

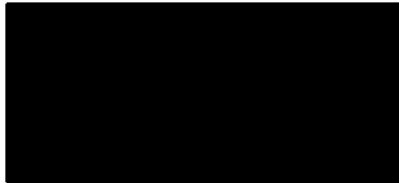


State of Wisconsin \DIVISION OF HEARINGS AND APPEALS

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April 17, 2024



Kelly Her
Milwaukee Enrollment Services
1220 W Vliet St
Milwaukee, WI 53205

RE:



Case No. FCP - 211741

Dear Parties:

Enclosed is a copy of the Final Decision in the above-referenced matter.

Sincerely,

Shannon Buboltz
Legal Associate Supervisor

c: Miles - email
Office of Family Care Expansion - email
Health Care Access and Accountability - email

Attorney Brandon Parks - email



STATE OF WISCONSIN
DEPARTMENT OF HEALTH SERVICES

In the Matter of

DECISION

FCP 211741

The attached proposed decision of the Administrative Law Judge dated February 15, 2024, is hereby adopted as the final order of the Department.

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

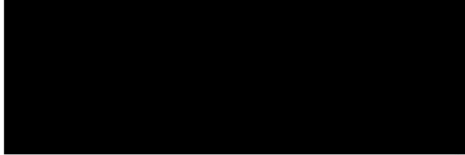
Given under my hand at the City of
Madison, Wisconsin, this 17th day
of April, 2024.


Kirsten L. Johnson, Secretary
Department of Health Services



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of



PROPOSED DECISION
Case #: FCP - 211741

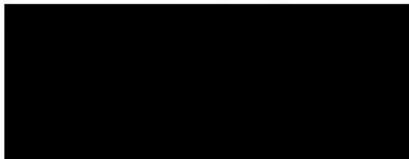
PRELIMINARY RECITALS

Pursuant to a petition filed December 28, 2023, under Wis. Admin. Code, §DHS 10.55, to review a decision by Community Care regarding the Family Care Program (FCP), a hearing was held on February 13, 2024, by telephone.

The issue for determination is whether FCP should pay for companion care for two weeks after petitioner's enrollment.

PARTIES IN INTEREST:

Petitioner:



Petitioner's Representative:

Atty. Brandon L. Parks
Storm, Balgeman & Klippel, S.C.
1011 N. Mayfair Rd., Suite 200
Wauwatosa, WI 53226-3431

Respondent:

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

By: Kelly Her
Community Care
1801 Dolphin Drive
Waukesha, WI 53186

ADMINISTRATIVE LAW JUDGE:

Brian C. Schneider
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Milwaukee County.
2. Petitioner resides at [REDACTED] a community-based residential facility (CBRF). She was a private-pay resident until September 1, 2023, when her funds were expended.
3. Petitioner applied for and was enrolled in the FCP effective November 16, 2023, with Community Care as her managed care organization. Community Care staff had contact with petitioner's daughter/authorized representative during the enrollment process. They decided to meet on November 30, 2023, and petitioner's daughter was assured that CBRF care would remain in place until a plan or care could be formulated that date.
4. Leading into the summer, 2023, petitioner was undergoing stress and anxiety, resulting in difficulty getting to sleep. With the concurrence of CBRF staff, petitioner's family hired a companion caretaker to sit with petitioner in the after-dinner hours, paid by the family, as the CBRF did not have staff to handle the service. The companion served to alleviate petitioner's anxiety. [I note here that the companion care was provided by [REDACTED] which I assume is a separate entity from the CBRF within the [REDACTED] network.]
5. When discussing the continuation of care between November 16 and November 30, Community Care staff were under the impression that the companion was part of petitioner's regular CBRF care. Petitioner's daughter thus assumed that the companion care would come under the continuity of care policy as she was told that CBRF services would continue. The companion billed some \$1,100 in the two-week period.
6. When the plan of care meeting occurred on November 30, it was determined that the companion care would not be covered within petitioner's plan of care. Instead she was shifted to a Memory Care. Community Care informed petitioner's daughter that it could not cover the companion care from November 16 to November 30 because it was not part of petitioner's CBRF care plan, and thus did not fall within the continuity of care policy.
7. Petitioner's daughter filed this appeal to contest the denial of payment of the companion care during the period November 16 through November 29.

DISCUSSION

The FCP is a MA waiver program that provides appropriate long-term care services for elderly or disabled adults. Wis. Stats. §46.286; see also Wis. Admin. Code, Chapter DHS 10. Wis. Admin. Code, §DHS 10.33(2) provides that an FCP applicant must have a functional capacity level of comprehensive or intermediate (also called nursing home and non-nursing home). The process contemplated for an applicant is to test her functional eligibility, then her financial eligibility, and if she meets both standards, to certify her as eligible. Then she is referred to a MCO for enrollment in the MCO. See Wis. Admin. Code, §§DHS 10.33 – 10.41. The MCO then drafts a service plan using MCO selected providers, designing a care system to meet the needs of the person, and the person executes the service plan. At that point the person's services may begin.

Petitioner argues that she was promised that all care in place as of the date of enrollment would continue until the plan of care meeting. The MCO counters that the companion care was not part of the CBRF care plan, that it was arranged and paid by petitioner's family, and thus was not part of the continuity of care agreement.

The FCP is governed primarily by the contract between the Department and the MCO. The standard contract is found on-line at dhs.wisconsin.gov/familycare/mcos/fc-fcp-2024-contract.pdf. I note that the 2024 contract is the same as the 2023 contract with regard to the following discussion.

Article V.D.1.a of the standard contract discusses continuity of care at page 66:

Immediate Service Authorization

Beginning on the date of enrollment, the MCO is responsible for providing the member with needed services in the benefit package. This includes responsibility to continue to provide services or supports the member is receiving at the time of enrollment if they are necessary to ensure health and safety and continuity of care until such time as the IDT staff has completed the initial assessment. Such services may have time limited authorizations until completion of the member's full assessment and member-centered plan.

When Community Care staff assured that petitioner's CBRF services would continue during the assessment period, they were thinking only about standard CBRF services. There clearly was a miscommunication as Community Care staff were unaware that the companion care was a service contracted by the family outside the CBRF's regular care services. Furthermore, when the assessment was done on November 30, it was made clear that the companion care was not considered to be necessary to ensure petitioner's health and safety; instead it was determined that Memory Care was the service that would meet petitioner's needs.

I conclude that although petitioner's daughter thought the continuity of care included the companion care, the MCO is not liable for covering it. The care was not part of petitioner's CBRF services, and in the end it did not meet the standard of being necessary to ensure petitioner's health, as it was not included in petitioner's plan of care. The MCO should not be liable for a service that was not part of the CBRF's regular care services under the continuity of care policy.

CONCLUSIONS OF LAW

The MCO correctly denied coverage of companion care during the period between enrollment and plan of care assessment because the care was not part of petitioner's CBRF services but was contracted independently by petitioner's family.

THEREFORE, it is

ORDERED

That the petition for review is hereby dismissed.

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 15th day of February, 2024



Brian C. Schneider
Administrative Law Judge
Division of Hearings and Appeals