worth. (Testimony of Monique [REDACTED], Supportive Community Services Case Manager)
5. On December 10, 2019, the Milwaukee County Circuit court appointed Supportive Community Services to be Petitioner’s corporate guardian. (Exhibit 4).
6. Monique [REDACTED] is the Petitioner’s case manager from Supportive Community Services and has worked with the Petitioner for about two years. (Testimony of Ms. [REDACTED])
7. In November 2013, the Petitioner was placed in a CBRF, on an emergency, basis because she was being abused/neglected by her family. In part, family members were taking the money Petitioner’s money and she did not understand what they were doing. (Testimony of Dinah LaCaze, Family Care Supervisor)
8. The Petitioner, her case manager – Ms. [REDACTED], and the Petitioner’s interdisciplinary team attempted to find alternate housing for the Petitioner, but could not come to an agreement about where the Petitioner should be placed. (Testimony of Ms. LaCaze and Ms. [REDACTED])
9. On April 29, 2014, MCDFC sent Petitioner a notice indicating that it was denying her request for placement at an adult family home. (Exhibit 1)
10. The Petitioner’s guardian, Supportive Community Services, Inc., filed a request for fair hearing on the Petitioner’s behalf. It was received by the Division of Hearings and Appeals on May 7, 2014. (Exhibit 1)

**DISCUSSION**

The Family Care Program is a subprogram of Wisconsin’s Medical Assistance (MA) program and is intended to allow families to arrange for long-term community-based health care and support services for older or impaired family members without resort to institutionalization, *Wis. Stats.* §46.286; *Wis. Admin. Code* §DHS 10.11. 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.

An individual, who meets the functional and financial requirements for Family Care, participates in Family Care by enrolling with a Care Management Organization (CMO), which, in turn, works with the participant and his/her family to develop an individualized plan of care. *See Wis. Stats.* §46.286(1) *and*

*Wis. Admin. Code* §DHS 10.41. The CMO, in this case MCDFC, implements the plan by contracting with one or more service providers, such as ANS Home Health.

*Wis. Admin. Code* DHS 10.41(2) states that:

Services provided under the family care benefit shall be determined through individual assessment of enrollee needs and values and detailed in an individual service plan unique to each enrollee. As appropriate to its target population and as specified in the department's contract, each CMO shall have available at least the services and support items covered under the home and community-based waivers under 42 USC 1396n (c) and ss. 46.275, 46.277 and 46.278, Stats., the long-term support community options program under s. 46.27, Stats., and specified services and support items under the state's plan for medical assistance. In addition, a CMO may provide other services that substitute for or augment the specified services if these services are cost-effective and meet the needs of enrollees as identified through the individual assessment and service plan.

It is a well-established principle that a moving party generally has the burden of proof, especially in administrative proceedings. State v. Hanson, 295 N.W.2d 209, 98 Wis. 2d 80 (Wis. App. 1980). In a case involving the denial of a new service, the Petitioner is the party. Thus, the Petitioner bears the burden to prove that he/she meets the approval criteria for the requested service.

In the case at hand, Petitioner contests the denial of her placement at an Adult Family Home (AFH).

It is undisputed that the Petitioner needs supportive home care services, some personal care services, social supports, daily living skills training and transportation. However, it is the position of MCDFC that the Petitioner's desired outcome would be better met, if she were in a Supported Independent Living Services program (SILS). MCDFC argues that it is more appropriate to place the Petitioner in her own apartment because that is what she desires, because Family Care would pay for supportive home care, personal care and transportation services, and because the Petitioner would better learn to live independently, if forced to do more for herself.

Petitioner's guardian argues that the Petitioner needs constant supervision due to her cognitive disability and expressed concerns that if left alone, the Petitioner would be vulnerable to her family who could visit at any time or to anyone else who might wish to take advantage of her. Ms. [REDACTED] gave as an example a time when Petitioner was 19 and engaged in a dating/sexual relationship with a man in his 50's. Ms. [REDACTED] further testified that the Petitioner liked the AFH that she toured, because even though she was sharing a unit with another person, she had her own room and this made her feel like she had her own apartment.

