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STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]

DECISION

Case #: FCP - 219522

PRELIMINARY RECITALS

Pursuant to a petition filed on August 8, 2025, 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 September 24, 2025, by telephone.

The issue for determination is whether the Family Care agency erred in its decision to terminate payment for professional lawn care services

There appeared at that time the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]

Respondent:

Department of Health Services
201 E. Washington Ave.
Madison, WI 53703

By:

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

ADMINISTRATIVE LAW JUDGE:

John Tedesco
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner is a resident of Juneau County.
2. Petitioner is enrolled in the Family Care Program.

3. Petitioner received supportive home care support in the form of a paid supportive home care worker with a set number of paid hours per week.
4. Petitioner lives with his wife in a home.
5. On 5/22/25 Inclusa, the Family Care agency, issued a Notice of Adverse Benefit Determination informing petitioner that it was terminating lawn care services. The Notice stated:

you have a relative residing with you in the home who is able to complete this service, this would be a reasonable expectation for them to support this task for the shared household.

6. Petitioner filed a grievance with Inclusa seeking review of the termination of professional lawn care services.
7. On 7/24/25 the Inclusa Grievance Committee held a hearing relating to petitioner internal grievance of the SHC reduction.
8. On 7/24/25 the Family Care agency issued a decision from the Inclusa Grievance Committee. The Committee upheld the SHC reduction.
9. On 8/8/25 the petitioner filed a request for fair hearing.

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. Whenever the local Family Care program decides that a person is ineligible for the program, or when the CMO discontinues an ongoing service in the service plan, the client is allowed to file a fair hearing request after an internal grievance. Because a service reduction is sought here, and the decision was upheld by the agency after a grievance, the Petitioner appropriately sought a fair hearing for a further review of the CMO decision. Wis. Admin. Code §DHS 10.55(1). It is the agency's burden to prove by a preponderance of the evidence that the reduction in services and hours is appropriate.

The state code language on the scope of permissible services for the FC reads as follows:

DHS 10.41 Family care services. ...

(2) SERVICES. Services provided under the family care benefit shall be determined through individual assessment of enrollee needs and values and detailed in an individual service plan unique to each enrollee. As appropriate to its target population and as specified in the department's contract, each CMO shall have available at least the services and support items covered under the home and community-based waivers under 42 USC 1396n(c) and ss.46.275, 46.277 and 46.278, Stat., the long-term support services and support items under the state's plan for medical assistance. In addition, a CMO may provide other services that substitute for or augment the specified services if these services are cost-effective and meet the needs of enrollees as identified through the individual assessment and service plan.

Note: The services that typically will be required to be available include adaptive aids; adult day care; assessment and case planning; case management; communication aids and interpreter services; counseling and therapeutic resources; daily living skills training; day services and treatment; home health services; home modification; home delivered and congregate meal services; nursing services; nursing home services,

including care in an intermediate care facility for the mentally retarded or in an institution for mental diseases; personal care services; personal emergency response system services; prevocational services; protective payment and guardianship services; residential services in an RCAC, CBRF or AFH; respite care; durable medical equipment and specialized medical supplies; outpatient speech; physical and occupational therapy; supported employment; supportive home care; transportation services; mental health and alcohol or other drug abuse services; and community support program services.

Wis. Admin. Code §DHS 10.41(2).

Supportive home care is included in the list of covered services in the statutory note above. Having established that SHC hours can be a covered service, the issue is whether the agency has appropriately determined the SHC hours that are essential to meeting the Petitioner's needs.

SHC services are permitted as follows:

Supportive Home Care (SHC) is the provision of a range of services for participants who require assistance to meet their daily living needs, ensure adequate functioning in their home and permit safe access to the community.

Supportive home care services include:

1. Personal Services

- a. Assistance with activities of daily living such as eating, bathing, grooming, personal hygiene, dressing, exercising, transferring and ambulating;
- b. Assistance in the use of adaptive equipment, mobility and communication aids;
- c. Accompaniment of a participant to community activities;
- d. Assistance with medications that are ordinarily self-administered;
- e. Attendant care;
- f. Supervision and monitoring of participants in their homes, during transportation (if not done by the transportation provider) and in community settings;
- g. Reporting of observed changes in the participant's condition and needs; and
- h. Extension of therapy services. "Extension of therapy services" means activities by the SHC worker that assist the participant with a PT/OT or other therapy/treatment plan. Examples of these activities include assistance with exercise routines, range of motion exercises, standing by during therapies for safety reasons, having the SHC worker read the therapist's directions, helping the participant remember and follow the steps of the exercise plan or hands on assistance with equipment/devices used in the therapy routine. It does not include the actual service the therapist provides.

2. Household Services

- a. Performance of household tasks and home maintenance activities, such as meal preparation, shopping, laundry, house cleaning, simple home repairs, snow shoveling, **lawn mowing** and running errands;
- b. Assistance with packing/unpacking and household cleaning/organizing when a participant moves.

3. Room and board costs for SHC providers who “live in” are allowable under this SPC.

Application for a §1915(c) Home and Community-Based Services Waiver, Waiver Number WI.0485.R01.00, Effective January 1, 2011 (emphasis added).

The skeletal legal guidance that pertains to determining the type and quantity of daily care services that must be placed in an individualized service plan (ISP) is as follows:

DHS 10.44 Standards for performance by CMOs.

...

(2) CASE MANAGEMENT STANDARDS. The CMO shall provide case management services that meet all of the following standards:

...

