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**STATE OF WISCONSIN**  
**Division of Hearings and Appeals**

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In the Matter of



**DECISION**  
Case #: FCP - 207491

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**PRELIMINARY RECITALS**

Pursuant to a petition filed on January 24, 2023, under Wis. Admin. Code § DHS 10.55, to review a decision by the Department of Health Services through its agent, Lakeland Care Inc., regarding Family Care, a hearing was held on March 8, 2023, by teleconference initiated from Madison, Wisconsin. The hearing was first scheduled for February 8, 2023 but rescheduled, at Petitioner's request, to allow the parties additional time to attempt to reach informal resolution pursuant to Petitioner's request.

The issue for determination is whether Lakeland Care Inc. must amend Petitioner's member-centered care plan.

There appeared at that time the following persons:


**PARTIES IN INTEREST:**

Petitioner:



Respondent:

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

By: , Care Manager Supervisor  
Lakeland Care Inc.  
3415 Custer St. – Suite C  
Manitowoc, WI 54220-4356

**ADMINISTRATIVE LAW JUDGE:**

Teresa A. Perez  
Division of Hearings and Appeals

**FINDINGS OF FACT**

1. Petitioner is a 36-year old enrollee of the Family Care Program who receives services through Lakeland Care Center Inc., a managed care organization (MCO).
2. [REDACTED], Petitioner's aunt, serves as her court-appointed guardian and resides in Brown County.
3. Petitioner has diagnoses including thyrotoxicosis, cerebral palsy, chronic pain, spastic paresis, anxiety, depression, and borderline personality disorder, and bipolar II.
4. Petitioner's care needs include but are not limited to: assistance with bathing, dressing, grooming, toileting, 1:1 monitoring while eating because of choking risk related to her cerebral palsy, transfers via Hoyer lift, medication management and administration, oversight of a baclofen pump, health care coordination, and utilization of a behavior support plan.

Petitioner is able to report concerns, express preferences, and maintain relationships but requires assistance with decision-making.

Petitioner is able to independently move within her home using a power wheelchair.

5. Petitioner resided at an adult family home in Brown County until an unspecified date in December 2022. She received notices of involuntary discharge from that facility in March 2022 and again in October 2022.
6. After receiving the initial notice of the adult family home's intent to discharge Petitioner, her guardian requested that the MCO arrange for Petitioner to move to a new home located in an area that would permit her to maintain visitation from her natural support system (e.g., her guardian and other family members). Specifically, her guardian expressed a preference for Petitioner's new home to be located somewhere between Green Bay, where the guardian resides, and Milwaukee, where Petitioner's mother resides.
7. The MCO agreed that Petitioner's long term care outcomes and mental health would be best served if she resided closer to her family.
8. Between March 2022 and December 2022, the MCO made attempts to secure a placement for Petitioner in an adult family home in the geographic area identified by Petitioner's guardian but was not successful.
9. The MCO has contacted primarily adult family homes that are within its current provider network. As of the date of the hearing in this matter, the MCO had contacted one or two out-of-network providers.
10. An appropriate placement must be wheelchair accessible, employ staff trained to utilize a Hoyer lift for transfers, willing to oversee Petitioner's baclofen pump, and willing to follow her behavior support plan.
11. On December 20, 2022, Petitioner was moved to an adult family home in [REDACTED], Wisconsin which is about a 2.5 hour drive from Green Bay where her guardian resides and a 4 hour drive from her other relatives.

12. Petitioner's guardian has been satisfied with the care that Petitioner has received at the adult family home in [REDACTED] but is dissatisfied with the location of Petitioner's home.
13. Petitioner's guardian, who lives in Green Bay, was able to make face-to-face visits with Petitioner only twice between December 20, 2022 (i.e., the date of her move) and March 8, 2022 (i.e., the date of the hearing). When Petitioner resided in Brown County, her guardian visited weekly.
14. From December 20, 2022 through March 8, 2022, Petitioner left the adult family home in [REDACTED] only one time.
15. On one occasion since moving to [REDACTED], Petitioner traveled approximately ten hours round-trip to receive care related to her baclofen pump. The MCO has since initiated an effort to find a closer provider so that Petitioner will not again have to make such a lengthy trip for medical care.
16. On December 15, 2022, Petitioner's guardian filed an appeal of Petitioner's member-centered care plan because the plan requires her to live in a geographic location that is unacceptable to them.
17. On January 17, 2023, the MCO's Appeal Committee held an internal hearing and on January 20, 2023, the MCO issued a written decision upholding the member-centered care plan.
18. On January 24, 2023, Petitioner's guardian filed a request for hearing with the Division of Hearings and Appeals regarding Petitioner's member-centered care plan.

### DISCUSSION

Family Care (FC) is a Medical Assistance funded program intended to meet the long term care and health care needs of target groups consisting of frail elders; individuals age 18 and older who have physical disabilities, as defined in Wis. Stat. §15.197 (4) (a) 2.; and individuals age 18 and older who have developmental disabilities, as defined in Wis. Stat. §51.01 (5) (a). FC is administered by the Department of Health Services (DHS). DHS contracts with several managed care organizations (MCOs) throughout the state to provide case management services to FC members. A template of the most recent contract is available on-line at <https://www.dhs.wisconsin.gov/familycare/mcos/fc-fcp-2022-generic-final.pdf>.

