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

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In the Matter of

[REDACTED]  
[REDACTED]  
[REDACTED]

**DECISION**  
Case #: FCP - 216208

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**PRELIMINARY RECITALS**

Pursuant to a petition filed on December 6, 2024, under Wis. Admin. Code § DHS 10.55, to review a decision by MY Choice Family Care regarding Medical Assistance (MA), a hearing was held on January 16, 2025, by telephone.

The issue for determination is whether the agency correctly denied the petitioner's request to move to an assisted living facility.

There appeared at that time the following persons:

**PARTIES IN INTEREST:**

Petitioner:

[REDACTED]  
[REDACTED]  
[REDACTED]

Petitioner's Representative:

Mary McKeown  
Wisconsin Board on Aging and Long Term Care  
1402 Pankratz St., Suite 111  
Madison, WI 53704

Respondent:

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

By: Renita Link, Member Rights Specialist  
Andrew Severtson, Lead Supervisor  
Emily Somers, Care Manager  
Lexi Barta, RN Care Manager  
MY Choice Family Care  
10201 Innovation Dr, Suite 100  
Wauwatosa, WI 53226

**ADMINISTRATIVE LAW JUDGE:**

Kate J. Schilling  
Division of Hearings and Appeals

## **FINDINGS OF FACT**

1. Petitioner (CARES # ) is a 75 year old resident of Dane County.
2. The petitioner has a medical history including a cerebral vascular accident (stroke), diabetes, chronic pain, depression, fibromyalgia, obesity, suicidal ideations, schizoaffective disorder, anxiety, delusional disorder, COPD, reduced mobility, incontinence, frequent urinary tract infections, and frequent bladder infections. She has also recently experienced a decline in executive function and management of her diabetes according to her doctor.
3. An annual Long-Term Care Functional Screen was performed by a MyChoice screener on October 2, 2024, and finalized on October 3, 2024.
4. The petitioner needs assistance with four activities of daily living (ADLs) and five instrumental activities of daily living (IADLs) including preparing food, mobility assistance, showering, dressing her lower body, toileting, laundry, house cleaning, grocery shopping, and medication management. She also needs assistance monitoring her skin for breakdown and/or infections.
5. In the months leading up to the hearing, Comfort Keepers ended its contract with MyChoice as a homecare staffing agency. MyChoice then found a new entity to provide homecare services to the petitioner; however, MyChoice is aware that the petitioner is not satisfied with the new homecare service provider, and it is currently looking for a new provider.
6. The petitioner receives five home-delivered meals per week. The petitioner had recently requested to go back to 10 home-delivered meals per week (lunch and dinner five days per week); however, the agency denied the request. The petitioner filed a grievance/appeal with the MCO, and it was denied again on November 1, 2024.
7. Over the past year, the petitioner had five visits to the emergency room at the hospital. The visits were for the following reasons:
  - a. 4/26/24 for shortness of breath, cold, cough
  - b. 5/10/24 for pneumonia
  - c. 6/28/24 for leg swelling
  - d. 8/10/24 for suicidal ideations
  - e. 8/16/24 for an intentional overdose of medication with intent of self-harm.
8. The petitioner currently receives 4.5 hours per week of supportive home care (SHC). She does not receive Medical Assistance Personal Care (MAPC) hours. The petitioner recently made a verbal request to move into an assisted living facility so that she could get more assistance with her activities of daily living. The agency denied this request on August 27, 2024.

## **DISCUSSION**

The Family Care program, which is supervised by the Department of Health Services, is designed to provide appropriate long-term care services for older adults and people with disabilities. 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).

The Department's contract with its MCOs is updated annually and found online at <https://www.dhs.wisconsin.gov/familycare/mcos/contract.htm>. It provides in its Addendum VI that SHC are services which directly assist people with activities of daily living and personal needs, and to assure adequate functioning and safety in the home and community. Services must be sufficient in amount and scope to achieve the purpose for which they are furnished. They must be cost effective and delivered through a comprehensive health and social services delivery system. See Contract, Section VII, Part A, 1 and 2.

A Long-Term Care Functional Screen was performed on October 2, 2024, by a screener at MyChoice. According to the screen, the petitioner requires assistance with four activities of daily living (ADLs) and five instrumental activities of daily living (IADLs). It is undisputed that she requires hands-on assistance, supervision, and cueing to complete many tasks including showering, toileting, preparing meals, laundry, grocery shopping, cleaning her apartment, and medication management. The petitioner's testimony at the hearing closely mirrored the functional screen assessment. In addition to her physical health issues, the petitioner also has significant mental health conditions which have worsened over the past year resulting in visits to the emergency room for suicidal ideations and a medication overdose with intent to harm herself.

The petitioner testified that she feels overwhelmed and that she has very little support. At the hearing, she stated, "I don't feel I'm getting the care I need." She testified that she does not have any family to help her out and her friend does not come over much anymore. She does receive support from Comprehensive Community Services for her mental health, and she has reached out to them when she was contemplating self-harm.

Currently, the petitioner is receiving 4.5 hours of SHC per week. Due to homecare agency policies in the area requiring a four hour minimum shift for their employees, this amounts to one shift of 4.5 hours per week. The recent transition to the new homecare company has been difficult as the company does not always have a staff person to send to her each week, and the staff that have been sent so far have fallen below the petitioner's expectations. She stated that one staff person did not know how to do laundry, others did not offer to help her shower or make meals, and another person did not speak sufficient English. The petitioner admitted at the hearing that she has sent staff home early if they are not engaging with her or offering to help.

