



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

In the Matter of

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

DECISION

FCP/157558

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.

The issue for determination is whether the Milwaukee County Department of Family Care (MCDFC) correctly terminated the Petitioner's placement at a Community-Based Residential Facility (CBRF).

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 Insurance Coordinator, MCDFC
Milwaukee Dept. 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 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)
3. 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 Boulware, Supportive Community Services Case Manager)
4. The Petitioner does not need skilled nursing services. (Testimony of Dinah [REDACTED])
5. In November 2013, the Petitioner was placed in a CBRF, on an emergency, basis because she was being abused/neglected by her family. (Testimony of Dinah [REDACTED], Family Care Supervisor)
6. On April 29, 2014, MCDFC sent Petitioner a notice indicating that it was terminating her placement effective May 14, 2014. (Exhibit 1)
7. 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 termination of services, the agency is the party moving to change the status quo. Thus, the agency bears the burden to prove that it correctly terminated the service in question.

In the case at hand, Petitioner contests the termination of her placement at a community-based residential facility (CBRF).

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/lcared/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 a community-based residential facility for persons with developmental disabilities is a place where services include supportive home care, personal care, supervision, behavior and social supports, daily living skills training, transportation and up to seven hours per week of nursing care per resident. (Standard MCO Contract)

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

It is undisputed that the Petitioner does not need all of the services offered by a CBRF, in particular skilled nursing services. Consequently, placing the Petitioner in a CBRF is neither cost-effective nor is it an appropriate means of meeting the Petitioner's needs.

CONCLUSIONS OF LAW

The agency correctly terminated the Petitioner's placement at a CBRF.

THEREFORE, it is ORDERED

The Petition is 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 Milwaukee,
Wisconsin, this 23rd day of May, 2014.

\sMayumi M. Ishii
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 23, 2014.

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