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STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

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

DECISION

Case #: FCP - 216187

PRELIMINARY RECITALS

Pursuant to a petition filed on December 6, 2024, 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 March 19, 2025, by telephone. Hearings scheduled for January 15, 2025, and February 12, 2025, were rescheduled at the request of the petitioner or her representative.

The issue for determination is whether the respondent correctly terminated the petitioner's residential placement.

There appeared at that time the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]
Madison, WI 53704

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: Sarah Roth
MY Choice Family Care
10201 Innovation Dr, Suite 100
Wauwatosa, WI 53226

ADMINISTRATIVE LAW JUDGE:

Jason M. Grace
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner is a ■ year-old resident of Dane County. She currently lives at ■■■■■■■■■■, a Community Based Residential Facility (CBRF). She is enrolled in the Family Care Program (FCP), with My Choice Wisconsin her managed care organization (MCO).
2. The petitioner has medical diagnoses that include dementia, epilepsy since age 12, history of a stroke, and anxiety disorder. She is alert and orientated to person, place, time and situation.
3. The petitioner is independent in her activities of daily living (ADLs) of dressing, eating, mobility (with the use of adaptive equipment), toileting, and transfers. Petitioner needs assistance with bathing, but she is currently completing this task without assistance from CBRF staff. She needs assistance with the instrumental activities of daily living (IADLs) of medication and money management, transportation, meal preparation, and laundry/chores. However, she independently administers her own medications and manages her own finances without CBRF assistance. The CBRF provides the petitioner assistance with meal preparation, laundry/cleaning, and transportation services.
4. The MCO employed the Resource Allocation Decision process and found that the petitioner no longer needed residential placement. It was found that she did not need 24/7 staffing, she was independent in her daily needs, and that she was able to live in an independent apartment with supportive home care to assist with care needs, such as bathing, meal preparation, and laundry/chores. By notice dated October 10, 2024, the MCO informed the petitioner that her residential placement was being terminated effective November 30, 2024.
5. The petitioner filed an appeal with the MCO. By letter dated November 27, 2024, the MCO's Grievance and Appeal Committee informed the petitioner that the termination of residential placement was upheld. It was noted that the policies and procedures were appropriately followed, there was no concrete evidence showing the medical need for residential placement, her last reported seizure was over a year ago, and she has not had any reported falls since enrollment in FCP in 2021. It was also noted she was independent with medication management.
6. On December 6, 2024, the petitioner filed an appeal with the Division of Hearings and Appeals.

DISCUSSION

The FCP provides appropriate long-term care services for elderly or disabled adults. It is supervised by the Department of Health Services (Department), authorized by Wis. Stat. § 46.286, and comprehensively described in Chapter DHS 10 of the Wisconsin Administrative Code. The Department contracts with managed care organizations (MCOs) throughout the state to provide case management services to members. Case management services include the development of individual service plans (ISPs) and the authorization of allowable and appropriate long term care services. Wis. Admin. Code §DHS 10.44(f). The ISP must reasonably and effectively address all of the FCP recipient's long-term needs and outcomes, assist the recipient to be as self-reliant and autonomous as possible, and be cost effective when compared to alternative services or supports that could meet the same needs and achieve similar outcomes. Id

The contracts between the Department and the individual MCOs require MCOs to determine appropriate long term care services by engaging in a "member-centered planning process" and, more specifically, by applying the "Resource Allocation Decision" (RAD) method. See Wisconsin Department of Health Services, Division of Medicaid Services Family Care Contract ("FCP Contract"), Article V, Sec. K

(issued January 1, 2024, with October and November amendments) (available online at: <https://www.dhs.wisconsin.gov/familycare/mcos/fc-fcp-2024-contract-nov-amend.pdf>); see also OFCE Memo, Issued 6/26/2013 (Revised 02/2024) available on-line at <https://www.dhs.wisconsin.gov/familycare/mcos/communication/ta13-02.pdf>.

In other words, rather than requiring MCOs to develop and apply clear coverage criteria for services, DHS requires MCOs to use a particular process in considering whether to authorize services. MCOs may however develop service authorization guidelines for use with the RAD. Such guidelines must be approved by the Department. *FCP Contract*, Article V., Sec. K.1.a. Regardless of the particular service authorization policy utilized, the MCO is responsible for covering services as part of the FC benefit package that cost-effectively addresses a member's diagnoses, achieve appropriate growth and development, maintain and regain functional capacity, affords access to the benefits of the community, and achieve person-centered goals. *FCP Contract*, Article VII. The MCO shall not deny a service that is reasonable and necessary, and in an amount, scope, and duration needed to cost-effectively support the member's long-term care outcomes. *FCP Contract*, Article V, Sec.K 2. 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 issue here is whether the MCO appropriately terminated the petitioner's residential placement. Given that the MCO is seeking to change the current status of affairs, it has the burden to demonstrate by a preponderance of the evidence that the termination of residential placement was appropriate.

