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STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[redacted]

DECISION
Case #: FCP - 220397

PRELIMINARY RECITALS

Pursuant to a petition filed on October 10, 2025, under Wis. Admin. Code § DHS 10.55, to review a decision by Inclusa Inc/Community Link, in its capacity as a managed care organization contracted by the Department of Health Services, to deny Family Care authorization for residential services in a community based residential facility, a hearing was held on November 25, 2025, by telephone.

The issue for determination is whether Inclusa correctly denied Petitioner's request for Family Care authorization of residential services in a community based residential facility rather than a residential care apartment complex.

There appeared at that time the following persons:

PARTIES IN INTEREST:

Petitioner:

[redacted]

Petitioner's Representative:

[redacted]

Respondent:

Department of Health Services
201 E. Washington Ave.
Madison, WI 53703
By: Tammy Haugen
Inclusa Inc/Community Link
3349 Church St Suite 1
Stevens Point, WI 54481

ADMINISTRATIVE LAW JUDGE:
Teresa A. Perez
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner is a 94-year old resident of Marathon County who is enrolled in Family Care with Inclusa serving as her managed care organization (MCO).

2. Petitioner has lived with her 68-year old son in his home since January 2024. Prior to that she was living in an independent apartment but was no longer able to meet her own needs, as indicated by multiple daily calls to her children for assistance. (Testimony of [redacted], [redacted], Resp. Ex. 11: 7/22/25 Case Note)

3. Petitioner's son and daughter-in-law are Petitioner's primary caregivers. She also has two daughters who live nearby that help her when they are able. All of her children are elderly and none of them are paid caregivers.

4. Petitioner's daughters are unable to drive at night and her son is unable to drive at all. (Testimony of [redacted] and [redacted].)

5. Petitioner's medical diagnoses include exudative macular degeneration of both eyes and related severe vision impairment ("well below the threshold for 20/200"), sensorineural hearing loss, chronic low back pain, lumbar radiculopathy, spinal stenosis, congestive heart failure, esophageal stricture, chronic obstructive pulmonary disease, emphysema/chronic bronchitis, pulmonary fibrosis, dyslipidemia, pulmonary hypertension, and paroxysmal atrial fibrillation. (See 0/5/25 Letter from [redacted] and 7/23/25 Long Term Care Functional Screen.)

6. Petitioner suffers from shortness of breath, unsteady gait, balance problems, dizziness, fatigue, significant vision loss, and hearing impairment. She also suffers from chronic pain on the left side of her neck which extends through her fingers. That pain is accompanied by increased weakness and impaired fine motor skills. (Testimony of Petitioner, [redacted], [redacted], [redacted], and 7/23/25 LTCFS.)

7. Petitioner moved in with her son at age 92--approximately two years ago--because she could no longer live independently. Her health has declined and her needs for assistance with activities of daily living and instrumental activities of daily living have increased since then. (Testimony of [redacted] and [redacted].)

8. Petitioner requires assistance with showering. A family member sets a towel outside of shower, starts water and adjusts the temperature. Petitioner gets into the shower and sits on a shower chair. She has a detachable showerhead but does not have the strength to hold it on her own. Her daughter-in-law assists Petitioner in washing her back. She is very fatigued and requires an extended rest period after showering. Petitioner is at risk of falls when she showers due to her dizziness, pain, weakness, and shortness of breath. (See 7/23/25 LTCFS and Testimony of [redacted].)

9. Petitioner requires assistance with selecting clean clothes due to her visual impairment and struggles to manipulate buttons, zippers, and snaps. She is able to dress her upper and lower body but experiences imbalance, dizziness and pain with bending; she therefore sometimes requires assistance putting on shoes. (See 7/23/25 LTCFS.)

10. Petitioner uses a walker for mobility in the home but cannot comfortably remove her hands from the walker to retrieve items or open or close doors. This makes it difficult for her to safely or

comfortably open the refrigerator door or retrieve items to move from one place to another. Petitioner's son and his partner supervise Petitioner when she ambulates within their home. (See 7/25/25 LTCFS and [redacted]'s Testimony.)

11. The frequency of Petitioner's need to toilet has increased recently. Because of her difficulty with mobility, she commonly uses a commode overnight. She is unable to empty or clean it and relies on her son and daughter-in-law to do so. She is able to use the toilet during the day with the assistance of grab bars but requires assistance with proper hygiene. Her family has found fecal matter on the walls and shower matt sometimes. Petitioner tends to remain seated on the toilet for extended periods and is often subsequently dizzy and unsteady upon standing. (See 7/23/25 LTCFS.)