The following are some of the case management services that MCOs are required to provide: an assessment of members' long-term care outcomes, identification of paid and unpaid services and supports to meet member outcomes, and the development of a dynamic member-centered plan. See Wis. Admin. Code §DHS 10.44(2)(e) and (f) and *Family Care Contract*, Article V. An MCO's assessment protocols must assess and identify "long-term care outcomes that are consistent with the values and preference of the enrollee" in the areas of both "self-determination of daily routine, services, activities and living situation" and "social roles and ties to family, friends, and community." Wis. Admin. Code §10.44(2)(e)2.c. and g. And, the care plan must reasonably and effectively address all of an enrollee's long term care needs and utilize the contract that every MCO must enter into with the State of Wisconsin to serve Family Care members requires MCOs to include the following in member-centered plans: "the plan to sustain, maintain and/or enhance the member's existing natural supports and community supports and for coordinating services the member receives from such supports." See *Family Care Contract*, Article V., Sec. C. 3.c. iv. j).

A Family Care member who is dissatisfied with their member-centered plan for any of the following reasons may file a request for fair hearing:

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.

Wis. Admin. Code § DHS 10.55(1); also see Wis. Stat. §46.287.

In this matter, Petitioner's member-centered plan is unacceptable to her guardian and to her because it requires her to reside in [REDACTED], which is located a significant distance from the homes of her guardian and other family members and has not permitted sufficient community integration. See Findings of Fact No. 13-15. The representatives from the MCO who appeared at hearing indicated that they agree with Petitioner and her guardian regarding the importance of Petitioner living closer to family and recognize that Petitioner's current location restricts her ability to interact with her guardian and family members. Moreover, the MCO's representatives stated that they will continue to search for an adult family home in the preferred geographical area identified by Petitioner and her guardian; that they are willing to include out-of-network providers in their search given the apparent scarcity of appropriate in-network providers, and that they will provide updates regarding their search to Petitioner's guardian.

The MCO credibly explained that the challenge of locating an adult family home that can meet Petitioner's specific needs and that has the capacity to currently serve Petitioner has been exacerbated by a shortage of caregivers. Petitioner's guardian did not identify a particular adult family home where she would like Petitioner to be placed; rather, she expressed a reasonable desire for the MCO to continue putting a good faith effort into finding Petitioner a home that is closer to her natural support system.

Although the MCO indicated that Petitioner's member-centered plan was updated shortly prior to the hearing, the MCO did not offer a copy of any version of the member-centered plan (or any other exhibits) as evidence. The only member-centered plan in the record was offered by Petitioner's guardian and is dated February 24, 2023. See *Petitioner's Omnibus Exhibit*, pp. 2 – 23. That plan identifies the following relevant outcome: "[Petitioner] will have access to a stable environment as evidenced by her health and safety needs being met" and identifies the following action in support of that outcome: "IDT continues to search for accessible placement for [Petitioner] to be closer to guardian/family." *Id.* at p. 22. The plan does not however identify what specific steps it intends to take to do so or document the MCO's stated commitment to continue providing updates to Petitioner's guardian regarding their efforts.

**I am therefore remanding this case to the MCO with instructions to revise the member-centered plan by adding the following additional "actions" under the section entitled, "Assessment Focus Area: Living Environment" (1) on a weekly basis, contact in-network and/or out-of-network residential providers within Petitioner's desired geographic area; (2) document the providers contacted, the location of those providers, the dates of contact, and, if the provider declines to accept Petitioner, note the specific reason the provider offered for declining (e.g., inability to meet care needs, no openings available, unwilling to accept MCO's offered rate, etc.), and (3) provide a copy of that written documentation to Petitioner's guardian.**

Finally, I note that during the hearing, the parties also discussed requests Petitioner's guardian has made for adult day programming and counseling services. I have not addressed those topics because this was a hearing regarding Petitioner's care plan. If the MCO denies or fails to issue a decision regarding specific service requests, Petitioner has the right to file a fair hearing request after undergoing an internal appeal.

## CONCLUSIONS OF LAW

Consistent with Wis. Admin. Code §10.44(2)(e) and (f), the MCO must amend Petitioner's member-centered care plan to reflect that it will make on-going efforts to locate an adult family home that has the capacity to serve Petitioner and that is situated closer to her natural support system.

**THEREFORE, it is**

**ORDERED**

That the matter is remanded to the respondent agency to amend Petitioner's member-centered plan by including the three actions specified in the second to last bolded paragraph of the Discussion section of this Order. The respondent shall provide the amended plan to the Petitioner's guardian within ten 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, 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.

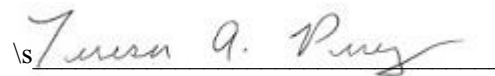
The process for requesting a rehearing may be found at Wis. Stat. § 227.49. A copy of the statutes may be found online or at your local library or courthouse.

### **APPEAL TO COURT**

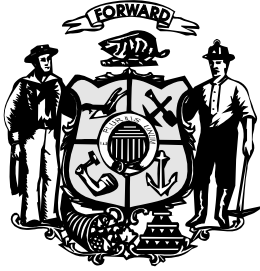
You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Health Services, 1 West Wilson Street, Room 651, **and** on those identified in this decision 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 9th day of May, 2023



Teresa A. Perez  
Administrative Law Judge  
Division of Hearings and Appeals



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The preceding decision was sent to the following parties on May 9, 2023.

Lakeland Care Inc  
Office of Family Care Expansion  
Health Care Access and Accountability