STATE OF WISCONSIN
Department of Health Services

In the Matter of

[redacted]

DECISION
Case #: FCP - 219586

The attached proposed decision of the hearing examiner dated November 6, 2025, is modified as follows and, as such, is hereby adopted as the final order of the Department.

PRELIMINARY RECITALS

Pursuant to a petition filed on August 14, 2025, under Wis. Admin. Code § DHS 10.55, to review a decision by My Choice Family Care regarding Medical Assistance (MA), a hearing was held on September 30, 2025, by telephone.

The issues for determination are:

1) Does the petitioner have the right to appeal the FamilyCare Managed Care Organization's determination involuntarily terminating her ability to self-direct supportive home care and respite care services?

2) If that right to appeal exists, was the MCO correct in denying the petitioner the right to self-direct her services?

There appeared at that time the following persons:

PARTIES IN INTEREST:

Petitioner:

[redacted]

Petitioner's Representative:

Attorney Lori Kornblum
Law Offices of Lori S. Kornblum
10936 N Port Washington Rd Ste 296
Mequon, WI 53092

Respondent:
Department of Health Services
201 E. Washington Ave.
Madison, WI 53703
By: Megan Bailey, Attorney Kevin Collins
My Choice Family Care
10201 Innovation Dr, Suite 100
Wauwatosa, WI 53226

ADMINISTRATIVE LAW JUDGE:
Kate J. Schilling
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner is a 30 year old resident of Dodge County who is currently enrolled in the FamilyCare Program with MyChoice Wisconsin as her Managed Care Organization (MCO).

2. The petitioner's medical history includes intellectual disability, cardia arrhythmias, mitral valve disorder, congenital heart malformation, scoliosis, spinocerebellar ataxia, Bell's palsy, language disorders, global aphasia, sleep apnea, reactive airway disease, Brugada syndrome, cervicobrachial syndrome, and chronic pain.

3. According to the petitioner's most recent Long-Term Care Functional Screen (LTCFS) on April 3, 2025, she requires hands on care for all six activities of daily living (ADLs) and four instrumental activities of daily living (IADLs). At the time of the hearing, the petitioner was eligible for 99.5 supportive home care hours per week and 16 hours per week of respite.

4. In March 2025, the petitioner had spinal surgery related to her scoliosis. Following this surgery, the petitioner required 2:1 staffing for safety in transferring, mobility, and positioning.

5. At a video meeting the morning of July 29, 2025, MyChoice orally informed the petitioner's guardians that effective August 16, 2025, they would no longer be able to use the self-directed services model under FamilyCare and would instead need to have an agency oversee the petitioner's supportive home care and respite.

6. Later on July 29, 2025, MyChoice emailed a statement to the petitioner's guardian regarding the petitioner no longer being able to self-direct her supportive homecare and respite care services. This letter was not signed or dated and did not include appeal rights.

7. On July 30, 2025, the petitioner's attorney notified the MCO via letter that it was appealing the change to no longer being able to use the self-directed services model to the MCO's Appeal and Grievance Committee. The attorney requested a hearing and the continuation of services pending the appeal.

8. On August 1, 2025, the MCO informed the petitioner's attorney that the change to no longer using the self-directed services model was not an appealable decision and that the MCO would not hold an appeal on the matter. Mediation services were offered but were declined by the petitioner.

9. On August 14, 2025, the petitioner appealed to the Division of Hearings and Appeals and requested services be continued pending the appeal.

DISCUSSION

The Family Care Program is a Medical Assistance home and community based waiver program designed to provide long-term care services for individuals with physical and developmental disabilities and elderly individuals through a managed care service delivery model. 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. The State of Wisconsin has obtained approval from the federal Centers for Medicaid and Medicare Services to operate the Family Care Program in conformation with the Medicaid wavier.

The Department of Health Services ("the Department") contracts with managed care organizations (MCOs) throughout the state to provide case management services to Family Care members. See the WI Dept. of Health Services, Division of Medicaid Services and MCO contract(hereafter "MCO Contract") (available online at https://www.dhs.wisconsin.gov/familycare/mcos/contract.htm). Case management services include comprehensively assessing a member's desired outcomes (*i.e*., goals) and the services that support those outcomes.

