

3. Petitioner is independent in all activities of daily living (ADLs) although she uses a walker for mobility. She has a lift chair to help her with transfers. She manages her own medications and money, and is able to use a phone. She and her husband work together to complete household tasks although they have supportive home care assistance as well. She is of sound mind and does not require overnight care. The agency pays for a driver for her although recently none has been available; a new driver has been hired. Medical and non-medical transportation is authorized.
4. Petitioner requested to be moved to an assisted living facility in early 2023. By a notice dated February 2, 2023, the agency denied the request. Petitioner sought a grievance, but the committee upheld the denial on March 14, 2023.

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, she may then request a hearing with the Division of Hearings and Appeals. Wis. Admin. Code, §DHS 10.55(2).

FCP policies are found primarily in the Department's standard contract with the FCP MCOs. The contract is found on-line at <https://www.dhs.wisconsin.gov/familycare/mcos/fc-fcp-2020-generic-final.pdf>. FCP agencies are expected to place members in the least restrictive setting although a member can request alternative services. See Contract, VII.A.7. Services must be cost-effective.

The record shows that petitioner's condition does not meet the need for assisted living. She is independent in ADLs and Instrumental ADLs. There was testimony that she has more trouble getting around than in the past, but her functional screen has not shown a dramatic decline. Petitioner's primary reason for wanting the move, to be frank, is for social reasons. She testified that she feels lonely and that she would like to be around others more regularly. Clearly the MCO should assist petitioner in getting out more, and ironically, at the point of the hearing a new driver was being hired. At this point I cannot disagree with her MCO care team that petitioner does not need to reside in assisted living. That may change, but not at this point.

CONCLUSIONS OF LAW

The agency correctly denied petitioner's requested move to assisted living because she does not require that level of care.

THEREFORE, it is

ORDERED

That the petition for review 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, 4822 Madison Yards Way, 5th 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

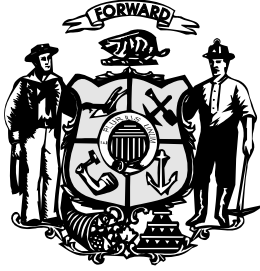
You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Health Services, 1 West Wilson Street, Room 651, **and** on those identified in this decision 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 31st day of May, 2023



\s _____
Brian C. Schneider
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin \DIVISION OF HEARINGS AND APPEALS

Brian Hayes, Administrator
5th Floor North
4822 Madison Yards Way
Madison, WI 53705-5400

Telephone: (608) 266-3096
FAX: (608) 264-9885
email: DHAmail@wisconsin.gov
Internet: <http://dha.state.wi.us>

The preceding decision was sent to the following parties on May 31, 2023.

Inclusa Inc/Community Link
Office of Family Care Expansion
Health Care Access and Accountability

