



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

██████████
██████████
██████████

DECISION
Case #: FCP - 206406

PRELIMINARY RECITALS

Pursuant to a petition filed on September 28, 2022, under Wis. Admin. Code § DHS 10.55, to review a decision by the MY Choice Family Care regarding Medical Assistance (MA), a hearing was held on November 17, 2022, by telephone.

The issue for determination is whether the MCO correctly denied petitioner's request for home modifications.

There appeared at that time the following persons:

PARTIES IN INTEREST:

Petitioner:

██████████
██████████
██████████

Respondent:

Department of Health Services
1 West Wilson Street, Room 651
Madison, WI 53703

By: Megan Bailey
MY Choice Family Care
10201 Innovation Dr, Suite 100
Wauwatosa, WI 53226

ADMINISTRATIVE LAW JUDGE:

Beth Whitaker
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES #) is a resident of Dane County who receives Family Care Program services through the MCO My Choice Wisconsin (MCW).

2. Petitioner's primary diagnoses are traumatic brain injury after age 22 and obesity. Her secondary diagnoses include other chronic pain or fatigue; other musculoskeletal, neuromuscular or peripheral nervous disorders; arthritis; and anxiety and depression.
3. Petitioner lives alone in her home, which is a single family, one story house with a fenced back yard.
4. Petitioner has owned three service dogs, the most recent of whom died in July 2021.
5. Petitioner successfully uses a four wheel walker to ambulate.
6. Petitioner engages in regular psychiatric and psychological treatment, including daily medication, for her diagnosed mental health conditions.
7. On January 17, 2022 a Long Term Care functional screen was completed for petitioner.
8. On March 7, 2022 petitioner requested a new service or support in the form of stairs/steps from her back door to her patio and from her patio to her lawn to allow her to fully access her back yard.
9. On March 30, 2022 Home and Vehicle Modification Committee, a.k.a. MOD Committee, met regarding the request for a stair rebuild and recommended denial based on uneven ground, debris in backyard causing increased fall risk given petitioner's left foot drop and muscle weakness and balance issues. It recommended instead a "staked lease" (sic) or "zip line lease" (sic) for the next service dog.
10. On April 1, 2022, the petitioner and representatives of MCW participated by telephone in the "RAD process" to consider petitioner's request for "stairs in backyard" and denied the request.
11. On April 4, 2022, MCW issued a Notice of Adverse Benefit Determination denying petitioners request for "housing misc cost" because "the service or support is not an effective way to support your outcome(s).
12. On May 24, 2022, a home safety/equipment assessment was completed by [REDACTED], PT, DPT.
13. On May 28, 2022 petitioner filed an internal appeal with MCW.
14. On July 5, 2022, a Grievance and Appeal hearing was held.
15. On July 7, 2022, MCW wrote to petitioner to inform her that its Grievance and Appeal committee decided to uphold the decision to deny her request regarding "Housing Misc. Cost; stair rebuild" because "as there are multiple exits from your home and you do not currently have a certified and trained service dog, we feel the Team followed policies and processes appropriately."
16. On November 1, 2022 a Member Centered Plan was created for petitioner identifying member goals/outcomes, including maintain safety when completing ADLs and IADLS, take medications as recommended and/or prescribed, receive assistance with community integration such as getting to the Yahara House from natural supports and SDS workers when needed and continuing to live in the least restrictive environment – her home.
17. The previous Member Centered Plan, in effect before November 1, 2022, included a goal/outcome of maintaining and improving mental health by spending time outdoors to improve mood.
18. On September 28, 2022, the Division received petitioner's request for hearing by email/fax.

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 and health care needs of target groups consisting of frail elders; individuals age 18 and older who have physical disabilities, as defined in Wis. Stat. §15.197 (4) (a) 2.; and individuals age 18 and older who have developmental disabilities, as defined in Wis. Stat. §51.01 (5) (a). 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. Case management includes the identification and authorization of allowable and appropriate long term care services for individual FC recipients. Wis. Admin. Code, §DHS 10.44(2)(f).

The contracts between DHS and the individual MCOs require MCOs to determine appropriate long term care services by engaging in a “member-centered planning process” and by applying either the “Resource Allocation Decision” (RAD) method or by applying the terms of service authorization policies designed by the individual MCOs that are explicitly approved by the Department. See Family Care Contract Template, Issued January 1, 2022, Article V, Sec. K (available at <https://www.dhs.wisconsin.gov/familycare/mcos/fc-fcp-2022-generic-final.pdf>). Regardless of the particular service authorization process or policy utilized, the Family Care Contract prohibits an MCO from denying “services that are reasonable and necessary to cost-effectively support the member’s long term care outcomes identified in the comprehensive assessment as well as those necessary to assist the member to be as self-reliant and autonomous as possible.” Id. at Article V., Sec. K.2.a.