In this case, the petitioner was enrolled in FamilyCare with MyChoice Wisconsin (hereafter "MyChoice") as her MCO. The petitioner and her guardian were self-directing her supportive home care and respite care. The petitioner received 115.5 hours of supportive home care each week, which included 16 hours per week of respite care. The petitioner lives with her parents, who are her primary caregivers. Following the petitioner's spinal surgery in March 2025, she was receiving eight hours per day of 2:1 staffing.

I. Does the petitioner have a right to appeal an involuntary termination of self-directed services?

On July 29, 2025, the MCO notified the petitioner's legal guardians that they would no longer be able to utilize self-directed services (SDS) to hire, train, and oversee the staff who provided care to the petitioner after August 17, 2025. The petitioner's guardians were initially informed of this change during a team meeting held by videoconference on July 29, 2025. Later that day, the MCO emailed a statement regarding the change to the petitioner's guardians. This statement was not dated or signed, did not contain appeal rights, and was not on the MCOs letterhead. (Petitioner's Exhibit B, pages 13-15)

The petitioner's attorney notified the MCO via letter sent by email on July 30, 2025, that they were appealing the change to no longer being able to use the self-directed services model. The attorney requested an Appeal and Grievance Committee hearing and the continuation of SDS pending the appeal. (Petitioner's Exhibit L, pages 6-8) On August 1, 2025, the MCO informed the petitioner's attorney via email that the change to no longer using the self-directed services model was not an appealable decision and that the MCO would not hold an appeal or hearing on the matter. Mediation services were offered but were declined by the petitioner. (Petitioner's Exhibit L)

Typically, members of FamilyCare MCOs are required to appeal to the MCO Appeal and Grievance Committee for the first level of appeal prior to filing for a fair hearing with the Division of Hearings and Appeals.

> The MCO must only have one level of appeal and a member must exhaust this level of appeal before the member can request a State Fair Hearing.

MCO Contract, Article XI, Section C, *Overall Policies and Procedures for Grievances and Appeals*, page 203. See also Wis. Stat. § 49.45 (5)(b)1.d. In this case, the petitioner's counsel was notified by the MCO that it did not consider this action to be an adverse benefit determination; therefore, it did not issue an adverse benefit determination notice, provide appeal rights, or consider the petitioner to have appealed the change. As the MCO did not acknowledge it as an adverse determination and would not agree to continuing services during the appeal process, the petitioner's attorney filed for an appeal with the Division of Hearings and Appeals on August 14, 2025.

The MCO representative asserted at the hearing that there was no right to an appeal or hearing for the discontinuation of self-directed services under FamilyCare. In support of its position, the MCO cited to the following MCO contract language:

> An "adverse benefit determination" is not:
>
> i. A change in non-residential provider;
>
> ii. A change in the rate the MCO pays a provider;
>
> iii. A termination of a service that was authorized for a limited number of units of service or duration of a service as defined in Article V.K.3.a. and b.; or
>
> iv. An adverse benefit determination that is the result of a change in state or federal law; however, a member does have the right to a State Fair Hearing in regard to whether the member is not impacted by the change.
>
> v. The denial of authorization or payment for a service or item that is not inside of the benefit package specified in Addendum VI.
>
> vi. The denial of authorization for remote delivery of a waiver service or a state plan service delivered via interactive telehealth.
>
> **vii. The denial of a member's request to self-direct a service or the limitation of a member's existing level of self-direction.**

(Emphasis added.) MCO contract, Article XI, *Grievances and Appeals*, pages 201-202.

At the hearing, the petitioner's attorney pointed out that the FamilyCare 1915c Home and Community Based Waiver, effective January 1, 2025, states that participants do have appeal rights in this situation.

