



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

██████████
██████████
██████████

DECISION
Case #: FCP - 210267

PRELIMINARY RECITALS

Pursuant to a petition filed on September 14, 2023, 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 13, 2023, by telephone.

The issue for determination is whether the agency erred in its termination of petitioner's supportive home care hours.

There appeared at that time the following persons:

PARTIES IN INTEREST:

Petitioner:

██████████
██████████
██████████

Petitioner's Representative

Attorney Mary Colleen Bradley
Disability Rights Wisconsin
1502 W. Broadway
Suite 201
Monona, WI 53713

Respondent:

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

By: K. Weber

Inclusa Inc/Community Link
3349 Church St Suite 1
Stevens Point, WI 54481

ADMINISTRATIVE LAW JUDGE:

John P. Tedesco
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES #) is a resident of Sauk County.
2. Petitioner is 28 years old with diagnoses including Wegener's Granulomatosis, polyarthritis, anxiety, and depression.
3. Petitioner's long-term care functional screen indicates that petitioner needs assistance with grocery shopping and laundry and chores as well as other IADL's.
4. The agency had previously been providing SHC supports.
5. On 7/24/23 the agency issued a notice to petitioner informing him that the supportive home care supports would be terminated.

DISCUSSION

In this case there has been some confusion, it seems. Inlusa explained at hearing that petitioner did not meet the nursing home level of care for Family Care purposes. This was the subject of a separate case, FCP-211106, which was also heard on this same hearing date. In that case, the dispute related to the DHS LTCFS algorithm finding petitioner not eligible for nursing home level of care and related supports. I have issued my decision in that case and found that the algorithm was incorrect. Petitioner meets the nursing home level of care when the criteria in the Wisconsin Administrative Code are applied. Thus, that decision order the agency to find FCP nursing home level of care eligibility if all other eligibility criteria are met.

The agency's determination in this case stems from that fundamental error which said that petitioner was not at the NH level of care. The agency's written submission notes that on 6/22/23 the agency identified that his SHC for cleaning was not within his non-nursing home benefit package. This began, according to the agency, an analysis of how his goals could be met without the SHC. The agency further explained in its written submission that "a member must have a nursing home level of care to qualify for those benefits." As stated above, I have now found that petitioner does, in fact, meet the stated level of care.

At hearing, the agency explained that the SHC was not terminated solely because petitioner was considered non-nursing home level of care. Instead, the agency explained that petitioner may be able to take on some of the tasks and chores, or that natural supports such as family and friends and neighbors can accomplish petitioner's SHC needs. But, the agency does not offer the name or testimony of one individual who is willing to do petitioner's home chores. Petitioner did not seem to know which neighbor he has that would be coming in to clean his house or what friend will do his grocery shopping.

The agency representative spoke a lot but said little. The agency's case was wholly unpersuasive. The bottom line here is that the LTCFS states that petitioner needs assistance with IADL's. The agency previously offered SHC. There is no evidence that petitioner's condition has improved. And the agency has not identified any other source of support other than in the abstract. The agency seeks to change the status quo here by terminating the SHC previously offered. I have reviewed the hearing testimony and all of the submitted exhibits. The agency offered no persuasive reason to support the termination of SHC. As the agency has the burden of proof when it seeks to change the status quo I must find in favor of petitioner.

I note that I expect that if petitioner is enrolled in the FCP at the full nursing home level of care following my prior decision in FCP-211106, that petitioner will be assessed for any additional benefits that may be part of such a benefits package including the potential for more SHC.

CONCLUSIONS OF LAW

The agency erred in its termination of petitioner’s SHC as set forth in the 7/24/23 notice.

THEREFORE, it is ORDERED

That the matter is remanded to the agency with direction to reverse the termination of SHC as set forth in the 7/24/23 notice and restore such hours to the level prior to the appeal; such hours may, however, be increased above this amount. This action must be completed within 10 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, 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

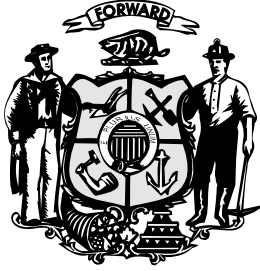
You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Health Services, 1 West Wilson Street, Room 651, **and** on those identified in this decision 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 25th day of January, 2024



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 January 25, 2024.

Inclusa Inc/Community Link
Office of Family Care Expansion
Health Care Access and Accountability
Attorney Mary Colleen Bradley