The issue in this case is whether petitioner’s MCO correctly denied her request for stairs from her back door to allow full access to the backyard.

Home modifications are the provision of services and items to assess the need for, arrange for, and provide modifications and/or improvements to a member's living quarters in order to increase accessibility or safety. Modifications may provide for safe access to and within the home, reduce the risk of injury, facilitate independence and self-reliance, enable members to increase their abilities to perform ADLs or IADLs, and decrease reliance on paid providers. Home modifications may include materials and services, such as ramps; stair lifts, wheelchair lifts or other mechanical devices to lift persons with impaired mobility from one vertical level to another; kitchen and/or bathroom modifications; specialized accessibility/safety adaptations; and voice-activated, light-activated, motion activated, and other electronic devices that increase the member’s self-reliance and capacity to function independently. Home modifications may include modifications that add to the square footage of the residence if the modifications are to assure the health, safety, or independence of the person; prevent institutionalization; and are the most cost effective means of meeting the accessibility or safety need. The services under the Environmental Accessibility Adaptations (Home Modifications) are limited to additional services not otherwise covered under the state plan, including EPSDT, but consistent with waiver objectives of avoiding institutionalization.

See Application for §1915(c) HCBS Waiver: WI.0367.R04.00 – Jan. 1, 2020, Appendix C (available at <https://www.dhs.wisconsin.gov/familycare/statefedreqs/fc1915cwaiver.pdf>); and Wis. Stat. Sec. 46.281(1d)

The MCO in this case has developed a RAD Guideline for reviewing requests for home modifications. The definition of home modifications in the guideline is consistent with the definition in the Family Care contract noted above. The guideline further indicates the factors that the MCO should consider in reviewing a home modification request as follows: “The home modification must support a member’s long term goal; addressing health, safety, or independence. The home modification must be determined to be the most cost effective option. The modifications must be to a home owned by the member and address

an ongoing, routine need. The Care Team must obtain two quotes from licensed providers for all services over \$500, contracted providers and all modifications must conform to all applicable State and local building codes.”

The MCO’s RAD Guideline further expresses the importance of decisions that are made in collaboration with the member, that are member-centered, that are effective in meeting a long-term care outcome and that are the most cost-effective. The guideline also requires the MCO care team to document all other financial options that were explored through the RAD process and document the process of determining cost-effectiveness including the price of quotes.

The rationale for the denial was that the backyard contains uneven ground and debris causing increased fall risk given petitioner’s left foot drop and muscle weakness and balance issues. The MCO found that placing a service dog on a “staked lease” (sic) or “zip line lease” (sic) in the unfenced front yard was an appropriate alternatives.

Petitioner testified credibly that her balance has improved and she is able to walk in her backyard safely, if she has appropriate stairs to access her patio and lawn with her four wheeled walker. She said that she has right foot drop, rather than left foot as the decision stated, and that she uses a brace when outside. She testified credibly that while part of her backyard is rocky and uneven, much of it is evenly graded lawn and that that is the area she proposes to use to walk and do off-leash dog training. The May 24, 2022 home safety/equipment assessment completed by [REDACTED], PT, DPT, contains a narrative description and numerous photographs of all areas of petitioner’s yard, including the backyard, which corroborate her testimony. Petitioner’s back yard contains a large expanse of grass-covered, even ground that does not contain anything to increase the risk of falling. It appears that the MCO’s decision was made without benefit of the clear color photos contained in [REDACTED] report. The MCO’s copies were poor quality black and white images that did not show anything discernable about the condition of petitioner’s back yard.

In response to questions, petitioner also testified credibly that she is physically able to lift the walker to navigate the steps if the steps are less steep than the 18 inch step that currently exists between her backdoor and patio. It is plausible that she is physically able to lift more weight when it is closer to her body, as it would be if the steps were rebuilt to be shorter. She explained physical barriers to traveling from the front door around the side of the home to the back yard and established that these are not safe or physically possible for her because of the grade and narrowness of the concrete walkway, which is narrower than her walker. This is also corroborated by petitioner’s photographs with measurements of the walker and sidewalk as well as [REDACTED] safety assessment.