> Appendix E: Participant Direction of Services
> E-1: Overview (12 of 13)
>
> **Involuntary Termination of Participant Direction**. Specify the circumstances when the state will involuntarily terminate the use of participant direction and require the participant to receive provider-managed services instead, including how continuity of services and participant health and welfare is assured during the transition.
>
> The [MCO] is authorized to involuntarily terminate member self direction if the member's health and safety is jeopardized, purchasing authority is mismanaged, or the member refuses to report information necessary for the [MCO] to adequately monitor the situation. <u>This action is appealable</u>. If the member direction is involuntarily terminated for a member, the member's IDT resumes full responsibility for authorization of services and for assuring continuity of services, and as appropriate, providers.

(Emphasis added.) FamilyCare 1915(c) HCBW, January 1, 2025, Appendix E-1: Overview (12 of 13), page 253. I agree with the petitioner's attorney that this language under the waiver makes it clear that an involuntary termination of self-direction is appealable.

Furthermore, the Wisconsin Administrative Code provides for appeal rights in this situation as well.

> (6) Option for Enrollee Self-Management of Service Funding
>
> * * *
>
> (c) On or after January 1, 2023, the department may approve the CMO plan for self-managed service funding only if the plan provides all of the following:
>
> * * *
>
> 2. The CMO. . . shall do all of the following:
>
> * * *
>
> d. Inform the enrollee of his or her right to file a grievance under s. DHS 10.53, request department review under s. DHS 10.55 [fair hearing] if he or she disagrees with the determination of need for support **or the level of self-management provided by the plan.**

(Emphasis added.) Wis. Admin. Code § DHS 10.44 (6)(c) 2.d. In accordance with the 1915(c) FamilyCare HCBW and the Wisconsin Administrative Code, I find that the petitioner does have the right to appeal the involuntary termination of self-directed services. As this language is contradictory to the 2025 MCO contract, I am issuing this as a Proposed Decision so that the Department of Health Services can make a final decision on this matter.

II. Did the MCO correctly involuntarily terminate the petitioner's self-directed services?

Secondly, I must address whether the MCO correctly terminated the petitioner from self-directed services. Although the MCO did not issue a notice of adverse benefit action regarding the involuntary termination of SDS, it did provide a three page statement to the petitioner's attorney on July 29, 2025, outlining its reasons for the change.

To briefly summarize the MCO's rationale, it cited to timesheet inconsistencies and errors where two and three staff were working at the same time; the petitioner's increased care needs since March leading to potential caregiver burnout and a "high-risk situation related to your health, safety, or well-being" due to the MCO's inability to fully assess the petitioner's needs; the petitioner's guardian's refusal to provide access to the petitioner so that the MCO can complete a comprehensive assessment of her needs; and the inability of the MCO to communicate directly with the petitioner's medical professionals to verify medical orders and discuss reported health issues. (Petitioner's Exhibit L, pages 13-15).

At the hearing, the MCO representative testified that it never accused the petitioner's family or caregivers of fraud, waste, or abuse. It referred to the timesheet issues as "billing anomalies." Further, the MCO representative testified that the timesheet issues were not part of the MCO's rationale for ending the SDS model. Rather, the rationale was related to the amount of staff time that was being allocated to the petitioner's case, and the lack of cooperation in not allowing the MCO to speak directly to the petitioner's medical providers. The MCO submitted no evidence for the hearing record other than a one and a half page statement as to why the involuntary termination of SDS was not an adverse benefit determination, and therefore, not appealable according to the MCO contract.

According to the 1915(c) FamilyCare waiver language, an MCO can involuntarily terminate a person's self-direction if the member's health and safety is jeopardized, purchasing authority is mismanaged, or the member refuses to report information necessary for the [MCO] to adequately monitor the situation. FamilyCare 1915(c) HCBW, January 1, 2025, Appendix E-1: Overview (12 of 13), page 253. Although the MCO's statement sent to the petitioner's guardians on July 29, 2025, mentioned having concerns about the member's health and safety due to not being able to see her or communicate directly with her doctors, there was no evidence presented by the MCO at the hearing to substantiate these concerns.

The petitioner's mother and guardian testified at the hearing that the issues related to the timesheets had been previously resolved as the petitioner was receiving 2:1 staffing after her spinal surgery in March 2025 and so it was authorized that two people would be providing care at the same time. Additionally, the petitioner's mother testified that in going over the timesheets with the agency, they found that the agency had inaccurately stated that three people had billed at the same time when that had not actually occurred.

