



FH

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

DECISION
Case #: FCP - 220498

PRELIMINARY RECITALS

Pursuant to a petition filed on October 17, 2025, under Wis. Admin. Code § DHS 10.55, to review a decision by the Inclusa Inc/Community Link regarding to terminate Family Care authorization for non-medical transportation, a hearing was held on December 3, 2025, by telephone.

The issue for determination is whether Inclusa, Petitioner's Family Care managed care organization, correctly terminated Petitioner's authorization for non-medical transportation to day services.

There appeared at that time the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

Respondent:

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

By: Brooke Jaeger
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 31-year old resident of Marathon County who is enrolled in the Family Care Program with Inclusa serving as his managed care organization (MCO).
2. Petitioner's legal co-guardians are [REDACTED] and [REDACTED] who are also his aunt and uncle.
3. Petitioner has intellectual disabilities, obsessive compulsive disorder, and ADHD.
4. Petitioner has resided in an adult family home (AFH) located near Wausau since August 2025. Prior to that he lived at an AFH in Tomahawk. He resided with his guardians in the Wausau area for a number of years before moving to Tomahawk and also stayed with them, for a short time period, after being discharged from the AFH in Tomahawk and prior to finding his current placement.
5. Petitioner has a long term care outcome of community integration.
6. While living in Tomahawk, the MCO authorized Petitioner to receive adult day services four days per week at [REDACTED] as a means for him to achieve his outcome of community integration.
7. [REDACTED] was the nearest adult day service provider to Petitioner's AFH in Tomahawk. The MCO also authorized transportation for Petitioner to and from day services. As of the date of the hearing, Petitioner had been attending [REDACTED] for approximately 20 months.
8. When Petitioner moved to his current AFH, the MCO agreed to temporarily continue the authorizations for Petitioner's transportation to [REDACTED] to ease his transition; however, on August 29, 2025, the MCO notified Petitioner and his family that there are adult day service providers closer to Petitioner's new residence and that transportation can only be authorized to the nearest provider.
9. The fee paid by the Family Care Program to the AFH where Petitioner now resides includes the cost of transporting residents up to 100 miles per month.
10. Via notice dated September 11, 2025, the MCO informed Petitioner that Family Care would no longer authorize non-medical transportation to [REDACTED] as of September 26, 2025 because there are day service providers located closer to the AFH where he now lives and transporting him to [REDACTED] is therefore no longer cost effective.
11. The MCO agreed to continue the authorization for day services at [REDACTED] if "natural supports" (i.e., his family) agreed to transport Petitioner. The current authorization is for four days per week. Petitioner's family tried to transport Petitioner but has been unable to do so.
12. Petitioner has a current authorization to attend day services four days per week but he has been attending only three days per week--at least since he moved to his current AFH. The monthly cost of transporting Petitioner to [REDACTED] and back three days per week is \$954. The cost of transportation would be \$1,272 if he were to attend four days per week and \$636 if he were to attend two days per week.

13. Petitioner has previously attended two of the adult day service programs that are close to his current AFH: [REDACTED] and [REDACTED]. While attending those programs, he experienced behavioral issues including interfering with other attendees and being unable to stay focused on his own activities. His behaviors caused him to frequently lose certain privileges.
14. [REDACTED] has approximately 20 - 25 participants; whereas, the prior adult day service programs Petitioner attended had 40 - 45 attendees. [REDACTED] has scheduled outings every day, a more structured routine and less free time than the other programs that he attended.
15. During Petitioner's participation in the [REDACTED] [REDACTED], Petitioner's behavioral health provider has observed improvements in his "mood, concentration, and frustration tolerance"; the owner of [REDACTED] has observed improvements in his attitude, confidence, and approach towards staff and peers; and his guardians have observed Petitioner socializing in a more positive and respectful way, developing healthy relationships, and having an over-all improved sense of well-being that they have never observed in him before. Petitioner has told his guardians that he enjoys attending [REDACTED] and has expressed anxiety to both his guardians and [REDACTED] staff regarding the possibility of no longer being able to do so.
16. Petitioner filed an internal appeal with the MCO regarding the termination of transportation to [REDACTED], and, on October 16, 2025, the MCO's Appeal and Grievance Committee upheld the termination.
17. On October 17, 2025, Petitioner filed a request for fair hearing with the Division of Hearings and Appeals and requested that his services continue pending the outcome of this appeal. That request was granted.

