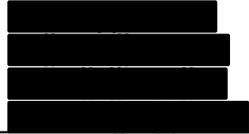




STATE OF WISCONSIN  
Division of Hearings and Appeals

In the Matter of



DECISION

FCP/164553

**PRELIMINARY RECITALS**

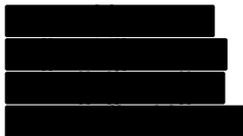
Pursuant to a petition filed March 11, 2015, under Wis. Admin. Code § DHS 10.55, to review a decision by the Care Wisconsin First, Inc. in regard to Medical Assistance, a hearing was held on May 14, 2015, at Port Washington, Wisconsin.

The issue for determination is whether the case management organization (CMO) has demonstrated that it correctly discontinued Petitioner’s participation in an activity program

There appeared at that time and place the following persons:

**PARTIES IN INTEREST:**

Petitioner:



Respondent:

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

By: Ms. Wesolek, Kristy McAllister  
Care Wisconsin First, Inc.  
2802 International Lane  
Madison, WI 53704-3124

**ADMINISTRATIVE LAW JUDGE:**

David D. Fleming  
Division of Hearings and Appeals

**FINDINGS OF FACT**

1. Petitioner (CARES # ) is a resident of Ozaukee County.

2. Petitioner is a Family Care Program (FCP) participant. One of the services in place for her with a prior case management organization has been a group of services through [REDACTED]. This included job coaching and social activities.
3. Petitioner was notified that the above CMO was discontinuing the [REDACTED] Services as it does not have a contract with [REDACTED] for recreational services and because it concluded that social activities do not relate to Petitioner’s long term outcomes as they do not affect her health and safety or her ability to perform her ADLs. The CMO conclude that Petitioner has the ability to take a local taxi and manage a small sum of spending cash so can do other social activities and does not need [REDACTED]’s supervision and transportation. The discontinuance was to be effective March 13, 2015.
4. Petitioner filed an appeal with the Division of Hearings and Appeals on March 11, 2015 to contest the discontinuance of the [REDACTED] services. The Division of Hearings and Appeals ordered that Petitioner’s [REDACTED] services be continued pending a decision in this matter.
5. Petitioner is diagnosed with Down syndrome. She is 42 years of age ([REDACTED]). She lives with her mother. Her mother is 74.
6. Petitioner’s long term functional screen indicates that Petitioner is independent as to her ADLs – bathing, dressing, toileting and the like. She needs assistance with most IADLs. The LTFS indicates that Petitioner is unable to live independently and that she requires assistance with meal preparation, money management, to clean house, do laundry or work independently. Her mother is her payee. Petitioner cannot communicate fully beyond basic needs, she cannot apply reasoning and problem solve to new situations. She requires cues, reminders and guidance to complete routine daily activities. She requires assistance with medication management.
7. Petitioner does have two part time jobs in the community.
8. Petitioner’s social life is through her friends at [REDACTED]. She has known some of them since 1<sup>st</sup> grade. She has attended recreational activities at [REDACTED] for 15 years. She has attended [REDACTED] through the Family Care program since 2009 as a Family Care participant with the CMO Community Care.
9. Petitioner seeks to attend the [REDACTED] social activities 2 times per month at a cost of \$120.00.

**DISCUSSION**

The Division of Hearings and Appeals can only exercise authority that has been delegated to it. With respect to Family Care the Wisconsin Administrative Code delegates hearing authority where the appeal is directly to the Division of Hearings and Appeals as follows:

...

- (a) Denial of eligibility under s. DHS 10.31 (6) or 10.32 (4).
- (b) Determination of cost sharing requirements under s. DHS 10.34.
- (c) Determination of entitlement under s. DHS 10.36.
- (d) Failure of a CMO to provide timely services and support items that are included in the plan of care.
- (e) Reduction of services or support items in the enrollee’s individualized service plan, except in accordance with a change agreed to by the enrollee.
- (f) An individualized service plan that is unacceptable to the enrollee because any of the following apply:
  1. The plan is contrary to an enrollee’s wishes insofar as it requires the enrollee to live in a place that is unacceptable to the enrollee.
  2. The plan does not provide sufficient care, treatment or support to meet the enrollee’s needs and identified family care outcomes.
  3. The plan requires the enrollee to accept care, treatment or support items that are unnecessarily restrictive or unwanted by the enrollee.
- (g) Termination of the family care benefit or involuntary disenrollment from a CMO.

- (h) Determinations of protection of income and resources of a couple for maintenance of a community spouse under s. DHS 10.35 to the extent a hearing would be available under s. 49.455 (8) (a), Stats.
- (i) Recovery of incorrectly paid family care benefit payments as provided under s. DHS 108.03 (3).
- (j) Hardship waivers, as provided in s. DHS 108.02 (12) (e), and placement of liens as provided in ch. HA 3.
- (k) Determination of temporary ineligibility for the family care benefit resulting from divestment of assets under s. DHS 10.32 (1) (i).

...  
*Wis. Admin. Code, § DHS 10.55(1); also see Wis. Stats., §46.287.*

The discontinuance of Petitioner’s [REDACTED] activities does fall within the legal authority of the Division of Hearings and Appeals.

I am going to be blunt here - I can find no basis for the failure to continue the [REDACTED] services for Petitioner. Social activities are a part of Family Care services. *Wis. Admin. Code, §DHS 10.44(2)(e)(2)*. To assert that Petitioner’s mother can provide planning with Petitioner’s friends or that Petitioner can do it flies in the face of reality. The CMO’s own LTFC calls Petitioner’s abilities to organize into question and to assert that her mature mother should handle this thus fostering more dependence on a mature parent is antithetical to the need to foster independence for Petitioner to the extent possible. Other social activities such as one on one volunteers are not an equivalent to fostering and nurturing friendships going back for years and in some cases most of Petitioner’s life. The cost is not unreasonable or prohibitive and the prior CMO funded this since 2009.

I also note here to that the CMO did enter into a contract with [REDACTED] to continue services for Petitioner so it is not clear why it will not do so again other than its determination that it is not necessary. I am approving Petitioner’s [REDACTED] activities at a frequency of 2 times per month though that approval of [REDACTED] activities is not intended to be an open ended approval of any dollar amount for FCP payment. I am, therefore, limiting the approval to a total cost to the FCP not to exceed the base cost of the activity, currently at \$60.00 per event. The cost of other aspects of an activity, e.g., a meal or a ticket to a play or concert would be Petitioner’s responsibility.

**CONCLUSIONS OF LAW**

That the best available evidence indicates that Petitioner’s participation in [REDACTED] activities should continue.

**THEREFORE, it is ORDERED**

That this matter is remanded to the case management organization with instructions to take the steps necessary to continue Petitioner’s participation in [REDACTED] activities at a frequency of up to 2 times per month but with the cost limited for FCP payment to the base price of the [REDACTED] activity.

**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, WI 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 request (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 Milwaukee,  
Wisconsin, this 24th day of June, 2015

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\sDavid D. Fleming  
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 June 24, 2015.

Care Wisconsin First, Inc  
Office of Family Care Expansion