Furthermore, the petitioner's attorney submitted a signed statement dated September 15, 2025, from the Dodge County Adult Protective Services staff stating that following its investigation relating to claims of potential abuse or neglect, the "evidence does not show that [the petitioner] has been hurt or harmed. (Petitioner's Exhibit B, page 28) Additionally, a statement written by the petitioner's physical therapist dated September 23, 2025, was submitted as part of the hearing record. This letter states that the physical therapist has seen the petitioner twice per week for a total of 45 visits since March 2025, and believes that her care needs are being met and that she has not observed any indications of abuse or neglect.

It is a well-established principle that a moving party generally has the burden of proof, especially in administrative proceedings. *State v. Hanson*, 295 N.W.2d 209, 98 Wis. 2d 80 (Wis. App. 1980). The court in *Hanson* stated that the policy behind this principle is to assign the burden to the party seeking to change a present state of affairs. In this case, the MCO terminated the petitioner's right to utilize the self-directed services program model; therefore, the MCO has the burden of proof to demonstrate that its actions are correct in light of relevant policies and laws. Here, the MCO presented no written documentation and very little testimony into evidence at the hearing establishing that it had properly terminated the petitioner's self-direction in accordance with the 1915(c) FamilyCare waiver. Moreover, the use of MCO staff time is not an appropriate reason to terminate a member's right to use the self-directed services model under the terms of the waiver.

CONCLUSIONS OF LAW

1. The petitioner's involuntary termination of self-directed services while enrolled in FamilyCare is an appealable issue.

2. The petitioner's involuntary termination of self-directed services August 1, 2025 was incorrect and not supported by evidence.

THEREFORE, it is **ORDERED**

That if this Proposed Decision is adopted by the Secretary of the Department of Health Services as the Final Decision in the matter, the MCO shall, within 10 days of the date of the Final Decision, take all necessary steps to reinstate the petitioner's right to use the self-directed services model for her supportive home care and respite care hours retroactive to August 16, 2025.

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, Madison, WI 53705-9100 **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 State of Wisconsin Department of Health Services, 201 E. Washington Avenue, Rm E200B, PO Box 7850, Madison, WI 54703 **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 request (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 16th day of January, 2026.

Department of Health Services

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[redacted]

PROPOSED DECISION
Case #: FCP - 219586

PRELIMINARY RECITALS

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The issues for determination are:

1) Does the petitioner have the right to appeal the FamilyCare Managed Care Organization's determination involuntarily terminating her ability to self-direct supportive home care and respite care services?

2) If that right to appeal exists, was the MCO correct in denying the petitioner the right to self-direct her services?

There appeared at that time the following persons:

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Petitioner:

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Petitioner's Representative:

Attorney Lori Kornblum
Law Offices of Lori S. Kornblum
10936 N Port Washington Rd Ste 296
Mequon, WI 53092

Respondent:
Department of Health Services
201 E. Washington Ave.
Madison, WI 53703
By: Megan Bailey, Attorney Kevin Collins
My Choice Family Care
10201 Innovation Dr, Suite 100
Wauwatosa, WI 53226

ADMINISTRATIVE LAW JUDGE:
Kate J. Schilling
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner is a 30 year old resident of Dodge County who is currently enrolled in the FamilyCare Program with MyChoice Wisconsin as her Managed Care Organization (MCO).

2. The petitioner's medical history includes intellectual disability, cardia arrhythmias, mitral valve disorder, congenital heart malformation, scoliosis, spinocerebellar ataxia, Bell's palsy, language disorders, global aphasia, sleep apnea, reactive airway disease, Brugada syndrome, cervicobrachial syndrome, and chronic pain.

3. According to the petitioner's most recent Long-Term Care Functional Screen (LTCFS) on April 3, 2025, she requires hands on care for all six activities of daily living (ADLs) and four instrumental activities of daily living (IADLs). At the time of the hearing, the petitioner was eligible for 99.5 supportive home care hours per week and 16 hours per week of respite.

4. In March 2025, the petitioner had spinal surgery related to her scoliosis. Following this surgery, the petitioner required 2:1 staffing for safety in transferring, mobility, and positioning.

