



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[Redacted]
[Redacted]
Redact
[Redacted]

DECISION

FCP/161586

PRELIMINARY RECITALS

Pursuant to a petition filed October 27, 2014, under Wis. Admin. Code, §DHS 10.55, to review a decision by Community Care Inc. to deny a request for a service under the Family Care Program (FCP), a hearing was held on December 11, 2014, by telephone.

The issue for determination is whether the agency correctly denied a request for modification of a van when petitioner already received transportation assistance through public transportation.

PARTIES IN INTEREST:

Petitioner:

[Redacted]
[Redacted]
Redact
[Redacted]

Respondent:

Department of Health Services
1 West Wilson Street, Room 651
Madison, Wisconsin 53703
By: Barb Strohmeyer, Care Manager
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 (CARES # [Redacted]) is a resident of Outagamie County.
2. Petitioner is 30-years-old and lives with family. He receives services under the FCP. He is wheelchair-bound and requires specialized transportation.

3. Prior to petitioner becoming eligible for FCP the family had a van with a lift to transport petitioner. The van thus was not taken into account when services were determined. Petitioner receives funding for transportation to his vocational activity and for medical appointments.
4. In 2014 the family van was junked. A request was made on petitioner's behalf for the FCP to cover the cost of modifications to a new van to incorporate a lift to make it wheelchair accessible. The cost for the modifications was \$17,000. The family would pay for the van itself.
5. The agency determined that petitioner's needs and outcomes through the FCP could be met with current funding for transportation services. By a notice dated September 17, 2014 the agency informed petitioner that it was denying the request for the service. Petitioner filed an appeal with the Division of Hearings and Appeals.

### 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 denial of eligibility for the program and 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, he may then request a hearing with the Division of Hearings and Appeals. Wis. Admin. Code, §DHS 10.55(2).

The denial of a requested new service is not among the items that can be appealed directly to the Division of Hearings and Appeals. The notice given to petitioner did not tell him that limitation, however, and thus he appealed directly to this office. Under the strict reading of the law I do not yet have authority to review the case. Nevertheless, I did some research and found that in similar situations, the results were similar to the resolution suggested during the hearing. FCP agencies will pay for van modifications if the recipient and/or the recipient's family agree to take responsibility for all transportation. The agencies typically do not pay for a private vehicle and also specialized transportation to certain activities. The Division of Hearings and Appeals has upheld that policy.

I am going to dismiss the appeal because (1) it did not go through the grievance process first, and (2) the denial of the van modification was consistent with past practice when the program already is paying for transportation to programs and services involved in the plan of care. However, nothing is stopping the parties from reviewing the care plan again. If petitioner's family is willing to undertake all transportation responsibilities, it appears that the agency would be willing to fund the van modifications.

**CONCLUSIONS OF LAW**

The Division of Hearings and Appeals does not have authority to grant the requested service because the petitioner did not first go through an agency grievance process.

**THEREFORE, it is**

**ORDERED**

That the petition for review herein be and the same is hereby 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 18th day of December, 2014

---

\sBrian C. Schneider  
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 December 18, 2014.

Community Care Inc.  
Office of Family Care Expansion