



STATE OF WISCONSIN  
Division of Hearings and Appeals

In the Matter of

[REDACTED]

DECISION

FCP/170938

**PRELIMINARY RECITALS**

Pursuant to a petition filed December 22, 2015, under Wis. Admin. Code § DHS 10.55, to review a decision by the MY Choice Family Care in regard to Medical Assistance, a telephone hearing was held on January 26, 2016.

The issue for determination is whether the respondent correctly modified petitioner’s Supportive Home Care – Attendant Care (SHC) hours.

There appeared at that time and place the following persons:

**PARTIES IN INTEREST:**

Petitioner:

[REDACTED]

Respondent:

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

By: [REDACTED]  
MY Choice Family Care  
901 N 9th St  
Milwaukee, WI 53233

**ADMINISTRATIVE LAW JUDGE:**

Peter McCombs  
Division of Hearings and Appeals

**FINDINGS OF FACT**

1. Petitioner is a resident of Milwaukee County.
2. Petitioner testified that he has suffered five strokes and two brain aneurisms; respondent concurred that petitioner has a history of cerebral infarction with monoplegia of left upper limb. Petitioner has utilized a cane for 15 years.

3. Petitioner was previously enrolled in the IRIS program, and reportedly received Supportive Home Care and Personal Care 54.6 hours per week, and Ensure Plus oral nutritional supplement. In order to provide proper continuation of care, petitioner's care hours and nutritional supplement were continued when he transitioned from IRIS to FCP.
4. The respondent subsequently completed an evaluation and assessment of petitioner's functional abilities, and determined that petitioner's necessary SHC hours were 16.75 per week.
5. Following its assessment pertaining to petitioner's Ensure oral nutritional supplement, the respondent determined that it was no longer necessary and terminated that service.
6. The respondent sent petitioner a *Notice of Action* dated November 9, 2015, notifying him that effective November 24, 2015, his SCH hours would be reduced from 54.6 hours (SHC 21 hrs/wk, PC 33.6 hrs/wk) per week to 16.75 hours (SHC 7.5 hrs/wk 9.25 hrs/wk) per week.
7. The respondent sent petitioner a Notice of Action dated November 18, 2016, notifying him that it was terminating his Ensure oral nutritional support service.
8. Petitioner appealed the SHC modification, as well as the termination of the Ensure service, via the FCP grievance process. The MCO Grievance and Appeal Committee upheld both the reduction in SHC services and the termination of the oral supplement.
9. Petitioner filed an appeal with the Division of Hearings and Appeals on December 22, 2015.
10. On January 19, 2016, the respondent received notice that petitioner voluntarily disenrolled from FCP, and enrolled with IRIS.

### DISCUSSION

FCP is available to eligible persons through enrollment in a Care Management Organization ["CMO"] under contract with the Wisconsin Department of Health Services ["DHS"]. Wis. Admin. Code § DHS 10.41(1). A person may be eligible for FCP, but yet not entitled to enroll in a CMO. Wis. Admin. Code § DHS 10.36(1) (November 2009). A person who is found eligible for FCP but who does not meet certain conditions is not entitled to FCP benefits. Wis. Admin. Code § DHS 10.36(3). Such persons may pay privately for CMO services. Wis. Admin. Code §§ DHS 10.36(3) & 10.37.

In this case petitioner is eligible for FCP, is enrolled in a CMO, and is receiving FCP benefits. Petitioner appeals because he was previously authorized to receive 54.6 SHC hours per week, but that was reduced to 16.75 hours per week following his transition from IRIS to Family Care.

This matter must be decided by the preponderance of the credible evidence. Wis. Admin. Code § HA 3.09(4). It must be concluded, based on the preponderance of the evidence in the record of this matter, that 16.75 SHC hours per week are sufficient.

Petitioner and his caregiver testified that petitioner's bathing requires 1.5 hours every-other-day, and added that cleaning petitioner's fish tank consumes 2 hours each week. However, petitioner was unable to provide with any further specificity the number of SHC hours that he requires. He conceded that they haven't figured out the total time that he needs. Petitioner failed to establish his need for greater hours that were approved by the respondent, but instead testified that more time was needed because of petitioner's unique circumstances and needs. Nothing was quantified. Without a better way to quantify the time for services, however, I find it difficult to add more time.

Petitioner should be aware that if he and/or his provider can show a medical need for more time, it can always request an amendment for additional time with evidence to show the need for the additional time. However, based upon the evidence before me I cannot conclude that the reduction to 16.75 SHC hours per week was wrong.

**CONCLUSIONS OF LAW**

For the reasons discussed above, the respondent may reduce petitioner's SHC hours from 54.6 hours per month week to 16.75 hours per week.

**NOW, 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 17th day of March, 2016

---

\sPeter McCombs  
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 March 17, 2016.

MY Choice Family Care  
Office of Family Care Expansion  
Health Care Access and Accountability