Addendum X, of the standard MCO contract executed by the Department of Health Services can be viewed on-line at:

<http://www.dhs.wisconsin.gov/lc/lc/ltcare/statefedreqs/cy2014mcocontract.pdf>

It states that residential care services may be authorized when:

1. A member's long-term care outcome cannot be cost-effectively supported in the member's home, OR
2. When members' health and safety cannot be adequately safe-guarded in the member's home; OR

3. When residential care services are a cost-effective option for meeting that member's long-term care needs.

(Id.)

The contract further describes the types of acceptable residential care and states that an AFH is a place where services include supportive home care, personal care and supervision. The AFH may also include transportation and recreation/social activities, behavior and social supports, daily living skills training and transportation. (Standard MCO Contract)

This standard is repeated in the Milwaukee County Department of Family Care Policy, Procedure and Guideline attached to Exhibit 3.

The standard MCO contract contains no provisions discussing SILS; this is an item in the MCDF Policy and Procedure Guideline and it is described as, "services that provide necessary assistance for eligible persons in order to meet their daily living needs and to insure adequate functioning at home, in small integrated alternative care settings and in the community. *These are NOT residential services*". (Exhibit 3, pg. 36) There is no clearly stated criteria for whom this would be appropriate. As such, I turn to the criteria stated in the MCO contract.

The record supports a finding that the Petitioner cannot live independently at this time. First, the court found it appropriate and necessary to appoint a guardian for the Petitioner due to a lack of full evaluative capacity. Second, the Petitioner has demonstrated some poor/questionable judgment by giving her family access to her money and previously by engaging in a sexual relationship with a man 30-40 years her elder. She has also shown some questionable judgment given that her family abused/neglected her but one of her stated preferences is to live with her family. Third, the Petitioner is unable to understand the information in a check, make change or utilize public transportation and needs assistance with grooming, menses related toileting, meal preparation, medication administration, money management, laundry/chores and transportation. Consequently, it is reasonable to conclude that the Petitioner's safety cannot be adequately safe-guarded, if she is in her own home, unsupervised. Further, given all of Petitioner's needs, I question the cost-effectiveness of putting her in her own apartment and paying for all the services and supports she needs on an ad-hoc, a la carte basis.

As such, it is found that MCDFC incorrectly denied the Petitioner's request for placement in an AFH.

It should be noted that there was some discussion about whether the Petitioner could be placed in the specific AFH that she toured. However, the notice sent to the Petitioner was not a denial of placement at that specific AFH and the subject for the hearing dealt with the denial of Petitioner's placement at any AFH, not a specific one. Indeed, Ms. LaCaze indicated it was the position of MCDFC that Petitioner did not need to be in an AFH, at all.

As guidance to the parties, I note that Wis. Admin. Code §DHS 10.51(2)(a)3 states that enrollees in an MCO have the right to support from the CMO in, "actively participating and planning individualized services and making reasonable service and provider choices for achieving identified outcomes." In addition, Wis. Admin. Code §DHS 10.44(3)(d) Standards for Performance by CMOs states that the CMO must maintain a process to consider a request for non-CMO providers when one of four criteria are met: 1) the CMO does not have the capacity to meet all of its enrollees' needs; 2) the CMO's providers do not have the specialized expertise, specialized knowledge or cultural diversity in its network of providers; 3) the CMO cannot meet the enrollee's need on a timely basis or 4) transportation or access to the CMO provider would cause undue hardship on the enrollee.

**CONCLUSIONS OF LAW**

The MCDFC incorrectly denied the Petitioner's request for placement in an AFH.

**THEREFORE, it is**

**ORDERED**

That MCDFC approve funding for Petitioner's placement in an AFH within 10 days of this decision.

**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 Milwaukee,  
Wisconsin, this 27th day of May, 2014.

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\sMayumi M. Ishii  
Administrative Law Judge  
Division of Hearings and Appeals



**State of Wisconsin\DIVISION OF HEARINGS AND APPEALS**

Brian Hayes, Administrator  
Suite 201  
5005 University Avenue  
Madison, WI 53705-5400

Telephone: (608) 266-3096  
FAX: (608) 264-9885  
email: [DHAmail@wisconsin.gov](mailto:DHAmail@wisconsin.gov)  
Internet: <http://dha.state.wi.us>

The preceding decision was sent to the following parties on May 27, 2014.

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