



FH

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION
Case #: FCP - 220856

PRELIMINARY RECITALS

A petition was filed on November 17, 2025, under Wis. Admin. Code § DHS 10.55, to review a decision by My Choice Family Care regarding Medical Assistance (MA). Hearings were initially scheduled for December 3, 2025, and December 18, 2025, but were rescheduled at the request of the petitioner. The hearing was then held on January 6, 2026, by telephone. The hearing record was left open for one week following the hearing for both parties to submit additional documentation.

The issue for determination is whether the petitioner's guardian is entitled to retroactive pay as a caregiver.

There appeared at that time the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]

Respondent:

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

By: Brooke Zimmerman, Faith Peavy
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 51 year old resident of Milwaukee County. His medical history includes cardiomyopathy, congestive heart failure, COPD, emphysema, anoxic brain injury, and seizures. He currently has a tracheotomy, enteral feedings, suprapubic catheter, and uses a wheelchair for mobility.
2. On January 30, 2025, the petitioner had cardiac arrest and acute respiratory failure, and was taken to the hospital by ambulance. He remained in the hospital for approximately a month, then was discharged to an acute care skilled nursing facility. He then remained in a SNF from February 26, 2025 through May 6, 2025, when he was discharged home. His sister is his guardian and primary caregiver.
3. On July 1, 2025, the petitioner was enrolled in FamilyCare with MyChoice WI as his Managed Care Organization (MCO).
4. On July 2, 2025, the MyChoice WI care team went to the petitioner's home and created and signed an initial service plan.
5. On July 8, 2025, the MCO case manager visited the petitioner's home again. During this visit, the petitioner's guardian expressed a desire to be hired by an agency so that she could be paid for her time as a caregiver. Initially, the petitioner's guardian requested to work with [REDACTED]. The case manager performed the assessment and made phone calls to [REDACTED] on July 11, 25, and 28.
6. On July 22, 2025, the MCO staff asked the petitioner's guardian if she wanted to consider another supportive home care (SHC) agency as they had not heard back from [REDACTED]. She indicated that she wanted to continue trying to set up care through [REDACTED].
7. On July 31, 2025, [REDACTED] confirmed with the MCO that it could take on the case.
8. On August 1, 2025, the petitioner's guardian decided to meet with another home care agency that could provide skilled nursing care. The petitioner's guardian subsequently chose this agency, completed an application, and the agency performed a background check.
9. On August 12, 2025, the petitioner's guardian was officially hired and started working as a paid caregiver with the new home care agency.

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 Department of Health Services ("the Department") contracts with managed care organizations (MCOs) throughout the state to provide services to Family Care members. See the Family Care / Partnership 2026 Contract (available online at <https://www.dhs.wisconsin.gov/familycare/mcos/contract.htm>).

In this case, the petitioner was enrolled with the FamilyCare MCO on July 1, 2025. The MCO care team made a home visit the following day and completed an initial service plan which was signed by the petitioner's guardian and the case manager. The agency contended at the hearing that the petitioner's guardian did not inquire into working as a paid caregiver during the initial visit on July 2, 2025. The agency representatives testified at the hearing that the first time they became aware of the request to be paid as a caregiver was on July 8, 2025, during the second home visit. In support of its position, the agency submitted a copy of the petitioner's initial service plan signed on July 2, 2025, which had the box marked for declining self-directed supports. (Agency Exhibit 2)

At the hearing, the petitioner's guardian testified that she had raised the issue of getting paid as a caregiver at the first meeting with the MCO staff on July 2, 2025. She stated that her primary concern was ensuring that her brother had adequate support to live in the community, but that a secondary concern of hers was getting paid for the time she spent providing care as she had quit her job to become her brother's full-time caregiver and finances were tight due to losing her employment income.

The Department of Health Services requires that all individuals, including family members, who provide paid care to FamilyCare participants undergo a background check. Wis. Stat. §50.065. This requirement is also laid out in the Department contract with FamilyCare MCOs.