Petitioner offered compelling testimony about the benefits of having regular, reliable access to a safe space outdoors where she can be in nature. Her testimony is consistent with an April 14, 2022 letter from [REDACTED], Ph.D. prof of psychiatry and psychology UW Madison in support of petitioner’s request. He stated: “Exercise is critical for her physical and mental health, and her backyard is a safe place for her to get this exercise. She is a fall risk and therefore requires steps that will accommodate her walker.” Petitioner testified that this year, when she was unable to access her back yard at all, she had summer depression and recently considered inpatient treatment for depression. She argued persuasively that access to her backyard by the modifications requested will alleviate her symptoms and reduce the risk of a need for inpatient care. In addition, Michael Leasure, MD wrote on June 24, 2022 in support of petitioner’s request, stating: “[REDACTED] would benefit from being outside in nature and having the opportunity to train her service animal. Keeping her safety in mind, I think she would benefit from being in a space that has the least risk of obstructions and trip hazards.”

The MCO's proposed alternative to use the unfenced front yard for the service dog is not supported by any evidence or sound reasoning. Dog trainer [REDACTED], writing and offering testimony in support of petitioner's request, stated that a service dog must have access to a fenced yard for off-leash training and that the fenced space must be large enough to work at a distance while keeping the trainee safe, especially at the beginning of off-leash training. The off-leash training is necessary in case the dog is startled, the leash is accidentally unclipped while the dog is in public crowded places or on public transportation or the handler accidentally drops the leash.

[REDACTED] stated that petitioner's front yard is unsuitable for training because of branches and twigs and other reasons, including interactions with other dogs that hinder successful training. [REDACTED] explained numerous reasons that being tied in the unfenced front yard is inappropriate as contrary to training objectives. Further, it is questionable whether a dog, whether a service dog or not, chained in an unfenced yard next to a public sidewalk is safe from harm from passing people and animals. [REDACTED] written materials and testimony were credible. She has decades of experience and credentials in support dog and other dog training and articulated her professional opinions clearly. Further, it defies common sense to expect petitioner to maintain and train a service dog or other dog in the circumstances proposed by the MCO.

The Grievance and Appeals Committee reasoning was not supported. Petitioner showed that while she does have another door to exit the front of her home, there is no safe or accessible path for her to take to get to the backyard. And the fact that petitioner does not currently have a service dog is not a valid basis for denial. Petitioner has a history of service dogs as recently as July 2021 and is without one only because the dog died. It would be unreasonable for petitioner to have to wait until she actually has another dog to begin the needed home modifications.

The MCO failed to show that the requested home modifications in this case were not the most effective or cost-effective means of meeting petitioner's outcomes. Its reasoning was based on incorrect and incomplete facts. Petitioner rebutted several alleged facts about her physical abilities and the condition of her back yard. The MCO's conclusion that other resources can be used to move her to another less restrictive environment was also not supported by any specific evidence. There was no evidence presented by the MCO that the Petitioner would be unable to move about in her back yard safely with the home modifications. The only evidence of cost-effectiveness analysis was the assertion that the alternative of using the front yard for access to nature and for dog training was at no cost. This alternative does not meet petitioner's long term outcomes. It does not improve her mental or physical well-being or allow for a service dog. The front yard and travel within the community are not the equivalent of a reliably accessible, private, secure back yard which exists on petitioner's property. In addition to not proposing an appropriate alternative, the MCO did not follow procedure to get quotes for the cost of the work requested by petitioner.

Based on the evidence presented, I conclude the MCO did not show that it correctly denied petitioner's request for home modifications.

CONCLUSIONS OF LAW

A preponderance of the evidence in the record demonstrated that petitioner is entitled to Family Care authorization for the requested home modifications in the form of steps to allow access to her patio and lawn in her back yard.

THEREFORE, it is

ORDERED

That this matter is remanded to the MCO with instructions to approve the petitioner's home modification request and move forward with the process required for accomplishing the requested modification. These actions shall be commenced 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

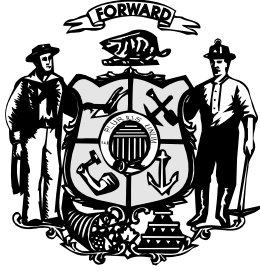
You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Health Services, 1 West Wilson Street, Room 651, **and** on those identified in this decision 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 22nd day of November, 2022

\s _____

Beth Whitaker
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 November 22, 2022.

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