DISCUSSION

Family Care (FC) is a Medical Assistance funded waiver program authorized by the Center for Medicare and Medicaid Services (CMS) and is intended to meet the long term care needs of frail elders; individuals age 18 and older who have physical disabilities; and individuals age 18 and older who have developmental disabilities. See Wis. Stat. §46.286, Wis. Admin. Code ch. DHS 10, Family Care 1915(b) Waiver, and Family Care 1915(c) Home and Community-Based Services Waiver. FC is administered by the Department of Health Services (DHS). DHS contracts with managed care organizations (MCOs) throughout the state to provide case management to FC enrollees. See *Family Care / Partnership Contract* (available online at <https://www.dhs.wisconsin.gov/familycare/mcos/fc-fcp-2025-contract.pdf>). Case management includes the identification and authorization of allowable and appropriate long term care services and supports for individual FC recipients. Wis. Admin. Code, §DHS 10.44(2)(f).

The Department requires MCOs to utilize a "member-centered planning process" which is referred to as the "Resource Allocation Decision" (RAD) method when determining appropriate long-term care services for a member. See *FC / P Contract*, Article V., Sec. K.; and *Family Care / Partnership / PACE Technical Assistance Series: DHS and MCO Resource Allocation Decision (RAD) and Notice of Adverse Benefit Determination Guidelines*, Issued 06/2013, Revised 02/2024. MCOs may develop service authorization guidelines for use with the RAD but such guidelines must be approved by the department. *FC / P Contract*, Article V., Sec. K.1.a.

Here, the service authorization in question is for transportation to and from an adult day service program that Petitioner has been attending for a little less than two years but that is no longer the closest such program available. The MCO contended that transportation to and from that program ([REDACTED]) is therefore no longer cost-effective. The MCO pointed out that there are several adult day

service providers that are closer to Petitioner's current home--one of which ([REDACTED]) transports participants for no additional charge. In addition, "transportation up to 100 miles per month per enrollee is included in the [rate that the MOD pays to the AFH]." See Resp. Ex. 8, p. 3.

Petitioner's aunt and uncle, who are also his co-guardians, appeared at hearing for Petitioner. They have been closely involved in Petitioner's life for many years and Petitioner has resided with them in the past. They offered sincere and credible testimony regarding their observations of Petitioner's behavior while he attended two prior adult day service programs that are near his current AFH and of his behavior since beginning to attend [REDACTED]. They explained that they believe his participation in the program at [REDACTED] has significantly improved not only his behaviors but also his mood and overall well-being. They also testified that they believe the staff: participant ratio, daily outings, and structure of the program at [REDACTED]--which allows for less free time--are the program qualities that have facilitated Petitioner's improvements. In addition, they offered letters of support from Petitioner's psychiatrist and the owner of [REDACTED] which corroborate their testimony regarding Petitioner's improvements. The MCO offered no detail regarding the structure of the adult day service programs that are closer to Petitioner's current home.

Petitioner's aunt and uncle further testified that they understood the need to consider the cost of services, that the Family Care Program has limited funds to spread among its enrollees, and that they do not wish to harm anyone else but that they believe Petitioner's improvements will be fleeting if he transfers to a new adult day service program. In consideration of those competing interests, they proposed that Petitioner attend [REDACTED] only two days per week, which would reduce the cost of the day service program authorization and thereby offset the cost of transportation.

