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[REDACTED]

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

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In the Matter of

[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

**DECISION**  
Case #: FCP - 189985

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**PRELIMINARY RECITALS**

Pursuant to a petition filed on September 19, 2018, under Wis. Admin. Code § DHS 10.55, to review a decision by the Inclusa Inc/Community Link regarding Medical Assistance (MA), a hearing was held on December 4, 2018, by telephone.

The issue for determination is whether the respondent correctly terminated petitioner's out-of-benefit food budget.

There appeared at that time the following persons:

**PARTIES IN INTEREST:**

Petitioner:

[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

Respondent:

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

By: [REDACTED]  
Inclusa Inc/Community Link  
3349 Church St Suite 1  
Stevens Point, WI 54481

**ADMINISTRATIVE LAW JUDGE:**

Peter McCombs  
Division of Hearings and Appeals

**FINDINGS OF FACT**

1. Petitioner (CARES # ██████████) is a resident of Portage County. Petitioner turned 18 on February 5, 2007, and remained in high school until he was 21. Petitioner was thereafter enrolled in Family Care.
2. Petitioner has diagnoses of autism spectrum disorder, oppositional defiant disorder, OCD/anxiety, bipolar, GERD, IBS, leaky gut syndrome, constipation, sleep apnea, behavior issues and social pragmatics.
3. Petitioner’s benefits through the Family Care program have included an out-of-benefit food budget to assist petitioner with purchasing food for his specialized diet.
4. On July 25, 2018, the agency conducted a Resource Allocation Decision (RAD) regarding the Petitioner’s request for his continued out-of-benefit food budget. The agency noted the Petitioner has significant and multiple food allergies, in addition to GERD, IBS, leaky gut syndrome, and constipation.
5. On August 8, 2018, the agency notified Petitioner that it had denied his request based on its conclusion that the Petitioner has informal support available and that the food budget is not the most cost-effective outcome.
6. On September 19, 2018, the Petitioner filed an appeal with the Division of Hearings and Appeals.

**DISCUSSION**

The Family Care program (FC) 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.

The state code language on the scope of permissible services for the 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 §HFS 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).

The agency testified that, through its RAD decision process, it determined that petitioner’s income would allow petitioner to contribute to his food budget, thereby eliminating the need for assistance in this regard. In its Notice of Action terminating the food budget benefit, the agency wrote:

█████ can utilize his Social Security and work wages to pay for his dietary needs, following the direction of a dietician for appropriate portion sizes. █████ has supports in place to assist with finding budget friendly options that meet his dietary needs. ...

Exhibit R-2.

The Petitioner was represented at the hearing by his mother. She argued that the Petitioner earns \$8.32 per hour, and his net pay is between \$435.00 and \$495.00 monthly. He also receives Social Security in the amount of \$641.00. The food budget benefit that petitioner has received is \$470.00 monthly. Petitioner’s parents provide him with natural supports, including substantial medication management support and they do not collect any rent from him.

Whereas Petitioner’s mother testified to the necessity of Petitioner’s specialized diet, and the extra cost that it entails, the respondent presented a cost-based analysis. Specifically, the respondent maintains that, when the out-of-benefit food budget was approved in the amount of \$470.00 in October of 2008, Petitioner was not employed. He is now employed and earning approximately the amount of his food budget. As such, the respondent reasons that Petitioner can contribute his earnings to his food budget thereby eliminating the need for assistance with purchasing food.

Petitioner’s mother asserts that the food budget benefit did not commence until October of 2010. The record does not shed any light on whether the food budget began in 2008 or 2010. However, that discrepancy is not determinative of the issue here. The respondent’s termination of the food budget is

based upon a simple mathematical determination, i.e., the Petitioner has additional income now that was not considered when his food budget was initially established.

MA programs, such as Family Care, operate to serve large numbers of people with a limited amount of funds. As stewards of public funding, CMO's must consider cost-effectiveness when determining whether or not to approve benefit requests. I find that the agency here has established that it properly considered petitioner's request, and properly denied the request in light of petitioner's present income. Should Petitioner's financial, health or living situation change, he may apply for food budget assistance anew; at this time, however, I find no error in the respondent's termination of Petitioner's out-of-benefit food budget.

### CONCLUSIONS OF LAW

The respondent has established that it properly considered petitioner's request to continue his out-of-benefit Food budget, and properly denied the request in light of petitioner's present income.

**THEREFORE, it is**

**ORDERED**

That petitioner's appeal 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, 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.

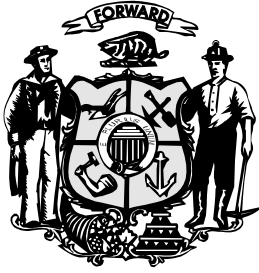
### **APPEAL TO COURT**

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 14th day of January, 2019

\s \_\_\_\_\_  
Peter McCombs  
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 January 14, 2019.

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