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STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION
Case #: FCP - 217755

PRELIMINARY RECITALS

Pursuant to a petition filed on April 3, 2025, 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 June 9, 2025, by telephone. A hearing scheduled for May 21, 2025, was rescheduled at the request of the petitioner.

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

There appeared at that time the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]

Respondent:

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

By:

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 resident of Dane County. He currently lives at [REDACTED], a certified adult family home (AFH). He is enrolled in the Family Care Program (FCP), with My Choice Wisconsin his managed care organization (MCO).

2. The petitioner has medical diagnoses that include intellectual disability, autism spectrum disorder, PTSD, depression, psychosis/suicidal ideations, ADHD, mood disorder, seizure disorder, obstructive sleep apnea, and asthma.
3. According to the petitioner's Long Term Care Functional Screen (LTCFS) completed on August 28, 2024, he is independent in all activities of daily living (ADLs) except dressing (helper need not be present). He needs assistance with the instrumental activities of daily living (IADLs) of meal preparation, medication administration/management, money management, laundry/chores, and transportation. Due to cognitive limitations related to intellectual disability and autism, he needs assistance with employment, requiring daily cues and reminders to stay on task. He also requires overnight supervision to respond appropriately and timely in the event of an emergency.
4. The LTCFS identified the following risks during the screening process:

Risk 1 - Due to mental health diagnoses with history of psychosis, suicidal thoughts and attempts, member may be at risk of admission to an IMD or hospital for psychiatric services if appropriate support is not provided.

Risk 2 - Member requires assistance with medication management to manage his mental health. Member also requires daily emotional support to successfully make it through his day. Without support, member would decompensate to the point of institutionalization within six to eight weeks
5. On or about January 30, 2025, the MCO employed the Resource Allocation Decision process and found that the petitioner no longer needed residential services. It noted he has a long term care outcome (LTCO) to live in the least restrictive environment. It was found that the most effective and cost effective option to support the petitioner's LTCO is to live in an independent apartment with supportive home care services to assist with tasks needed.
6. The petitioner's Member Centered Plan indicates his preference is to stay at his AFH.
7. On January 31, 2025, the MCO provided petitioner notice that his residential services were being terminated, effective February 28, 2025. It was indicated that he no longer needs the 24/7 staffing support from an AFH and is safe to be left alone for several hours at a time. The least restrictive option would be for the petitioner to live in an independent apartment with supportive home care and transportation services to assist with tasks needed, including meal prep, cleaning, medications, and transportation.
8. On February 10, 2025, the petitioner filed an appeal with the MCO. By letter dated March 24, 2025, the MCO's Grievance and Appeal Committee informed the petitioner that the termination of residential services was upheld.
9. On April 3, 2025, 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 services at an AFH. 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 service was appropriate.

The MCO has implemented a Department-approved Supplementary RAD guideline for Residential Services. 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. 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 services at an AFH. Part of the justification for that determination was that he did not require 24/7 staffing support. While that is true, I would note that there was no showing that such is a pre-requisite for residential services. The petitioner's preference is to remain at his AFH. While his 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 petitioner presented testimony from his current AFH provider and a woman he has known for the past 9 years. This woman was identified as a mother-figure and has assisted him in securing housing in the past. This included independent apartments with and without formal support services. It appears he transitioned to a prior residential placement following deterioration of his mental health to the point of suffering suicidal ideations in 2021. It further appears this deterioration was caused, at least in part, by a failure to take his prescription medications. At that time, his mental health providers recommended placement in a supportive environment that was highly structured with routine such as a group home. It was reported he struggled with his initial residential placement due to staffing shortages. This resulted in behavioral issues, including an incident where he started a fire at the residence. He eventually transitioned to his current residential placement wherein it was reported he finally received the structure and support needed.

The MCO's position is that the support and stability provided by his current AFH provider can be replicated in an independent apartment with supportive home care services, just in a more cost-effective manner. It is not clear to me that is the case. However, fatal to the MCO's position is that 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 the petitioner would require in an independent apartment. The record simply does not demonstrate that the MCO's approach is in fact more cost-effective. 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*. ...

(*emphasis added*); See also FCP Contract, pg. 397- 399 (requiring consideration of cost-effectiveness when determining the appropriateness of residential placement).

The burden to demonstrate cost-effectiveness falls on the MCO as it was seeking to terminate the petitioner's residential services. It failed to meet that burden. Thus, I am remanding the matter to the MCO to rescind its January 31, 2025, notice of action terminating residential services.

CONCLUSIONS OF LAW

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

THEREFORE, it is

ORDERED

That this matter is remanded to My Choice Wisconsin with instructions to rescind the January 31, 2025 notice of action terminating residential placement/services. 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.

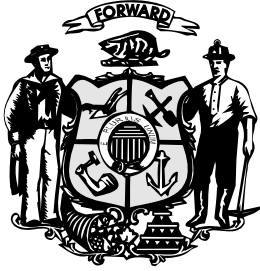
APPEAL TO COURT

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 11th day of July, 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 July 11, 2025.

MY Choice Family Care
Office of Family Care Expansion
Health Care Access and Accountability