The MCO has implemented a Department-approved Supplementary RAD guideline for Residential Services. MCO Exhibit, pg. 45-46. It requires the MCO to consider such factors as whether the member has ADL/IADL needs that surpass what a SHC/SV provider, day service provider, informal support, or a combination of the foregoing can provide; the health and safety issues of the current living situation; mental health needs and behavioral health issues of the member; the options and supports considered or attempted to maintain the member in the current living situation; the member's preference; and whether the member requires overnight care and supervision that cannot be remedied with a Personal Emergency Support System. Id. The Supplemental RAD also provides:

A members' living environment is critical to overall health and well-being. My Choice Wisconsin strives to ensure that members reside in the least restrictive and most effective and *cost-effective* setting, while addressing the member's individual needs and outcomes. Exploring an Adult Family Home (AFH), Community Based Residential Facility (CBRF), or Residential Care Apartment Complex (RCAC) is a decision that requires extensive thought.

This is a significant change for anyone who is moving outside of their natural setting, often requiring that they give up a certain degree of autonomy, independence, and ability to go about their day freely. This is a big decision and not one to be made lightly. This guideline also helps the IDT staff in identifying the least restrictive, most *cost-effective setting* that will support the member's medical, social, and functional needs as well as their personal outcomes, when natural supports and other Family Care/Partnership funded services are no longer available, sufficient, or fully exhausted to maintain the member safely in the community.

...

Id (*emphasis added*).

The MCO employed the RAD process and found that the petitioner did not need residential placement. Part of the justification for that determination was that she did not require 24/7 staffing. While that is true, I would note that there was no showing that such is a pre-requisite for residential placement.

The petitioner's preference is to remain in a residential placement. While her preference is to be considered, the FCP is a publicly funded program. Thus, the program is permitted to implement less expensive, more cost-effective options when it achieves a similar result. The evidence in the record does support the MCO's determination that a residential placement is not the only means of addressing the petitioner's long-term care needs and goals. The MCO noted that it is able to implement support services in an independent apartment to ensure the petitioner's needs are appropriately addressed. This would likely include SHC for assistance with ADLs/IADLs; transportation services; and it was noted that while petitioner has not had any falls since 2021, the FCP could fund a Personal Emergency Response System to detect and report falls. The recommendation letters from the petitioner's medical providers demonstrate that support services are necessary. They did not, however, persuasively demonstrate that residential placement presents the only appropriate living option.

The petitioner's residential placement is currently providing rather limited support and assistance, namely meal preparation, transportation, and laundry/cleaning. I understand there was a recent incident where she lost vision in one of her eyes for a few hours. However, it was not shown that the residential placement provides any greater assistance in identifying and responding to such incidents than would be afforded with the support services that would be implemented if she were to move to the independent apartment proposed by the MCO. During that most recent incident her current residential placement provider was not involved in detecting or responding to that incident. She did not immediately disclose the incident to staff or apparently seek or need emergency medical intervention. Instead, she followed up with a medical provider at her convenience. I also understand that moving may cause her stress and anxiety. However, she has to date declined the mental health services offered by the MCO that would assist in addressing that anxiety.

The record before me indicates there are two appropriate options to address petitioner's living situation: (1) the current residential placement and (2) the independent apartment with support services proposed by the MCO. The record indicates that both would be effective at meeting her current long-term care needs and outcomes. The MCO's Supplemental RAD for Residential Services notes:

The principles of good decisions are that they are (1) made in collaboration with the member, (2) member-centered, (3) effective in meeting a long-term care outcome, and (4) *the most cost-effective*. ...

MCO Exhibits, pg. 45-46 (*emphasis added*); See also FCP Contract, pg. 397- 399 (requiring consideration of cost-effectiveness when determining the appropriateness of residential placement). What the record does not demonstrate is which of the two options is more cost-effective. There was no analysis submitted into the record comparing the cost of the current residential placement with the projected cost of the proposed support services needed with an independent apartment. The burden to demonstrate cost-effectiveness falls on the MCO as it was seeking to change the petitioner's living situation. It failed to meet that burden. Thus, I am remanding this matter to the MCO to rescind its October 10, 2024, notice of action terminating residential placement.

CONCLUSIONS OF LAW

The MCO failed to meet its burden to demonstrate that termination of the petitioner's residential placement was appropriate.

THEREFORE, it is

ORDERED

That this matter is remanded to My Choice Wisconsin with instructions to rescind the October 10, 2024 notice of action terminating residential placement. My Choice Wisconsin shall comply with these instructions within ten 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.

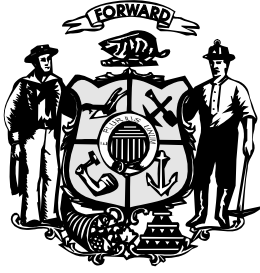
APPEAL TO COURT

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 April, 2025

\s _____
Jason M. Grace
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 April 25, 2025.

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