12. Petitioner requires assistance standing after sitting or laying down for a long period of time and when she sits down on the couch, she tends to "plop". (See 7/23/25 LTCFS.)

13. Petitioner requires assistance with setting up medications. (See 7/23/25 LTCFS.)

14. Petitioner's family cuts her food into small pieces because her dental condition prevents her from chewing tough foods. She requires assistance with all aspects of meal preparation, is unable to safely stand to prepare even simple meals, cannot safely use the microwave, stove or oven, cannot transfer her plate, open food containers, monitor expiration dates, or grocery shop without assistance. (See 7/23/25 LTCFS and Testimony of [redacted].)

15. Petitioner requires assistance with reading bank statements, financial transactions, and phone calls related to finances. (See 7/23/25 LTCFS.)

16. Petitioner is unable to do laundry or other household chores. (See 7/23/25 LTCFS.)

17. Petitioner has short term and long term memory loss, is frequently anxious, and routinely seeks support or cues for direction from others. (See 7/23/25 LTCFS.)

18. Petitioner no longer leaves her home due to her physical decline; as a result, she has missed many appointments including appointments with her primary care provider and cardiologist. (Testimony of [redacted].)

19. Due to her vision loss, fatigue, chronic pain, and shortness of breath, Petitioner wants to live in a small space that she could more easily memorize and that would not require her to ambulate more distance than necessary. (Testimony of [redacted] and Resp. Ex. 11: 7/31/25 Case Note.)

20. On or about July 3, 2025, Petitioner requested Family Care authorization for residential services at [redacted] (CBRF). (Resp. Ex. 5.)

21. On July 16, 2025, the MCO issued a Notice of Adverse Benefit Determination which advised Petitioner that the MCO had denied her request for residential services and concluded that she "does not need the service or level of service or support to support [her] outcome." The notice also included the following detailed explanation:

    Per our discussion, you had requested residential services at [redacted]. We will not be approving this service due to your current level of independence as you remain independent with bathing, mobility and toileting. Alternative supports could meet your needs in the less restrictive setting such as an independent apartment setting. We

reviewed that supportive home care or Community Supportive Living supports could assist with meal preparation, chores, completion of laundry and transportation to appointments, assisting to empty her commode, picking up medications from the pharmacy, being in the apartment when showering and laying out clean clothing as needed. A Personal emergency response system could also be an option for added response in case of a fall.

(Resp. Ex. 6.)

22. From July 21, 2025 - July 23, 2025, the MCO completed and updated long term care functional screen (LTCFS) which documented Petitioner's various needs for assistance. (See Findings of Fact Nos. 5, 6, 8 - 17).

23. On July 22, 2025, the MCO indicated that it would be willing to authorize residential services at a residential care apartment complex (RCAC). (Resp. Ex. 11: 7/22/25 Case Note.)

24. On August 14, 2025, Petitioner requested an internal appeal of the denial of residential services. On September 25, 2025, the MCO upheld the denial finding that "an independent apartment with supportive home care or community supported living or a residential care apartment complex (RCAC) would be the least restrictive setting for member as member is currently independent with bathing, mobility and toileting. A CBRF would not be the least restrictive, not the most effective and cost-effective option to support member's outcomes". (Resp. Exs. 1 - 4.)

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 included in the FC benefit package when those services cost-effectively address a member's diagnosis and assist a member in achieving appropriate growth and development, maintaining and regaining functional capacity, accessing

the benefits of the community, and achieving 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.

The issue here is whether the MCO appropriately denied Petitioner's request for residential services at a community based residential facility (CBRF).

The MCO has implemented a Department-approved Supplementary RAD guideline for Residential Services ("MCO Guideline"). That guideline, as well as the MCO's contract with the State, provide that residential care services may be authorized only when a member's long-term care outcomes cannot be cost-effectively supported in the member's home, or when a member's health and safety cannot be adequately safe guarded in the member's home, or when residential care services are a cost-effective option for meeting the member's long-term care needs. See Resp. Ex. 9 and *FCP Contract*, Addendum VI, Para. 17. The MCO Guideline also states that "the least restrictive setting must always be pursued though it provides no definition of the term least restrictive.

