



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

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██████████████████████████████

DECISION
Case #: FCP - 211940

PRELIMINARY RECITALS

Pursuant to a petition filed January 25, 2024, under Wis. Admin. Code, §DHS 10.55, to review a decision by MY Choice Family Care to deny a service under the Family Care Program (FCP), a hearing was held on March 13, 2024, by telephone.

The issue for determination is whether the agency correctly denied petitioner's request for payment of relocation expenses.

PARTIES IN INTEREST:

Petitioner:

██████████
██████████████████
██████████████████████████████

Respondent:

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

By: Sara Wong
MY Choice Family Care
10201 Innovation Dr, Suite 100
Wauwatosa, WI 53226

ADMINISTRATIVE LAW JUDGE:

Brian C. Schneider
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner is a resident of Dane County.
2. Petitioner is eligible for the FCP with My Choice Family Care as his managed care organization (MCO). He resides in an assisted living facility.

3. In June, 2023, petitioner's assisted living facility closed, and he had to move to a new location. My Choice Staff met with petitioner, and it was decided that petitioner would pay for the move with money from his WISPACT trust. The plan was arranged with the WISPACT beneficiary specialist. The move took place on June 12, with [REDACTED] providing the service.
4. [REDACTED] issued a bill for \$1,115.25. At that point petitioner questioned why he, rather than the FCP, was responsible for paying the bill, and he refused to pay. He instead requested that My Choice use FCP funds to pay the bill.
5. By a notice dated August 9, 2023, My Choice denied the request because such a payment must be pre-authorized. Petitioner filed a grievance with My Choice, but by a notice dated October 26, 2023, the grievance was denied.
6. Petitioner filed this appeal by mail postmarked January 25, 2024.

DISCUSSION

The Family Care program, which is supervised by the Department of Health Services, is designed to provide appropriate long-term care services for elderly or disabled adults. It is authorized in the Wisconsin Statutes, §46.286, and is described comprehensively in the Wisconsin Administrative Code, Chapter DHS 10.

The MCO must develop an Individual Service Plan (ISP) in partnership with the client. Wis. Admin. Code, §DHS 10.44(2)(f). The ISP must reasonably and effectively address all of the client's long-term needs and outcomes to assist the client to be as self-reliant and autonomous as possible, but nevertheless must be cost effective. While the client has input, the MCO does not have to provide all services the client desires if there are less expensive alternatives to achieve the same results. Wis. Admin. Code, §DHS 10.44(1)(f). Program policies and procedures are set out in the Department's annual FCP contracts with the MCOs, found at www.dhs.wisconsin.gov/familycare/mcos/fc-fcp-2024-contract.pdf.

Wis. Stat., §46.287(2)(a)1 provides that a person may request a fair hearing to contest the denial of eligibility for the program and the reduction of services under the FCP program, among other things, directly to the Division of Hearings and Appeals. In addition, the participant can file a grievance with the MCO over any decision, omission, or action of the MCO. The grievance committee shall review and attempt to resolve the dispute. If the dispute is not resolved to the participant's satisfaction, he may then request a hearing with the Division of Hearings and Appeals. Wis. Admin. Code, §DHS 10.55(2).

As a first point, during the hearing I noted that the appeal was filed 91 days after the date of the grievance decision notice, and I questioned whether the Division of Hearings and Appeals had jurisdiction over the appeal. On closer examination of the law, however, I conclude that I do have jurisdiction. Wis. Admin. Code, §DHS 10.55(3), referencing subsection (1g), provides that an appeal can be filed within 90 days of receipt of the notice, and receipt of the notice is presumed to be within five days of the mailing date. Thus, since the October 26 notice appears to have been mailed rather than hand-delivered, the deadline to appeal actually would be January 29. Petitioner's appeal thus is timely.

On its face, the MCO's denial is simple. Petitioner agreed to pay the cost of the move out of his WISPACT trust. He did not request that the FCP cover the cost prior to the service occurring. Ms. Wong pointed out that petitioner is his own decisionmaker, and thus it was his choice to make the payment out of his own funds. The problem is that petitioner's two relatives/representatives claimed that he actually is not his own decisionmaker, that he has had a financial power-of-attorney for some twenty years. Verification of that fact was not submitted, so it is not clear if it is true that he has a financial power-of-

attorney. If it is true, that fact was never communicated to the MCO. While My Choice has a copy of a medical power-of-attorney, it has never received or been told of a financial one, until the hearing on March 13. Furthermore, when MCO staff contacted petitioner's WISPACT specialist, she did not mention that he had a financial power-of-attorney, so it is not clear that she was aware of the status either. I thus cannot find that My Choice erred by dealing directly with petitioner in this matter.

As a first point, all FCP services must be authorized before they can be provided. See *FCP contract*, Section V.K.1.d, at page 82. The contract includes relocation services as a benefit only for instances when a recipient is moving from an assisted living facility to an independent living arrangement. *Contract*, Addendum VI, no. 16, at page 371. Thus a situation like petitioner's must be handled by the MCO within its own policies. My Choice's guidelines are found at page 57 of its submission. Echoing the contract, the My Choice policy provides that relocation services are available only for moves to a less restrictive living arrangement. When the person is moving to alternative housing rather than less restrictive housing, it usually is the facility that must organize the move. Failing that, the MCO must review all possible relocation options, including natural supports, family supports, and whether the member can pay for the service himself. See specifically the language on page 58 of the submission.

That is what happened here. Petitioner was forced to move from one assisted living facility to another. Under FCP policy, the MCO could not necessarily cover the move unless all options were explored. The immediate option was to have petitioner pay through his WISPACT trust, and *he agreed to do so*. Thus My Choice did not pursue a full process for FCP authorization, and despite the beliefs of petitioner's supporters, there was no guarantee that the Department would have approved of FCP coverage of the relocation.

I conclude that My Choice correctly denied petitioner's request for backdated coverage of the relocation expenses. He agreed to pay the cost before the move was completed, so My Choice did not seek Department authorization of coverage. At this point it is too late to seek authorization.

CONCLUSIONS OF LAW

The MCO correctly denied petitioner's request to pay retroactively for relocation from one living facility to another because he agreed to pay for the move himself prior to the move.

THEREFORE, it is **ORDERED**

That the petition for review 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

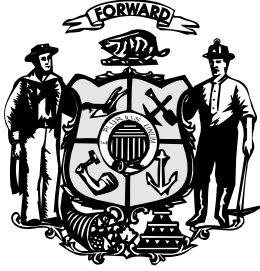
You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Health Services, 1 West Wilson Street, Room 651, **and** on those identified in this decision 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 19th day of March, 2024



\s _____
Brian C. Schneider
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 19, 2024.

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