At the hearing, the petitioner testified that she had taken a shower by herself the morning of the hearing, but she had not had a shower for 1-2 weeks before that. A letter provided by the petitioner's doctor stated that she has had "recurrent yeast skin infections and bacterial bladder infections, which in turn lead to urgent care visits or unscheduled visits to primary care. This puts her at risk of skin breakdown as well." (Petitioner's Exhibit 1) Additionally, the agency's nurse testified at the hearing that the petitioner's incontinence had previously been minor leakage, but has more recently changed to full incontinence and emptying of the bladder. Given this change and her increased risk for skin breakdown, it seems especially important that the petitioner has assistance to be able to help her shower on a regular basis. Showering just once per week, or once every 1-2 weeks, seems inadequate for the petitioner to maintain proper hygiene.

Due to the petitioner's increased bladder incontinence issues, the Long Term Care Functional Screen also notes that she needs laundry done more than once per week. It was undisputed that the petitioner requires assistance with laundry. However, given the current limitation and structure in her amount of supported home care hours, she only has a staff person come to her house once per week. That means that soiled laundry is accumulating and not being washed promptly.

The letter from the petitioner's doctor also noted "an observed decline in executive function," declining mobility, and "significant chronic mental illness with worsening symptoms in the last year." (Petitioner's Exhibit 1) Similarly, the notes from the petitioner's functional screen on October 2, 2024, reflect that an ANT and mini-cognitive screening was done during the functional screen and the petitioner scored 10 on the ANT and had an abnormal clock draw. She was also unable to recall the most recent holiday.

One of the areas the Long Term Care Functional Screen evaluates is overnight care and supervision. The notes in this section state:

Due to cognitive and physical impairment, member requires assistance with overnight cares/supervision. Member requires assistance to complete overnight care tasks of mobility and toileting to ensure tasks are completed safely. In the event of a true emergency, member would require assistance to ensure timely and appropriate response due to physical and cognitive impairment.

Long Term Care Functional Screen 10/3/2024, page 10 of 14. (MyChoice Exhibit page 44.) By contrast, the agency staff testified that they feel the petitioner is safe at home alone overnight, and they seem to feel that the petitioner is more capable than she believes herself to be. However, they did not dispute that the petitioner needs assistance with four ADLs and five IADLs, nor did they dispute any of the statements or findings in the functional screen. In its written summary and during the hearing, the agency stated that the petitioner did not need a residential placement because she does not require 24 hour care. As the petitioner's representative pointed out, there is not a requirement for needing 24 hour care anywhere that I was able to locate in order to qualify for a residential placement. Rather, the administrative code in Wisconsin requires that someone living in a Residential Care Apartment Complex (RCAC), **can only need up to 28 hours per week of care**. Wis. Admin. Code § DHS 89. The petitioner in this case was seeking a placement in an assisted living facility, not a skilled nursing facility which provides 24 hour care by regulatory definition.

In October, the petitioner had requested to go up 10 home delivered meals per week. The agency denied this request. At the hearing, the agency testified that the petitioner is receiving five home delivered meals per week and that homecare staff can help her prepare an additional four meals per week. They further testified that the petitioner does not eat three meals per day anymore. However, the petitioner testified that she has not had a staff person out to her home within the 3-4 weeks leading up to the hearing, and even when a staff did show up, meal preparation did not always occur. The petitioner stated that she can prepare a bowl of cereal or microwave meal for herself, but some days she only eats the one meal that is provided by the home delivery program. The petitioner's doctor stated the following in her letter:

Over the last year, [REDACTED] has had worsening control of her diabetes requiring the addition of new medication to control her blood sugars. Her inability to manage her medications and her eating schedule put her at risk of diabetic complications in the near future.

(Petitioner's Exhibit 1). The petitioner's doctor also stated that the petitioner does not "take her medications reliably and does not have the ability to judge when to use rescue medications including her inhalers for asthma and COPD." (Petitioner's Exhibit 1)

I agree with the petitioner's representative that the Resource Allocation Decision (RAD) process was not fully developed in considering the petitioner's request. In exploring other options available to meet the member's needs, the agency merely listed the two options as the petitioner staying in her apartment or moving to a residential facility. Then it is stated that the move to a residential facility would be "a high cost option" without providing any sort of cost analysis or explanation. There was also no discussion of a potential middle ground of increasing the petitioner's SHC hours while she remains in her own apartment to see if that would be sufficient to meet her increasing needs.

The petitioner's cognitive abilities, mental health, and physical health have worsened over the past year and her supportive home care hours have not correspondingly increased. There are concerns about the petitioner's personal hygiene, diabetes management, medication management, incontinence support, eating schedule, laundry, and mental health that have not been addressed in her current situation. The standard that the agency used to deny petitioner's request for residential placement was that she did not require 24 hour care. No citation for this rule was provided; moreover, this rule is at issue with the Wisconsin administrative code which states that a person living in an RCAC can need only up to 28 hours per week of care.

### CONCLUSIONS OF LAW

The preponderance of the evidence supports the petitioner's need to move to an assisted living facility to ensure her safety and so that her medical needs can be adequately met.

**THEREFORE, it is**

**ORDERED**

That this case be remanded to the agency with instructions to rescind its denial of the petitioner's request for a residential placement at an assisted living facility. The agency shall do this 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, 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.

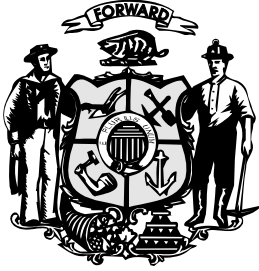
## APPEAL TO COURT

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 21st day of February, 2025

\s \_\_\_\_\_  
Kate J. Schilling  
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 February 21, 2025.

MY Choice Family Care  
Office of Family Care Expansion  
Health Care Access and Accountability  
[REDACTED]