



STATE OF WISCONSIN  
Division of Hearings and Appeals

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In the Matter of

[REDACTED]  
[REDACTED]  
[REDACTED]

DECISION

FCP/160008

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**PRELIMINARY RECITALS**

Pursuant to a petition filed August 21, 2014, under Wis. Admin. Code, §DHS 10.55, to review a decision by Community Care Inc. in regard to Family Care Program (FCP) services, a hearing was held on September 18, 2014, by telephone.

The issue for determination is whether the agency correctly denied a request for adult day center services.

**PARTIES IN INTEREST:**

Petitioner:

[REDACTED]  
[REDACTED]  
[REDACTED]

Respondent:

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

By: Heather Neumann  
Community Care Inc.  
205 Bishops Way  
Brookfield, WI 53005

**ADMINISTRATIVE LAW JUDGE:**

Brian C. Schneider  
Division of Hearings and Appeals

**FINDINGS OF FACT**

1. Petitioner is a 60-year-old resident of Milwaukee County who is eligible for the FCP. Community Care is her managed care organization (MCO).
2. Petitioner has a number of health problems, and she resides in an 8-bed community-based residential facility (CBRF). Petitioner is married; her husband lives in the community and works full-time. Other residents of the CBRF are older than petitioner, in more fragile health, and unable to participate in activities as much as petitioner.

3. On July 30, 2014, petitioner requested that Community Care pay for petitioner to attend an adult day center once-per-week. Because her husband works, it would give her an opportunity to get out into the community during the week. The center would cost about \$50 per day; transportation would be approximately \$30.
4. By a letter dated August 12, 2014 Community Care denied the request. In its contract with the CBRF the CBRF is to provide all activities, socialization, and community contact, and thus the MCO concluded that such services are the CBRF's responsibility.

### DISCUSSION

The Family Care program, which is supervised by the Department of Health Services, is designed to provide appropriate long-term care services for elderly or disabled adults. It is authorized in the Wisconsin Statutes, §46.286, and is described comprehensively in the Wisconsin Administrative Code, Chapter DHS 10.

The MCO must develop an Individual Service Plan (ISP) in partnership with the client. Wis. Admin. Code, §DHS 10.44(2)(f). The ISP must reasonably and effectively address all of the client's long-term needs and outcomes to assist the client to be as self-reliant and autonomous as possible, but nevertheless must be cost effective. While the client has input, the MCO does not have to provide all services the client desires if there are less expensive alternatives to achieve the same results. Wis. Admin. Code, §DHS 10.44(1)(f); DHS booklet, Being a Full Partner in Family Care, page 9. ISPs must be reviewed periodically. Admin. Code, §DHS 10.44(j)(5).

Wis. Stat., §46.287(2)(a)1 provides that a person may request a fair hearing to contest the reduction of services under the FCP program, among other things, directly to the Division of Hearings and Appeals. In addition, the participant can file a grievance with the MCO over any decision, omission, or action of the MCO. The grievance committee shall review and attempt to resolve the dispute. If the dispute is not resolved to the participant's satisfaction, she may then request a hearing with the Division of Hearings and Appeals. If the person chooses to not grieve a decision or omission and appeals directly, the decision must be reviewed by the Department's MCO monitoring unit. Wis. Stat., §46.287(2)(b). Community Care's monitoring unit is Metastar, and it is unclear whether Metastar reviewed the denial.

As has been noted many times in the past, there are no standards written in the law or policy 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. See Wis. Admin. Code, §DHS 107.02(3)(e).

During the hearing it became apparent that petitioner is not a typical resident of this particular CBRF. She is younger and more active than the other residents, and the activities that the other residents are able to participate in are different than the ones petitioner is capable of. While it is undisputed that the CBRF contract calls for the residence to provide activities and community access, it is difficult to provide petitioner with the full range of activities that she desires because there is insufficient staff to focus on just one resident. The CBRF does not have the funds to pay for the once weekly day center.

I conclude that there always is an exception to the rule, and petitioner appears to be the exception here. The CBRF administrator has agreed to provide the transportation to the day center if the MCO will cover the cost of the center, and I find the compromise to be reasonable. I will not order Community Care directly to provide the service because I did not take evidence on the cost factors in petitioner's ISP, but I will order Community Care to provide the once weekly adult day center if the cost can be fit into petitioner's ISP costs.

### CONCLUSIONS OF LAW

Because petitioner is an unusually active resident in her CBRF, the MCO should make an exception to the contractual provision that the CBRF must provide all activities and community access for petitioner, and that it should provide the requested once weekly adult day center access if the cost can be fit into petitioner's ISP.

**THEREFORE, it is**

### ORDERED

That the matter be remanded to the Community Care with instructions to provide the requested once weekly adult day center access if the cost can be fit into petitioner's ISP. The agency shall take the action within 10 days 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 24th day of September, 2014

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\sBrian C. Schneider  
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 September 24, 2014.

Community Care Inc.  
Office of Family Care Expansion