



STATE OF WISCONSIN  
Division of Hearings and Appeals

In the Matter of



DECISION

FCP/173041

**PRELIMINARY RECITALS**

Pursuant to a petition filed March 24, 2016, under Wis. Admin. Code § DHS 10.55, to review a decision by My Choice Family Care in regard to Medical Assistance (MA), a telephone hearing was held on April 12, 2016.

The issue for determination is whether the respondent correctly denied a request for a home modification.

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:   
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 (CARES # ) is a resident of Milwaukee County.
2. Petitioner's diagnoses include: cerebral palsy, brain injury, contractures, intellectual disability, and scoliosis.

- 3. On February 12, 2016, the petitioner, by her mother, requested a home modification (bathroom) from the respondent. The home modification plan was initially drawn up when petitioner was on the IRIS program.
- 4. On March 9, 2016, the agency denied the Petitioner’s request for a home modification. On that same date, the respondent contacted petitioner’s mother and set up an in home appointment to discuss recommendations provided by the occupational therapist who completed the evaluation that resulted in the request denial. Petitioner’s mother initially agreed to the meeting, but subsequently cancelled the meeting, and filed this appeal.

**DISCUSSION**

The Family Care (FC) program, which is supervised by the Department of Health Services, is designed to provide appropriate long-term care services for elderly or disabled adults. Whenever the local Family Care program decides that a person is ineligible for the program, or when the CMO denies a requested service, the client is allowed to file a local grievance and/or a fair hearing request.

The state code language on the scope of permissible services for FC reads as follows:

DHS 10.41 Family care services....

(2) SERVICES. 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, Stat., the long-term support 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.

Note: The services that typically will be required to be available include adaptive aids; ...home modification; ... personal care services; ...durable medical equipment...and community support program services.

Wis. Admin. Code §DHS 10.41(2).

The general legal guidance that pertains to determining the type and quantity of care services that must be placed in an individualized service plan (ISP) is as follows:

DHS 10.44 Standards for performance by CMOs.

...

(2) CASE MANAGEMENT STANDARDS. The CMO shall provide case management services that meet all of the following standards:

...

(f) The CMO, in partnership with the enrollee, shall develop an individual service plan for each enrollee, with the full participation of the enrollee and any family members or other representatives that the enrollee wishes to participate. ... The service plan shall meet all of the following conditions:

1. Reasonably and effectively addresses all of the long-term care needs and utilizes all enrollee strengths and informal supports identified in the comprehensive assessment under par. (e)1.
2. Reasonably and effectively addresses all of the enrollee's long-term care outcomes identified in the comprehensive assessment under par. (e)2 and assists the enrollee to be as self-reliant and autonomous as possible and desired by the enrollee.
3. Is cost-effective compared to alternative services or supports that could meet the same needs and achieve similar outcomes.

...

Wis. Admin. Code §DHS 10.44(2)(f).

Home modification is identified as a service provided under Family Care regulations and guidelines. The Family Care guidelines define home modification as:

...the provision of services and items to assess the need for, arrange for and provide modifications and or improvements to a member's living quarters in order to provide accessibility or enhance safety. Modifications may provide for safe access to and within the home, reduce the risk of injury, facilitate independence allow the member to perform more ADL's or IADL's with less assistance and decrease reliance on paid staff.

Home Modification Guideline, *My Choice Family Care Policy, Procedure, and Guideline*

In its Notice of Action denying the home modification, the respondent indicated that the denial was based upon a determination that petitioner did not need the service (home modification) or level of service to support her outcome. The respondent had an occupational therapist perform an evaluation of petitioner's home modification request, and based the denial on the outcome of that evaluation. The occupational therapist provided alternate recommendations to address petitioner's bathroom access issues.

The petitioner's mother argued that the bathroom modification, which involves converting two bathrooms into a single bathroom, is absolutely necessary. She notes that this modification will reduce the value of her home, but she is pursuing it because her daughter needs this to access the bath. She credibly countered the respondent's determination that petitioner could use a chair in the bath and that petitioner could be transferred in the bathroom with the assistance of two people (specifically testifying that two people plus petitioner simply would not fit in the bathroom). She also provided photographs to establish the size of the bathroom.

The occupational therapist who conducted the evaluation did not testify. The petitioner objected to the hearsay nature of her written evaluation. None of the respondent's representatives have been to petitioner's home. As such, I am unable to conclude that the respondent has established that the home modification denial was correct. The only person to actually experience the size of the bathroom who testified was petitioner's mother. She provided photographic evidence of the small size of the bathroom, and I must concur that I cannot see how transfers could be effectively accomplished in that space. Petitioner's mother also testified that none of the chairs recommended by the therapist would fit in the

bathub. The respondent could not successfully refute that contention, and conceded that it was relying entirely upon the hearsay evaluation. The petitioner has met her burden of establishing that she needs a modification of her home bath.

**CONCLUSIONS OF LAW**

1. The petitioner reasonably requires a home modification to renovate her home bathroom.
2. The respondent has not established that it correctly denied petitioner’s home modification request.

**THEREFORE, it is ORDERED**

That the petition is remanded to the respondent with instructions to approve the home modification request submitted on petitioner’s behalf on February 12, 2016. This action shall be taken within 10 days of the date 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**

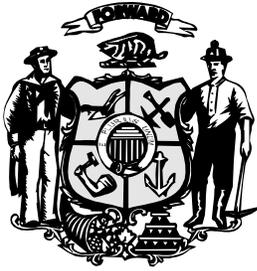
You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Health Services, 1 West Wilson Street, Room 651, Madison, Wisconsin 53703, **and** on those 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 28th day of June, 2016

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\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 June 28, 2016.

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