5. At a video meeting the morning of July 29, 2025, MyChoice orally informed the petitioner's guardians that effective August 16, 2025, they would no longer be able to use the self-directed services model under FamilyCare and would instead need to have an agency oversee the petitioner's supportive home care and respite.

6. Later on July 29, 2025, MyChoice emailed a statement to the petitioner's guardian regarding the petitioner no longer being able to self-direct her supportive homecare and respite care services. This letter was not signed or dated and did not include appeal rights.

7. On July 30, 2025, the petitioner's attorney notified the MCO via letter that it was appealing the change to no longer being able to use the self-directed services model to the MCO's Appeal and Grievance Committee. The attorney requested a hearing and the continuation of services pending the appeal.

8. On August 1, 2025, the MCO informed the petitioner's attorney that the change to no longer using the self-directed services model was not an appealable decision and that the MCO would not hold an appeal on the matter. Mediation services were offered but were declined by the petitioner.

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DISCUSSION

The Family Care Program is a Medical Assistance home and community based waiver program designed to provide long-term care services for individuals with physical and developmental disabilities and elderly individuals through a managed care service delivery model. 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. The State of Wisconsin has obtained approval from the federal Centers for Medicaid and Medicare Services to operate the Family Care Program in conformation with the Medicaid wavier.

The Department of Health Services ("the Department") contracts with managed care organizations (MCOs) throughout the state to provide case management services to Family Care members. See the WI Dept. of Health Services, Division of Medicaid Services and MCO contract(hereafter "MCO Contract") (available online at https://www.dhs.wisconsin.gov/familycare/mcos/contract.htm). Case management services include comprehensively assessing a member's desired outcomes (*i.e.*, goals) and the services that support those outcomes.

In this case, the petitioner was enrolled in FamilyCare with MyChoice Wisconsin (hereafter "MyChoice") as her MCO. The petitioner and her guardian were self-directing her supportive home care and respite care. The petitioner received 115.5 hours of supportive home care each week, which included 16 hours per week of respite care. The petitioner lives with her parents, who are her primary caregivers. Following the petitioner's spinal surgery in March 2025, she was receiving eight hours per day of 2:1 staffing.

I. Does the petitioner have a right to appeal an involuntary termination of self-directed services?

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The petitioner's attorney notified the MCO via letter sent by email on July 30, 2025, that they were appealing the change to no longer being able to use the self-directed services model. The attorney requested an Appeal and Grievance Committee hearing and the continuation of SDS pending the appeal. (Petitioner's Exhibit L, pages 6-8) On August 1, 2025, the MCO informed the petitioner's attorney via email that the change to no longer using the self-directed services model was not an appealable decision and that the MCO would not hold an appeal or hearing on the matter. Mediation services were offered but were declined by the petitioner. (Petitioner's Exhibit L)

Typically, members of FamilyCare MCOs are required to appeal to the MCO Appeal and Grievance Committee for the first level of appeal prior to filing for a fair hearing with the Division of Hearings and Appeals.

> The MCO must only have one level of appeal and a member must exhaust this level of appeal before the member can request a State Fair Hearing.

MCO Contract, Article XI, Section C, *Overall Policies and Procedures for Grievances and Appeals*, page 203. See also Wis. Stat. § 49.45 (5)(b)1.d. In this case, the petitioner's counsel was notified by the MCO

that it did not consider this action to be an adverse benefit determination; therefore, it did not issue an adverse benefit determination notice, provide appeal rights, or consider the petitioner to have appealed the change. As the MCO did not acknowledge it as an adverse determination and would not agree to continuing services during the appeal process, the petitioner's attorney filed for an appeal with the Division of Hearings and Appeals on August 14, 2025.