There was no dispute between the parties that the cost of transporting Petitioner four days a week would be \$1,272, that the cost of transporting him three days per week is \$954, and that the cost of transporting him twice a week would be \$656. Petitioner's uncle testified that he contacted the adult day service providers near Petitioner's current AFH to find out their respective daily rates and also asked [REDACTED] to identify its daily rate. He asserted that the average of the rates those providers identified is \$105. (It is not clear whether that average is of the contracted rates that the providers are paid by the MCO or whether that average is of the providers' private pay rates. The MCO did not, however, dispute that figure.) Petitioner therefore argued that the total cost of attending [REDACTED] Day Service twice per week, including transportation cost, would be \$1,476 per month ($\105 per day for adult day services \times 8 days = $\$840$ + $\$656$ for transportation) and that the total cost for attending a nearby adult day service provider four days per week would be \$1,680 ($\105×16).

Petitioner's argument to consider the costs of the day service program in addition to the cost of transportation is compelling; however, I have no documentation of the respective adult day service program's fees. Although I do not doubt the figures provided by Petitioner's uncle, I do not know whether one of the nearby providers has a fee that is lower than the average and / or whether [REDACTED]' fee is higher than the average. Such information is obviously relevant to determining a precise cost comparison. Based on the evidence in the record though, and in the absence of rebuttal from the MCO, I am persuaded that it is more likely than not that the total cost of attending [REDACTED] two days per week plus transportation is, if not lower, relatively close to the cost of attending a day service program four days per week.

Both parties offered thoughtful rationales for their respective positions. This is not a simple case to decide. As reflected in the MCO's Service Authorization Policy and Procedure and in the Family Care Contract, a long term care waiver service is medically necessary if it is "reasonable, appropriate, and cost-effectively addresses a member's assessed long-term care need or outcome related to . . . The ability to achieve age-appropriate growth and development. . . and the opportunity to have access to the benefits of

community living, to achieve person-centered goals, and live and work in the setting of their choice.” See Resp. Ex. 9. This definition of medically necessary services thus suggests that when analyzing a service authorization request, the MCO must consider both the cost of the service and the likely efficacy of the service in meeting an enrollee’s long term care outcomes.

Based on the detailed, first-hand testimony offered by Petitioner’s aunt and uncle regarding Petitioner’s improvements while attending the program at [REDACTED], his prior challenges while attending two other day programs, and the structure of his current program as compared to the prior programs, along with the corroborating documentation from Petitioner’s psychiatrist and the [REDACTED] owner regarding Petitioner’s improvements, I find that an authorization for transportation to and from [REDACTED] two days per week is cost-effective.

Finally, I note that this decision does not prohibit the MCO from revisiting this issue during a future service plan review. If the MCO discovers, for instance, that Petitioner’s circumstances have changed in some relevant way or determines that a nearby program has the sort of structure that has facilitated Petitioner’s behavioral improvements, the MCO would have the right, and obligation, to re-evaluate the transportation authorization that I am currently ordering based on the hearing record.

CONCLUSIONS OF LAW

- (1) Petitioner’s authorization for non-medical transportation to [REDACTED] was not properly terminated.
- (2) An authorization for transportation between Petitioner’s current AFH and [REDACTED] twice per week, in combination with an authorization for Petitioner to attend [REDACTED] twice per week, is a cost-effective means of meeting Petitioner’s long-term care outcome for community integration.

THEREFORE, it is

ORDERED

The matter is remanded to the MCO to rescind the September 11, 2025 termination of transportation and to authorize transportation to and from [REDACTED] twice per week. It is expected that the MCO will also reduce the authorization for day services from four times to two times per week. The MCO shall provide Petitioner written notice that it has taken these actions 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.

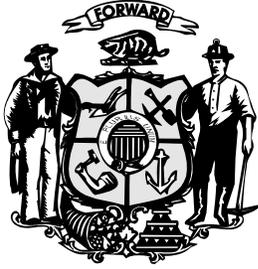
APPEAL TO COURT

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 5th day of January, 2026

\s _____
Teresa A. Perez
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 5, 2026.

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