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STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[redacted]

DECISION
Case #: FCP - 220551

PRELIMINARY RECITALS

Pursuant to a petition filed on October 22, 2025, under Wis. Admin. Code § DHS 10.55, to review a decision by the MY Choice Family Care regarding Family Care, a hearing was held on December 10, 2025, by telephone.

The issue for determination is whether Respondent properly terminated Petitioner's residential service placement at a 1-2 bed Adult Family Home.

There appeared at that time the following persons:

PARTIES IN INTEREST:

Petitioner:

[redacted]

Petitioner's Representative:

Attorney Mary Colleen Bradley
Disability Rights Wisconsin
1502 W Broadway
Suite 201
Monona, WI 53713

Respondent:

Department of Health Services
201 E. Washington Ave.
Madison, WI 53703
By: Andrew Sivertson
MY Choice Family Care
10201 Innovation Dr, Suite 100
Wauwatosa, WI 53226

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

FINDINGS OF FACT

1. Petitioner is a resident of Dane County who is enrolled in Family Care. MyChoice is the managed care organization (MCO) contracted to oversee and provide his benefits.

2. Petitioner currently lives at [redacted], a certified 1-2 bed adult family home (AFH) where he wishes to continue living.

3. Petitioner has medical diagnoses that include intellectual disability, Type 2 diabetes, cervical spine pain, epilepsy, PTSD, psychosis, mood affective disorder, obstructive sleep apnea, asthma, glaucoma, hypersomnia, and priapism.

4. Petitioner's mood disorder "is severe and persistent in nature and is significantly impacting IADL function, overnight supervision, employment, and cognition for daily decision making. It is [also] resulting in a permanent impairment of thought and cannot be stabilized or managed with medications or treatment." See Ex. P-11: March 13, 2025 Long Term Care Functional Screen.

5. Petitioner cannot safely or appropriately complete the following activities of daily living (ADLs): bathing and dressing or the following instrumental activities of daily living (IADLS): meal preparation; medication management; money management; laundry/chores; transportation; and employment. Petitioner requires the continuous presence of another person to successfully complete work activities.

6. Petitioner requires assistance with problem solving unexpected situations and also requires assistance with familiar routines (e.g., cues to initiate routine bathing, dressing, and grooming). Petitioner requires overnight supervision.

7. Petitioner's most recent long term care functional screen (LTCFS) identified the following risks for Petitioner:

> Risk 1 - Member is at risk for failing to obtain safety adequate to avoid significant negative health outcomes. Member experiences visual hallucinations as well as paranoia and requires staff to provide reassurance/support to maintain a stable mental health. Without current supports, member would be at risk for psychiatric hospitalization/IMD admission.
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> Risk 2 - Member experiences cognitive impairments as well as SPMI. He requires assistance with daily bathing and dressing as well as daily chores and employment. Member has extensive support from AFH staff as well as his supportive decision maker [redacted] which allows him to live as independently as he is. Without current supports, he would be at imminent risk for needing a more restrictive setting.

   See Ex. P-19.

8. The long term care outcomes identified on Petitioner's most recent member centered plan include "will reside in the least restrictive environment in the next 6 months", "will maintain stability with current mental/behavioral health supports in the next 6 months", and "will receive assistance with decision making in the next 6 months." Ex. R-17.

9. 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.

10. On January 31, 2025, the MCO provided petitioner notice that his residential services were being terminated, effective February 28, 2025. On April 3, 2025, the petitioner filed an appeal with the Division of Hearings and Appeals. On July 11, 2025, the Division of Hearings and Appeals reversed the MCO's termination.