The MCO representative asserted at the hearing that there was no right to an appeal or hearing for the discontinuation of self-directed services under FamilyCare. In support of its position, the MCO cited to the following MCO contract language:

> An "adverse benefit determination" is not:
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> i. A change in non-residential provider;
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> iii. A termination of a service that was authorized for a limited number of units of service or duration of a service as defined in Article V.K.3.a. and b.; or
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> iv. An adverse benefit determination that is the result of a change in state or federal law; however, a member does have the right to a State Fair Hearing in regard to whether the member is not impacted by the change.
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> v. The denial of authorization or payment for a service or item that is not inside of the benefit package specified in Addendum VI.
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> vi. The denial of authorization for remote delivery of a waiver service or a state plan service delivered via interactive telehealth.
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> **vii. The denial of a member's request to self-direct a service or the limitation of a member's existing level of self-direction.**

(Emphasis added.) MCO contract, Article XI, *Grievances and Appeals*, pages 201-202.

At the hearing, the petitioner's attorney pointed out that the FamilyCare 1915c Home and Community Based Waiver, effective January 1, 2025, states that participants do have appeal rights in this situation.

> Appendix E: Participant Direction of Services
> E-1: Overview (12 of 13)
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> **Involuntary Termination of Participant Direction**. Specify the circumstances when the state will involuntarily terminate the use of participant direction and require the participant to receive provider-managed services instead, including how continuity of services and participant health and welfare is assured during the transition.
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> The [MCO] is authorized to involuntarily terminate member self direction if the member's health and safety is jeopardized, purchasing authority is mismanaged, or the member refuses to report information necessary for the [MCO] to adequately monitor the situation. <u>This action is appealable</u>. If the member direction is involuntarily terminated for a member, the member's IDT resumes full

> responsibility for authorization of services and for assuring continuity of services, and as appropriate, providers.

(Emphasis added.) FamilyCare 1915(c) HCBW, January 1, 2025, Appendix E-1: Overview (12 of 13), page 253. I agree with the petitioner's attorney that this language under the waiver makes it clear that an involuntary termination of self-direction is appealable.

Furthermore, the Wisconsin Administrative Code provides for appeal rights in this situation as well.

> (6) Option for Enrollee Self-Management of Service Funding
>
> * * *
> (c) On or after January 1, 2023, the department may approve the CMO plan for self-managed service funding only if the plan provides all of the following:
>
> * * *
> 2. The CMO. . . shall do all of the following:
>
> * * *
> d. Inform the enrollee of his or her right to file a grievance under s. DHS 10.53, request department review under s. DHS 10.55 [fair hearing] if he or she disagrees with the determination of need for support **or the level of self-management provided by the plan.**

(Emphasis added.) Wis. Admin. Code § DHS 10.44 (6)(c) 2.d. In accordance with the 1915(c) FamilyCare HCBW and the Wisconsin Administrative Code, I find that the petitioner does have the right to appeal the involuntary termination of self-directed services. As this language is contradictory to the 2025 MCO contract, I am issuing this as a Proposed Decision so that the Department of Health Services can make a final decision on this matter.

II. Did the MCO correctly involuntarily terminate the petitioner's self-directed services?

Secondly, I must address whether the MCO correctly terminated the petitioner from self-directed services. Although the MCO did not issue a notice of adverse benefit action regarding the involuntary termination of SDS, it did provide a three page statement to the petitioner's attorney on July 29, 2025, outlining its reasons for the change.

To briefly summarize the MCO's rationale, it cited to timesheet inconsistencies and errors where two and three staff were working at the same time; the petitioner's increased care needs since March leading to potential caregiver burnout and a "high-risk situation related to your health, safety, or well-being" due to the MCO's inability to fully assess the petitioner's needs; the petitioner's guardian's refusal to provide access to the petitioner so that the MCO can complete a comprehensive assessment of her needs; and the inability of the MCO to communicate directly with the petitioner's medical professionals to verify medical orders and discuss reported health issues. (Petitioner's Exhibit L, pages 13-15).

At the hearing, the MCO representative testified that it never accused the petitioner's family or caregivers of fraud, waste, or abuse. It referred to the timesheet issues as "billing anomalies." Further, the MCO representative testified that the timesheet issues were not part of the MCO's rationale for ending the SDS model. Rather, the rationale was related to the amount of staff time that was being allocated to the

petitioner's case, and the lack of cooperation in not allowing the MCO to speak directly to the petitioner's medical providers. The MCO submitted no evidence for the hearing record other than a one and a half page statement as to why the involuntary termination of SDS was not an adverse benefit determination, and therefore, not appealable according to the MCO contract.

