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STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]

DECISION

Case #: FCP - 220319

PRELIMINARY RECITALS

Pursuant to a petition filed October 1, 2025, under Wis. Admin. Code, §DHS 10.55, to review a decision by MY Choice Family Care regarding the Family Care Program (FCP), a hearing was held on November 12, 2025, by telephone.

The issue for determination is whether petitioner needs to move to a less restrictive environment.

PARTIES IN INTEREST:

Petitioner:

[REDACTED]

Petitioner's Representative:

[REDACTED]

Respondent:

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

By: Renita Link
MY Choice Family Care
10201 Innovation Dr, Suite 100
Wauwatosa, WI 53226

ADMINISTRATIVE LAW JUDGE:
Brian C. Schneider
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner is a 68-year-old resident of Milwaukee County who is eligible for the FCP.
2. Petitioner has cognitive issues following a cerebral infarction along with a number of physical impairments and substance abuse issues.

3. Petitioner began living at [REDACTED], a 3-4 bed adult family home (AFH), after experiencing homelessness. He enrolled in the FCP on April 23, 2025, with My Choice Family Care as his managed care organization (MCO).
4. My Choice staff approved placement at [REDACTED] initially while doing a complete assessment of petitioner's abilities and needs. After the assessment, staff determined that while petitioner needs assistance with activities of daily living (ADLs) and instrumental ADLs, his needs could be met in less restrictive setting such as a community-based residential facility (CBRF).
5. By a notice dated July 29, 2025, My Choice informed petitioner that his residential placement at the AFH would end August 13, 2025, with the intent that petitioner could move to a CBRF or Residential Care Apartment. Petitioner filed a grievance in which the decision was upheld, and he then filed this appeal. His placement at [REDACTED] has continued pending this decision.
6. Petitioner desires to stay at the AFH. The difference between the cost of the AFH and a CBRF is not a factor in the My Choice determination. Since the notice, My Choice has not been able to find an alternative placement because of petitioner's criminal history.

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).

The FCP is operated primarily under the provisions of the contract between the Department and the MCO, found on-line at dhs.wisconsin.gov/familycare/mcos/fc-fcp-2025-contract.pdf. Addendum VI defines services under the FCP. Residential services are defined at number 21 of the addendum. They can be authorized only:

- i. When members' long-term care outcomes cannot be cost effectively supported in the member's home, or when members' health and safety cannot be adequately safe-guarded in the member's home; or
- ii. When residential care services are a cost-effective option for meeting that member's long-term care needs.

The contract then defines the types of residential services. The major difference between an AFH and a CBRF is in the maximum hours of nursing care allowed. There is no standard for least restrictive setting, and it appears that least restrictive setting standard is a My Choice concept.

Wis. Admin. Code, §DHS 10.44 (2)(e), provides that the MCO must assess and identify long-term care outcomes that are consistent with the values and preferences of the enrollee, including the following:

- a. Safety.
- b. Best possible health.
- c. Self-determination of daily routine, services, activities and living situation.
- d. Privacy.
- e. Respect.
- f. Independence.
- g. Social roles and ties to family, friends and community.
- h. Educational and vocational activities.
- i. Desired level and type of participation in community life.
- j. Spiritual needs and desired participation in religious activities.

Petitioner prefers to stay in the AFH. While I respect the idea that a person should be in the least restrictive setting, petitioner has a unique background that leads me to give him substantial leeway in deciding what setting is best for him. As noted, prior to finding a residence at [REDACTED], petitioner was homeless. I acknowledge that petitioner's history likely has given him an attachment to the place that took him in. Further, [REDACTED] indicated that My Choice has been unable to locate a CBRF that would take petitioner in because of his background.

I conclude that petitioner should be allowed to stay at [REDACTED], at least for as long as it remains cost effective. It is petitioner's goal to live in the least restrictive setting, and he clearly is happy with the setting in which he is living currently.

CONCLUSIONS OF LAW

While the goal of placing petitioner in the least restrictive setting is a worthwhile one, petitioner's circumstances as well as his desire to remain in the AFH at which he currently resides, makes his current placement the most reasonable one at this time.

THEREFORE, it is

ORDERED

That the matter be remanded to the agency with instructions to continue petitioner's placement at his current AFH; it should reverse the proposed move to a different setting within 10 days 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.

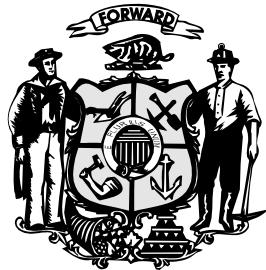
APPEAL TO COURT

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, 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 17th day of November, 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 November 17, 2025.

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