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STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION
Case #: FCP - 215537

PRELIMINARY RECITALS

Pursuant to a petition filed October 19, 2024, under Wis. Admin. Code, §DHS 10.55, to review a decision by Inclusa regarding the Family Care Program (FCP), a hearing was held on January 15, 2025, by telephone. Hearings set for December 4 and December 17, 2024 were rescheduled at the petitioner's request.

The issue for determination is whether petitioner's plan to move to a community residence cannot be considered safe.

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]

Respondent:

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

By: Brooke Jaeger
Inclusa
3349 Church St Suite 1
Stevens Point, WI 54481

ADMINISTRATIVE LAW JUDGE:

Brian C. Schneider
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner is a 43-year-old resident of Brown County.
2. Petitioner has muscular dystrophy. He experienced respiratory failure in April, 2024, and is now ventilator dependent with a tracheostomy. He is dependent for all activities of daily living

(ADLs) and most instrumental ADLs (IADLs). He has a urinary catheter, bowel ostomy, and receives medication through a PEG tube. He is at high risk of a respiratory virus. He can go off the ventilator for up to eight hours but is at risk of respiratory failure that would require immediate assistance. He is mentally competent and is able to work for a messaging company that is holding his position open.

3. Petitioner is a participant in the FCP with Inclusa as his managed care organization (MCO). He currently resides in a nursing home at a cost of \$971.02 per day. He cannot work at his job while in the nursing home because it lacks an independent internet connection.
4. On August 12, 2024, petitioner requested a move back to an apartment. He has two support staff ready to work with him as well as a registered nurse who would direct his cares. He would need two staff members to provide daily cares as well as a live-in staff member. Petitioner's plan for community living would cost \$881.87 per day.
5. By a notice dated August 21, 2024, Inclusa denied the request for community living because it determined that it would be too risky, that the nursing home was the best means to support his health. Petitioner filed a grievance, but the committee upheld the denial by a notice dated September 30, 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 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 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).

Wis. Admin. Code, §DHS 10.55(1) provides that a person may request a fair hearing to contest the denial of eligibility for the program, a cost share and financial eligibility, or the "entitlement" to the FCP. functional eligibility. In addition, the participant can file a grievance with the MCO over any decision, omission, or action of the MCO. The grievance committee shall review and attempt to resolve the dispute. If the dispute is not resolved to the participant's satisfaction, he may then request a hearing with the Division of Hearings and Appeals. Wis. Admin. Code, §DHS 10.55(2).

FCP policies are found primarily in the Department's standard contract with the FCP MCOs. The contract is found at <https://www.dhs.wisconsin.gov/familycare/mcos/fc-fcp-2025-generic-final.pdf>. Important to this case is the general language of FCP services. Services must be from appropriate and qualified providers, be fair and safe, serve to maintain community connections, and be cost effective. Contract, Part VII.A.1.

In this case the MCO focused on the idea of safety. It determined that the nursing home best supports petitioner's outcome as the community option would be too risky, given the fragile state of petitioner's health. Petitioner counters that the community option is less expensive, that he will have appropriate and

qualified providers, and that it will get him back into the community, including allowing him to work again (there was some confusion about the job, with Inclusa staff believing that petitioner could work while in the nursing home, but petitioner explained that he cannot do so for practical, technological reasons).

Petitioner provided evidence from family, friends, and his proposed nurse that support his move. Missing from his evidence is a statement from his doctor supporting the move. That said, petitioner is a mentally competent adult with a strong support team, and his desire to get back to community is precisely the idea of the FCP. Frankly, if it were me in petitioner's situation, the ability to work at a job, even from home, would be the primary thing that would keep me going. The problem is that having a nurse and two potential employees is not a sufficient plan to put in place given petitioner's many care needs and health risks. I thus will not order the MCO to approve petitioner's move back to the community at this time. I strongly urge the parties to keep working on a potential move. It now has been five months since petitioner's original request, and he seems to be getting along quite well. The advice by [REDACTED] from Disability Rights on how to proceed is, I believe, spot on (see page 5 of petitioner's hearing submission).

CONCLUSIONS OF LAW

The MCO's denial of a request to move petitioner back to his apartment was appropriate as it was not shown to be a safer placement than his current nursing home placement.

THEREFORE, it is

ORDERED

That the petition for review 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, 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.

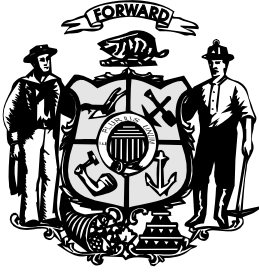
APPEAL TO COURT

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 24th day of January, 2025

\s _____
Brian C. Schneider
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 24, 2025.

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