According to the 1915(c) FamilyCare waiver language, an MCO can involuntarily terminate a person's self-direction if the member's health and safety is jeopardized, purchasing authority is mismanaged, or the member refuses to report information necessary for the [MCO] to adequately monitor the situation. FamilyCare 1915(c) HCBW, January 1, 2025, Appendix E-1: Overview (12 of 13), page 253. Although the MCO's statement sent to the petitioner's guardians on July 29, 2025, mentioned having concerns about the member's health and safety due to not being able to see her or communicate directly with her doctors, there was no evidence presented by the MCO at the hearing to substantiate these concerns.

The petitioner's mother and guardian testified at the hearing that the issues related to the timesheets had been previously resolved as the petitioner was receiving 2:1 staffing after her spinal surgery in March 2025 and so it was authorized that two people would be providing care at the same time. Additionally, the petitioner's mother testified that in going over the timesheets with the agency, they found that the agency had inaccurately stated that three people had billed at the same time when that had not actually occurred.

Furthermore, the petitioner's attorney submitted a signed statement dated September 15, 2025, from the Dodge County Adult Protective Services staff stating that following its investigation relating to claims of potential abuse or neglect, the "evidence does not show that [the petitioner] has been hurt or harmed. (Petitioner's Exhibit B, page 28) Additionally, a statement written by the petitioner's physical therapist dated September 23, 2025, was submitted as part of the hearing record. This letter states that the physical therapist has seen the petitioner twice per week for a total of 45 visits since March 2025, and believes that her care needs are being met and that she has not observed any indications of abuse or neglect.

It is a well-established principle that a moving party generally has the burden of proof, especially in administrative proceedings. *State v. Hanson*, 295 N.W.2d 209, 98 Wis. 2d 80 (Wis. App. 1980). The court in *Hanson* stated that the policy behind this principle is to assign the burden to the party seeking to change a present state of affairs. In this case, the MCO terminated the petitioner's right to utilize the self-directed services program model; therefore, the MCO has the burden of proof to demonstrate that its actions are correct in light of relevant policies and laws. Here, the MCO presented no written documentation and very little testimony into evidence at the hearing establishing that it had properly terminated the petitioner's self-direction in accordance with the 1915(c) FamilyCare waiver. Moreover, the use of MCO staff time is not an appropriate reason to terminate a member's right to use the self-directed services model under the terms of the waiver.

CONCLUSIONS OF LAW

1. The petitioner's involuntary termination of self-directed services while enrolled in FamilyCare is an appealable issue.

2. The petitioner's involuntary termination of self-directed services was incorrect and not supported by evidence.

THEREFORE, it is **ORDERED**

That if this Proposed Decision is adopted by the Secretary of the Department of Health Services as the Final Decision in the matter, the MCO shall, within 10 days of the date of the Final Decision, take all necessary steps to reinstate the petitioner's right to use the self-directed services model for her supportive home care and respite care hours retroactive to August 16, 2025.

NOTICE TO RECIPIENTS OF THIS DECISION:

This is a Proposed Decision of the Division of Hearings and Appeals. IT IS NOT A FINAL DECISION AND SHOULD NOT BE IMPLEMENTED AS SUCH. If you wish to comment or object to this Proposed Decision, you may do so in writing. It is requested that you briefly state the reasons and authorities for each objection together with any argument you would like to make. Send your comments and objections to the Division of Hearings and Appeals, P.O. Box 7875, Madison, WI 53707-7875. Send a copy to the other parties named in the original decision as 'PARTIES IN INTEREST.'

All comments and objections must be received no later than 15 days after the date of this decision. Following completion of the 15-day comment period, the entire hearing record together with the Proposed Decision and the parties' objections and argument will be referred to the Secretary of the for final decision-making.

The process relating to Proposed Decision is described in Wis. Stat. § 227.46(2).

Given under my hand at the City of Madison,
Wisconsin, this 6th day of November, 2025

Kate J. Schilling
Administrative Law Judge
Division of Hearings and Appeals