



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[Redacted]

DECISION
Case #: FCP - 207851

PRELIMINARY RECITALS

Pursuant to a petition filed on March 3, 2023, under Wis. Admin. Code § DHS 10.55, to review a decision by the MY Choice Family Care regarding Medical Assistance (MA), a hearing was held on July 26, 2023, by telephone.

The issue for determination is whether the agency correctly denied the request for funding under the Family Care Program for Respite Camp and transportation to respite camp.

There appeared at that time the following persons:

PARTIES IN INTEREST:

Petitioner:

[Redacted]

Petitioner's Representative:

[Redacted]

Respondent:

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

By: K. Kolchaski
MY Choice Family Care
10201 Innovation Dr, Suite 100
Wauwatosa, WI 53226

ADMINISTRATIVE LAW JUDGE:

John P. Tedesco
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner is a resident of Dane County.

2. Petitioner is enrolled in the Family Care Program (FCP).
3. [REDACTED] is petitioner's mother and guardian.
4. Petitioner's FCP MCO is MyChoice Wisconsin.
5. MyChoice assigned a new care manager to petitioner in March 2022.
6. Since that time MyChoice has tried repeatedly to have the care manager and care team personnel have a face-to-face meeting with petitioner in order to assess petitioner and his needs and appropriate level of service.
7. The last time MyChoice was permitted access to complete a face-to-face long-term care functional screen or assessment leading to a care plan was 2019.
8. The FCP and the MyChoice Care Team is still largely reliant on 2019 information in order to assess petitioner's needs.
9. On August 11, 2022 petitioner requested funding to attend [REDACTED] camp from 8/14/22 to 8/19/22 and for paid transportation to and from camp.
10. The FCP care manager attempted to reach petitioner's guardian at least eight times from 8/12/22 to 8/22/22 in order to process the request. The care manager left voicemails and sent e-mails. None were returned by petitioner's guardian. The e-mails were sent to that same account used by [REDACTED] to send the request to MyChoice.
11. The care manager visited petitioner's home on 8/12/22 to follow up but no one answered the door.
12. Due to the lack of any communication with petitioner or his mother, and a lack of current assessment of needs, the agency was unable to complete the decision process on the request.
13. The agency denied the requests for the funding for camp and the funding for transportation.
14. Petitioner filed a grievance with the agency which was denied.
15. Petitioner appealed to DHA.

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 CMO must develop an Individual Service Plan (ISP) in partnership with the client. Wis. Adm. 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 CMO 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. Wis. Admin. Code, §DHS 10.44(2)(j)(5).

Wis. Stat., §46.287(2)(a)1 provides that a person may request a fair hearing to contest 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 CMO over any decision, omission, or action of the CMO. 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.

The issue in this case is whether the CMO erred in its denial of petitioner's request for funding for [REDACTED] camp and related transportation. As has been noted many times in the past, there are no standards written in the law or policy on how to make such a determination. It comes down to the general criteria for determining authorization for services – medical appropriateness and necessity, cost effectiveness,

statutory and rule limitations, and effectiveness of the service. See Wis. Admin. Code Ch. DHS § 107.02(3)(e).

While it is correct to say that the standard under Wis. Admin. Code § DHS 10.44(2)(f)3 specifically includes that the ISP should assist the enrollee to be as self-reliant and autonomous “as possible *and* desired” by the enrollee, it is also the long-standing position of the Department, as affirmed in many fair hearing decisions, that the Family Care participant does not have “unfettered choice” in deciding what supports Family Care provides that will serve him or her, what living arrangements will be provided by Family Care, and exactly how the care plan is to be configured.

The petitioner seeks funding to attend a respite camp and the transportation to and from that camp. I have reviewed the documents submitted in this case. Petitioner submitted many documents. They are part of the record in this hearing. However, the vast majority of these are irrelevant to the determination in this matter. The documents do not demonstrate cooperation with the agency. Indeed, much of the record shows petitioner's lack of cooperation. It seems that petitioner's mother has created many charts and lists and probably shared those with the agency. But, it does not appear that petitioner's mother answered and calls or was willing to have the agency care team meet with petitioner at any time within the past few years. Petitioner seems to think that because the agency approved the request in the past that it must now do so blindly again.

My decision in this matter centers on petitioner's clear lack of cooperation with the Family Care agency and that agency's inability to approve the requested funding due to that lack of cooperation. Without current care needs based on a recent assessment the agency cannot possibly determine that the request should be approved. Additionally, I am also unable on this record to make such a determination. Petitioner's mother seems more interested in having an adversarial relationship and calling out her perception of mismanagement or other perceived slights that she is actually working to get her child the services she thinks would benefit him. Family Care is a voluntary program. Petitioner is not required to participate in it. But, if petitioner does, petitioner cannot be shocked by the idea that the agency needs to conduct assessments of need on a periodic basis and requires some communication with petitioner or a representative when petitioner requests a service.

It is a well-established principle that a moving party generally has the burden of proof, especially in administrative proceedings. *State v. Hanson*, 295 N.W.2d 209, 98 Wis. 2d 80 (Wis. App. 1980). The court in *Hanson* stated that the policy behind this principle is to assign the burden to the party seeking to change a present state of affairs. In this case, the agency has explained why they denied the request. The petitioner then has the burden to show that the requested camp and transportation is necessary, cost-effective, and appropriate. Petitioner did not. While petitioner may have reasons to be so guarded, these are factors that the law requires the agency to consider. Family Care is a voluntary program. Petitioner may wish to reassess whether a cooperative program like Family Care is appropriate for petitioner.

CONCLUSIONS OF LAW

The agency did not err in denying the request for respite camp and transportation because petitioner's lack of cooperation with the agency has not allowed the agency to determine need, cost-effectiveness, and appropriateness of the requested services.

THEREFORE, it is

ORDERED

That this appeal is 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

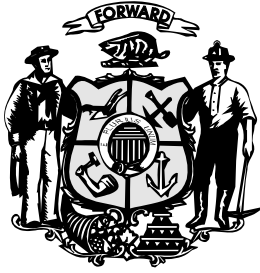
You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Health Services, 1 West Wilson Street, Room 651, **and** on those identified in this decision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



John P. Tedesco
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 August 31, 2023.

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