11. One month after the Division of Hearings and Appeals reversed the MCO's termination of residential services, the MCO issued a Notice of Adverse Benefit Determination dated August 12, 2025 informing Petitioner that his residential services would be terminated as of August 27, 2025 because he does not need that service or level of service to support his outcome. The notice then clarified that the MCO would comply with DHA's hearing decision but that it intended to eventually terminate Petitioner's placement at his current AFH in favor of placement at a 3-4 bed AFH or a 5-8 bed CBRF. Specifically, the notice stated as follows:

> We are committed to funding a residential placement in accordance with the outcome of your state fair hearing. In alignment with the Family Care contract with the Department of Health Services (DHS) we are to pursue solutions that are both effective and cost-effective in meeting member needs. While your current 1–2 bed AFH has supported your care, we have determined that other residential settings—such as 3–4 bed AFHs or 5–8 bed CBRFs—can also meet your needs (including medication management, meal preparation, behavioral oversight) in a more cost-effective manner. These settings are better aligned with DHS expectations and program sustainability. As such, we do not intend to consider other 1–2 bed AFHs as alternative placements.
>
> We recognize that identifying and transitioning to a suitable alternative residential setting may take time. While we actively search for an appropriate 3–4 bed AFH or 5–8 bed CBRF, we will continue to fund your current 1–2 bed AFH on an interim basis. This temporary arrangement is not a long-term approval but a transitional support to ensure continuity of care.

12. Petitioner filed a request for an internal appeal with the MCO. The MCO upheld its decision on October 9, 2025.

13. Petitioner filed a request for fair hearing with the Division of Hearings and Appeals on October 22, 2025.

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).

The case management responsibilities of MCOs include 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 entails applying 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. When evaluating authorization requests, MCOs may 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 seeks to terminate the petitioner's residential services at his current 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 asserted that Petitioner does not need the intensity of services offered at a 1-2 bed AFH and that it could more cost-effectively meet his needs at a 3-4 bed AFH or 5-8 bed CBRF.

Counsel for Petitioner argued, in part, as follows:

> . . . [R]espondent . . . misrepresents the kinds of services available in a 1-2 bed AFH versus a 3-5 bed AFH or a 5-8 bed CBRF. Respondent's hearing materials state on page 1: "[Petitioner] demonstrates sufficient independence and stability and does not present with behavioral or medical complexities that necessitate the intensive oversight typically provided in a 1-2 bed AFH." Respondent cites no authority for its position that 1-2 bed AFHs typically provide intensive oversight for medical and behavioral complexities.
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> Addendum VI. 21., DHS/MCO contract, which defines residential services, does not describe the intensity of services per setting. The same services are available in all settings. In addition, there is no difference between services available for medical complexities in 1-2 bed or a 3-4 bed AFH. Both allow up to 7 hours per resident per week of nursing care. See DHS 82.07(2)(c) and DHS 88.07(2)(d), respectively. CBRFs may allow up to 3 hours per resident per week of nursing care and more for up to 30 days and even more if DHS grants a variance. DHS 83.27(2)(d). No such increases or variances are allowed in AFHs, indicating that a CBRF, not AFHs, may offer increased services for medical complexities. And, respondent cites no authority for its assertion that 1-2 bed AFHs typically provide intensive oversight for behavioral complexities.

I concur.

Moreover, I note that at hearing, the MCO's representative testified that the MCO issued the notice of action at issue so that the MCO could do a search for a larger facility and that MCO "felt" that Petitioner could be supported in a more cost-effective manner. The MCO had not begun the search prior to issuance of the notice of action or even prior to the hearing in this matter. In other words, the MCO informed an enrollee that he would need to move from his current home without researching whether any other place could meet Petitioner's long-term care outcomes, much less meet them more cost-effectively--the purported basis for the MCO's wish to relocate Petitioner from the home where he lives, prefers to stay,

and is having his needs met. And, as in the hearing that occurred in front of ALJ Grace less than one year ago, the MCO presented no evidence to support its assertion that moving Petitioner to an unspecified other place would actually be less expensive.

The MCO has not come close to satisfying its burden of proof in this matter.

CONCLUSIONS OF LAW

Respondent has not presented sufficient evidence to terminate Petitioner's residential service placement at his current 1-2 bed Adult Family Home.

THEREFORE, it is **ORDERED**

That the matter is remanded with the following instructions: the MCO must rescind the Notice of Adverse Benefit Determination that was issued on August 12, 2025 and provide Petitioner's counsel written notice that it has done so. These instructions must be complied with within 10 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 9th 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 9, 2026.

MY Choice Family Care
Office of Family Care Expansion
Health Care Access and Accountability
Attorney Mary Colleen Bradley