The MCO Guideline directs care teams to consider various factors when they receive a request for residential services including whether the identified needs for support match what is noted in the LTCFS. See Resp. Ex. 9, p. 8. In addition, the MCO Guideline observes that a primary cause for consideration of residential services is when their needs cannot be met in an independent living setting, even with supports in place. To assess whether needs can be met with supports, the Guideline suggest that care teams may consider "a sketch of a Task Assessment" as a "helpful tool to assess the need for residential." Id. at p. 11. The MCO Guideline further observes that residential services may be requested when a family member believes that a member cannot be left home alone and suggests that, in such instances, the care team identify "the member's acuity, Cost Acuity Ratio (CAR), and community probability score." Id. at p. 12.

The MCO employed the RAD process and, based on documentation offered by the MCO including the Notice of Adverse Benefit Determination, initially found that the petitioner did not need residential services of any kind. (See Finding of Fact No. 21.) The MCO representative at hearing did not advance this argument, presumably because the MCO continued discussing with Petitioner and her family the question of how her needs could best be met after the issuance of the denial notice and ultimately determined that the MCO would be willing to authorize residential services at an RCAC but not a CBRF. This is reflected in the MCO's Appeal Committee Decision. (See Findings of Fact Nos. 23 and 24.)

At hearing, the MCO argued that an RCAC would be more effective and more cost-effective than a CBRF but offered no cost figures to support that argument. When asked if an RCAC is generally less expensive than a CBRF and whether she could offer a ballpark estimate of relative expenses, the MCO representative declined noting that no assessment has occurred and that it was therefore not possible to offer an idea of who much it would cost to provide Petitioner care in a CBRF vs. RCAC. Even if I were to assume that, on average, a CBRF is more expensive than an RCAC since a CBRF is authorized by state law to provide more and a higher level of care than an RCAC, there is no evidence to indicate how large a difference the cost might be for Petitioner.

The MCO also asserted that an RCAC would be sufficient for Petitioner because, by regulatory definition, an RCAC may provide up to 28 hours of supportive, personal, and nursing services. According to Wisconsin regulation, the "hours of service [that count towards the 28 hours] include time devoted to nursing assessment, documentation and consultation, stand-by assistance for activities of daily living and any other services directly attributable to an individual tenant." Wis. Admin. Code §DHS 89.24(3)(b)1.

The MCO did not, however, offer any type of Task Assessment to demonstrate how it concluded that Petitioner's significant care needs, including time required for documentation and consultation, would be met in 28 hours per week. And, despite the credible assertions by Petitioner's adult children that Petitioner needs standby assistance and supervision in light of her weakness, visual impairment, and unsteady gait, the MCO did not offer "the member's acuity, Cost Acuity Ratio (CAR), and community probability score" -- all of which are referenced in the MCO Guideline. And, perhaps most importantly, the MCO offered no explanation for the contradiction between its July 2025 LTCFS, which included detailed observations that Petitioner requires assistance with bathing, mobility and toileting, and its September 2025 internal appeal decision, which upheld the care team's denial and stated that Petitioner is independent with those activities.

Petitioner's son, one of her daughters, and Long Term Care Ombudsman [redacted] all appeared at hearing on Petitioner's behalf and offered credible, detailed testimony which was largely consistent with the Long Term Care Functional Screen completed by the MCO in July 2025. Their collective testimony and the LTCFS indicated that the 94 year old Petitioner's frailty has increased even in the past few months, and that her direct care needs and need for standby assistance and supervision have therefore also increased. Based on that credible testimony and the MCO's own LTCFS, in the absence of even a rough itemized task assessment, and in the absence of an estimated cost comparison, I am not persuaded that Petitioner's significant needs can be met in 28 hours per week and am not persuaded that an RCAC is either more effective or more cost-effective way of meeting Petitioner's needs as compared to a CBRF.

Thus, I am remanding the matter to the MCO to rescind its July 2025 notice of adverse benefit determination and to approve the requested residential placement at a CBRF.

CONCLUSIONS OF LAW

(1) The MCO did not properly deny Petitioner's request for residential services at a CBRF.
(2) A preponderance of the evidence in the record demonstrated that Petitioner's needs cannot be met at an RCAC.

THEREFORE, it is ORDERED

That this matter is remanded to Inclusa with instructions to rescind the July 16, 2025 notice of adverse benefit determination and authorize Petitioner's requested CBRF placement. Inclusa 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, 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 29th day of December, 2025

\s_____
Teresa A. Perez
Administrative Law Judge
Division of Hearings and Appeals

State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

Brian Hayes, Administrator
5th Floor North
4822 Madison Yards Way
Madison, WI 53705-5400

Telephone: (608) 266-7709
FAX: (608) 264-9885
email: DHAmail@wisconsin.gov
Internet: http://dha.state.wi.us

The preceding decision was sent to the following parties on December 29, 2025.

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