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[REDACTED]

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]

DECISION

Case #: [REDACTED]

PRELIMINARY RECITALS

Pursuant to a petition filed on August 24, 2018, under Wis. Admin. Code § DHS 10.55, to review a decision by the Community Care Inc. regarding Medical Assistance (MA), a hearing was held on December 17, 2018, by telephone.

The issue for determination is whether the Family Care agency correctly denied the request for an ADA height elongated toilet.

There appeared at that time the following persons:

PARTIES IN INTEREST:

Petitioner:

Petitioner's Representative:

[REDACTED]

[REDACTED]

Respondent:


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

By: [REDACTED]
Community Care Inc.
205 Bishops Way
Brookfield, WI 53005

ADMINISTRATIVE LAW JUDGE:
John P. Tedesco
Division of Hearings and Appeals

FINDINGS OF FACT

- 1. Petitioner (CARES # [REDACTED]) is a resident of Milwaukee County. He is enrolled in the Family Care Program (FC) and the FC agency is Community Care (agency).

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2. Petitioner is 54 and has diagnoses including arthritis and chronic pain.
  3. On June 20, 2018 the apartment owner from whom petitioner rents informed the FC agency that petitioner could not effectively use the existing toilet.
  4. The FC agency provided a raised toilet seat and also a folding bedside commode.
  5. On July 31, 2018 petitioner informed the agency that the raised seat was not adequate and was not an effective solution. He requested a new toilet.
  6. The agency determined on August 1, 2018 that a new toilet installed in his landlord's home is not a covered item in the petitioner's benefit package.
  7. The building owner refused to cover cost of a new toilet.
  8. On August 6, 2018 the agency sent a notice of denial.
  9. Petitioner filed a request for hearing on August 24, 2018.

### 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. Adm. Code § DHS 10.44(1)(f); DHS booklet, Being a Full Partner in Family Care, page 9. ISPs must be reviewed periodically. Adm. 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 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 acted appropriately in its denial of petitioner's request for an ADA height elongated toilet. 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. Adm. Code Ch. DHS § 107.02(3)(e).

At hearing, the representative for the agency testified that the request was denied because there are other, more cost-effective ways to meet the goals and outcomes for petitioner. From the outset, I note that the agency has not, in writing or at hearing, disputed that an ADA-height toilet is the most appropriate option for petitioner to meet his comfort needs. The agency disagreed that an elongated toilet bowl addresses any medical issues. The agency did suggest that the alterations are merely to meet comfort issues for petitioner in that he is quite functional, can climb stairs and visits the gym several times per week. The occupational therapist from the agency also testified to having observed petitioner

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stand from a sitting position in a kitchen chair without aids. The petitioner argues that the raised toilet seat that was provided is not secure and is not safe. The raised toilet seat obviously does not change the traditional round bowl to an elongated bowl, though the need for an elongated bowl was never made clear. Petitioner further argues that the substituted solution of a bedside commode, which presumably retains the feces in it until cleaned out, is an undesirable option unless absolutely necessary. I think few would disagree.

The agency has general guidance in its policies that it does not pay for home modifications to rental properties. This is a reasonable policy in most cases. Without such a rule, the possibilities are endless as to what could be requested that would result in a possible financial windfall for a landlord or property owner: new toilets, sinks, tubs, lifts, flooring, etc. That is not the goal of the FC Program. I note, however that the policy guidance states that “home modifications are not *typically* appropriate to complete on rental properties;” and, “home modification for rented properties will be temporary, removeable, or rented *when possible*” (emphasis added). *Community Care RAD Method Discussion Questions*, see exhibit #3. Given the qualifications in the language, this policy guidance allows for very limited exceptions if appropriate.

At hearing, the agency rehabilitation specialist testified that the durable medical equipment provider working with the agency had various options of toilet risers the provider would allow petitioner to trial. That had not yet been arranged at the time of the hearing, however, for reasons not explained. The therapist did testify that petitioner has previously objected to a toilet riser because he believes it makes him look handicapped and he does not like to portray that image. The rehab specialist also testified that another solution offered was a bariatric commode which stands on legs above the toilet. Petitioner apparently rejected this solution because he did not approve of the legs on which it stands.

At this point, there appear to be a great number of options that petitioner has not tried or had refused to try. State medical assistance programs are not unlimited-benefit health care programs. They must provide assistance to great numbers of members with limited resources. It may be that installation of a new toilet in a building owned by a third-party is the only possible solution. But, given the lack of trials of alternatives, and the seeming refusal to consider those alternatives, petitioner is not to the point of allowing that installation. I will also add that I am not convinced of the medical need for either the ADA toilet or the elongated bowl based on this record. The clinical/medical information provided is minimal and conclusory and there was no evidence presented at all that supported any need for an elongated bowl rather than a round bowl.

### CONCLUSIONS OF LAW

The agency did not err in its denial of the request for installation of an ADA toilet with elongated bowl.

**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, 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.

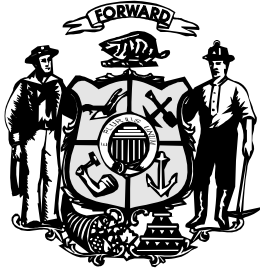
**APPEAL TO COURT**

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 27th day of February, 2019

\s \_\_\_\_\_  
John P. Tedesco  
Administrative Law Judge  
Division of Hearings and Appeals



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## State of Wisconsin \DIVISION OF HEARINGS AND APPEALS

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The preceding decision was sent to the following parties on February 27, 2019.

Community Care Inc.  
Office of Family Care Expansion  
Health Care Access and Accountability  
[REDACTED]