



STATE OF WISCONSIN  
Division of Hearings and Appeals

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In the Matter of

██████████  
██████████████████  
██████████████████

AMENDED DECISION ON REMAND  
Case #: FCP - 207518

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**PRELIMINARY RECITALS**

Pursuant to a petition filed January 26, 2023, under Wis. Admin. Code, §DHS 10.55, to review a decision by My Choice Family Care regarding the Family Care Program (FCP), a hearing was held on March 15, 2023, by telephone. A decision dismissing the appeal was issued on March 23, 2023. Petitioner filed a rehearing request on April 12, 2023. The rehearing was granted on April 19, and I have determined that the record is complete, and I can make this amended decision without scheduling a new hearing.

I note that in the original decision I mis-identified the My Choice Family Care representative. Her correct name is used in this decision.

The issue for determination is whether the agency correctly denied a request to move to assisted living.

PARTIES IN INTEREST:

Petitioner:

██████████████████  
██████████████████████  
██████████████████

Petitioner's Representative:

Mary McKeown  
Wisconsin Board on Aging & Long-Term Care  
1402 Pankratz St., Suite 111  
Madison, WI 53704

Respondent:

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

By: ██████████  
My Choice Family Care  
10201 Innovation Dr, Suite 100  
Wauwatosa, WI 53226

ADMINISTRATIVE LAW JUDGE:

Brian C. Schneider  
Division of Hearings and Appeals

## FINDINGS OF FACT

1. Petitioner is a 61-year-old resident of Dane County.
2. Petitioner enrolled in My Choice Family Care in September, 2022, after transferring from a different care organization. Petitioner has lived in an independent apartment for approximately eight years. She has several diagnoses, including autism, anxiety, PTSD, vertigo, chronic pain, and impaired mobility.
3. Soon after joining My Choice, petitioner requested to be relocated to an assisted living facility. At the time she had a possible facility in mind, but as of date of the hearing that facility no longer was available.
4. By a notice dated November 20, 2020, My Choice denied the request, concluding that petitioner was able to continue living independently with in home supports, and thus assisted living was not cost effective. Petitioner sought a grievance hearing, but the panel upheld the determination by a letter dated January 5, 2023.
5. Petitioner has had supportive home care workers working with her with some success. She also has received support from Elite Cognition, a counseling agency, and she is on the waiting list for comprehensive community services, expected to be available in upcoming months. Nevertheless, petitioner's doctor and her Elite Cognition counselor support a plan for assisted living. Her doctor is especially concerned with her inability to navigate support systems as well as her worsening mobility issues.
6. At present there is no imminent plan or availability to move to assisted living.

## 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).

It is not disputed that assisted living is a possible residential choice for the FCP, and that a member has substantial input into her choice of residential living. My Choice has set out guidelines to help determine placement, and the following should be considered: (1) The placement is consistent with the member's

outcomes, (2) Additional community supports and services could meet the member's needs in lieu of placement, (3) Respite resources for caregivers are maximized, and (4) issues that cause temporary problems have been ruled out. On the other hand, assisted living can be considered when the member's long-term outcomes cannot be effectively and cost-effectively supported in a natural living setting.

Although I appreciate both sides' positions here, I have to admit that there is little I can do at this juncture. Essentially, since there is no planned or available placement, the parties are asking me to make a declaratory judgment that petitioner must or must not be able to live in assisted living. Since I have no idea how much such a placement would cost, I cannot determine cost-effectiveness.

*The amendment to the original decision starts here.* It is evident that, despite my strong hint to the MCO that it work with petitioner and her representatives to seek out alternative housing, including potentially assisted living, the MCO has stonewalled petitioner by simply refusing to look into assisted living at all. At the hearing petitioner's doctor testified that assisted living would be petitioner's best situation, and her counselor from Elite Cognition echoed that recommendation. That said, I acknowledge that the "best" situation is not necessarily the most cost effective situation. In its response to the rehearing request, the MCO reiterated that petitioner does not need assisted living and that "it is generally understood that residential placement facilities cost above and beyond what a standard apartment would cost." General understanding is not evidence, and it does not address the issue of whether potential assisted living placement is cost effective in petitioner's situation. The MCO thus forces me to order it to work with petitioner to at least look into possible assisted living situations.

If the MCO concludes that a possible assisted living situation is not cost effective, then petitioner can file another grievance and potentially another hearing if that fails. I will make certain that any future appeal returns to me.

### **CONCLUSIONS OF LAW**

At this point there is nothing to be decided about petitioner's request to move to assisted living because there is no imminent plan to do so, but the agency nevertheless must work with petitioner to determine if assisted living is cost effective for her care.

**THEREFORE, it is**

**ORDERED**

That the matter be remanded to the MCO with instructions to work with petitioner and her representatives to explore a possible assisted living situation and to determine if it is cost effective. The MCO must begin that process 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, 4822 Madison Yards Way, 5<sup>th</sup> Floor North, 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

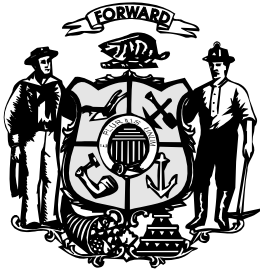
You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Health Services, 1 West Wilson Street, Room 651, **and** on those identified in this decision 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 19th day of April, 2023

  
vs \_\_\_\_\_

Brian 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 April 19, 2023.

MY Choice Family Care  
Office of Family Care Expansion  
Health Care Access and Accountability  
[REDACTED]