(f) The CMO, in partnership with the enrollee, shall develop an individual service plan for each enrollee, with the full participation of the enrollee and any family members or other representatives that the enrollee wishes to participate. ... The service plan shall meet all of the following conditions:

- 1. Reasonably and effectively addresses all of the long-term care needs and utilizes all enrollee strengths and informal supports identified in the comprehensive assessment under par. (e)1.
- 2. Reasonably and effectively addresses all of the enrollee's long-term care outcomes identified in the comprehensive assessment under par. (e)2 and assists the enrollee to be as self-reliant and autonomous as possible and desired by the enrollee.
- 3. Is cost-effective compared to alternative services or supports that could meet the same needs and achieve similar outcomes.

...

Wis. Admin. Code §DHS 10.44(2)(f).

According to the Inclusa “Paying Relatives and Legal Representatives Guideline” at Section 2.1:

IDT staff may consider compensation to relatives or legal representatives for needed services or supports that exceed the typical caregiving/support responsibilities for any relative of the same circumstances.

Examples of this may be time allocated to pureeing food if that is a documented medical need, or additional cleaning or laundry related to incontinence.

Types of Services:

Services that are **typically** shared household tasks and assumed to be the responsibility of spouses, significant others, relatives or legal representatives **residing with the member** are:

- Routine laundry
- Meal preparation (unless there is a special dietary need)
- Grocery shopping
- House cleaning (particularly if the space is shared with others living in the home)
- General companionship
- **Lawn care**
- **Yard Maintenance**
- Snow removal
- Money management

Services that are typically assumed to **exceed** the caregiving/support responsibilities of spouses, significant others, relatives, or legal representatives residing with the member are:

- Toileting
- Dressing
- Bathing
- Grooming
- Eating (other than monitoring during eating)
- Mobility
- Transferring/Repositioning
- Medication Administration and Medication Management
- Frequent laundry due to incontinence/illness
- Cleaning specific to the member's personal space (bedroom, personal bathroom)
- Active Supervision – a level of supervision that requires intervention/action by a caregiver beyond presence in the same room or building. To determine the amount of support related to health and safety tracking is recommended to calculate the amount of time related to this task. Supervision Tracker. Refer to the Supportive Home Care and SHC Chore Service RAD Companion.docx for more details on active and passive supervision.

The Inclusa guidelines contain more thorough direction on the consideration of appropriate supportive home care payments to a relative including that the paid supports are not intended to be a main source of income and the consideration of whether:

The service performed by the relative or legal representative does not benefit the relative, legal representative or other individual residing in

the household with the member (for example, lawn care, snow removal, family meal preparation, grocery shopping, emptying trash cans, etc.). The service may be of incidental benefit to the relative or legal guardian if the service is clearly identified as intended to support the member and is clearly identified as such in the MCP (for example occasional grocery shopping conducted as a community integration outing for the member).

Most notably, the Inclusa policy entitled “*Supportive Home Care and SHC Chore Service RAD Companion*” offers guidance directly on-point: **“In a shared household, a live-in caregiver would not be paid to mow his own yard.”** *Id.* at p.15. I find this policy guidance entirely reasonable.

At hearing, the agency presented a persuasive and well-documented case. The agency explained that the termination was made due to the agency’s application of its policies and determining that the service currently performed by a paid landscaping firm can be performed by petitioner’s wife.

Petitioner’s argument at hearing centered on the position that his wife does a lot already and that taking care of the yard would create a physical burden of which she is possibly not capable. No evidence supporting this concern was offered. No evidence suggesting she does not have time or ability to take on the task was presented aside from petitioner stating this was his belief.

I find the petitioner’s argument without merit. While I understand that lawn care can, under some circumstances, be covered under a Family Care benefit, I cannot fathom why any able-bodied person living in the home would not be expected to mow a lawn. A benefit would be understandable if a FCP member lives alone or with another disabled person. But, as cost-effectiveness is a primary concern in the FCP, other alternatives would win the day if petitioner’s wife does not want to mow the lawn. The family could plant a low-maintenance garden rather than have high maintenance grass, lay gravel, let the lawn go unmowed without pesticide or fertilizer treatments, or choose to relocate to a setting that lacks a lawn/garden and the related burden the petitioner perceives. Many people choose living settings that are lower maintenance due to their perceived burden.

There are many households in Wisconsin that would like to have a landscaping service but do not because they are costly. These include households that have fully employed household members with busy lives. If they want to have a lawn, and if it is important to them, then they find the time to mow it. Maybe they don’t mow it as often as they would like. Maybe they don’t fertilize and the yard looks less manicured and healthy the following season. Ultimately, I fail to see why petitioner’s preference for a more professionally kept lawn should be the responsibility of a Medicaid waiver program. Petitioner failed to establish that the need for landscaping services are related to his disability and that his spouse is not capable of sharing this family task.

I note that snow removal bears a very different place in consideration of household chores. Snow and ice removal are often required to ensure safety and allow egress from the home for emergency and for community engagement. Furthermore, snow removal is required to allow emergency service workers access to a home. Professional lawn care carries no such importance.

CONCLUSIONS OF LAW

The agency did not err in its termination of professional lawn care services.

THEREFORE, it is **ORDERED**

This appeal is 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.

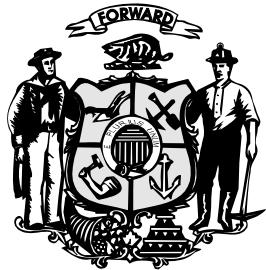
APPEAL TO COURT

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, 201 E. Washington Ave., **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 28th day of October, 2025

\s _____
John 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 October 28, 2025.

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