Caregiver Background Checks

The MCO shall comply with Wis. Admin. Code Chapters DHS 12 and 13 related to caregiver background and other checks for all SDS workers, providers, and MCO employees who do not meet VIII.G.1.a., including:

- a) The MCO shall establish and implement a policy consistent with Wis. Admin. Code Chapters DHS 12 and 13 to appropriately respond to an MCO employee who is paid to provide services to a member when the employee has a caregiver conviction that is substantially related to the care of a member;
- b) The MCO **shall perform, or require providers to perform, background checks on caregivers** in compliance with Wis. Stat. § 50.065 and Wis. Admin. Code Chapter DHS 12;
- c) If the MCO requires providers to perform background checks on caregivers, the MCO shall ensure that the providers perform the background checks in compliance with Wis. Stat. § 50.065 and Wis. Admin. Code Chapter DHS 12;
- d) The MCO maintains the ability to not pay or contract with any provider if the MCO deems it is unsafe based on the findings of past criminal convictions stated in the caregiver background check.
- e) The MCO **shall require co-employment agencies and fiscal employer agents to perform background checks** that are substantially similar to the background checks required under Wis. Stat. § 50.065 and Wis. Admin. Code Chapter DHS 12 on **individuals providing services to self-directing members** who have, or are expected to have, regular, direct contact with the member. Regular contact means scheduled, planned, expected or otherwise periodic

contact. Direct means face-to-face physical proximity to a member that may afford the opportunity to commit abuse or neglect or misappropriate property.

(Emphasis added.) *2026 FamilyCare Contract*, Article VII, page 200. This means that whether the MCO is hiring the person directly or contracting with another agency to provide the supportive home care hours, all individuals working as caregivers must go through the background check screening prior to working with the FamilyCare participant.

The parties dispute whether the issue of paid caregiving was raised during the initial home visit on July 2, 2025. However, I need not decide that issue. Even if it was discussed at the earlier date, there is another obstacle which prevents the petitioner's guardian from being paid prior to August 12, 2025. The hurdle here is that the petitioner's guardian had not gone through the application and background check screening process with an agency until August 12, 2025. For that reason, the petitioner's guardian cannot be paid prior to that date and backpay cannot be granted.

I recognize that it took nearly six weeks for the petitioner's guardian to be officially hired as a paid caregiver. However, other than potentially the first week, that delay was not attributable to the MCO. It typically takes two or three weeks for a person to go through the application process, background check, and screening before they can be officially hired to perform care. This is the case regardless of whether the person enrolls in self-directed supports or is hired by an agency. Moreover, once the petitioner decided to pursue the second agency, she was screened and officially hired in under two weeks.

The petitioner is receiving a high level of care from his guardian and other caregivers. I understand that the petitioner's guardian may find this decision to be unfair. However, I do not have equitable powers and cannot deviate from the policies and statutes. "An agency or board created by the legislature has only those powers which are expressly or impliedly conferred on it by statute. Such statutes are generally strictly construed to preclude the exercise of power which is not expressly granted. [citation omitted]" *Browne v. Milwaukee Board of School Directors*, 83 Wis.2d 316, 333, 265 N.W.2d 559 (1978).) As an administrative law judge, I do not have authority to render a decision on the basis of fairness or equity.

CONCLUSIONS OF LAW

The petitioner's guardian cannot receive pay for caregiving hours that occurred prior to her official start date with the home care agency.

THEREFORE, it is

ORDERED

That this appeal is hereby dismissed.

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.

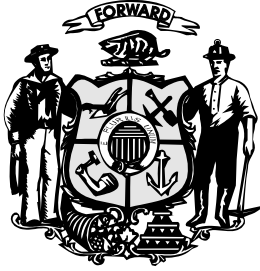
APPEAL TO COURT

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 March, 2026

\s _____
Kate J. Schilling
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 March 9, 2026.

MY Choice Family Care
Office of Family Care Expansion
Health Care Access and Accountability