



FH

**STATE OF WISCONSIN
Division of Hearings and Appeals**

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

DECISION
Case #: FCP - 211227

PRELIMINARY RECITALS

Pursuant to a petition filed on December 3, 2023, under Wis. Admin. Code § DHS 10.55, to review a decision by My Choice Wisconsin regarding Medical Assistance (MA), specifically the Family Care Program (FCP), a hearing was held on January 17, 2024, by telephone.

The issue for determination is whether the FCP by way of the Care Management Organization (CMO), My Choice Wisconsin (MCW), correctly denied petitioner's request for a weeklong summer camp.

There appeared at that time the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

Respondent:

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

By: Karly Nell, My Choice Wisconsin
My Choice Wisconsin
10201 Innovation Dr, Suite 100
Wauwatosa, WI 53226

ADMINISTRATIVE LAW JUDGE:
Kelly Cochrane
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner is a resident of Milwaukee County.
2. The petitioner has been residing at [REDACTED] [REDACTED] [REDACTED] ([REDACTED]) with an Intensive Treatment Program (ITP) since his enrollment in the FCP in January of 2021. [REDACTED] utilizes a 1:4 staffing ratio with petitioner's living arrangement. His diagnoses include anxiety disorder and autism. He has some behavioral challenges which include physical aggression, and [REDACTED] utilizes a seclusion room for his safety and the safety of staff. He receives speech and language therapy, occupational therapy, music therapy and recreational therapy at [REDACTED].
3. Petitioner's FCP Care Plan identified the following outcome: "Member will maintain community involvement in the next 6 months."
4. In June 2023, petitioner requested the FCP pay for a weeklong summer camp in Minnesota. Activities at this camp included hiking, swimming, crafts and boating at the cost of \$2970.
5. On July 13, 2023 MCW issued a notice to petitioner stating that his request was denied as he "participates in activities, social interactions, and therapies daily through his ITP. While at his ITP member's behaviors can be safely managed to keep member and staff as safe as possible. Member has access to a seclusion room and staff available for communication and interventions to engage with member safely and timely to effectively manage behavioral challenges. Since all of member's needs are being met at [REDACTED], we are unable to fund a duplicative service."
6. Petitioner's parents paid for the camp and petitioner attended.
7. Petitioner appealed the denial notice and on October 4, 2023, a local appeal by the Grievance and Appeal Committee was heard. On October 5, 2023, the Grievance and Appeal Committee issued a notice to petitioner stating that the denial was upheld and the "reason for the decision is that the care team followed policies and procedures appropriately. While we recognize that camp is a beneficial activity for everyone, we also note that the activities that mimic camp activities should be explored with [REDACTED] ([REDACTED]). For instance, [REDACTED] could go swimming at a local pool, take nature walks at the local parks, and continue to participate in music therapy at [REDACTED]. Please continue to discuss additional activity options with [REDACTED] concerning activities outside of the Center that will meet [REDACTED]'s needs and preferences."

DISCUSSION

The FCP provides appropriate long-term care services for elderly or disabled adults. It is supervised by the Department of Health Services (Department), authorized by Wis. Stat. § 46.286, and comprehensively described in Chapter DHS 10 of the Wisconsin Administrative Code. The contemplated process is to test the applicant's functional eligibility, then financial eligibility, and, if the applicant meets both standards, to certify eligibility. The applicant is then referred for enrollment in a CMO (care management organization) or MCO (managed care organization), which drafts a service plan that meets the following criteria:

- (f) The CMO, in partnership with the enrollee, shall develop an individual service plan for each enrollee, with the full participation of the enrollee and any family members or other representatives that the enrollee wishes to participate. ... The service plan shall meet all of the following conditions:

1. Reasonably and effectively addresses all of the long-term care needs and utilizes all enrollee strengths and informal supports identified in the comprehensive assessment under par. (e)1.
2. Reasonably and effectively addresses all of the enrollee's long-term care outcomes identified in the comprehensive assessment under par. (e)2 and assists the enrollee to be as self-reliant and autonomous as possible and desired by the enrollee.
3. Is cost-effective compared to alternative services or supports that could meet the same needs and achieve similar outcomes.
4. Is agreed to by the enrollee, except as provided in subd. 5.

Wis. Admin. Code § DHS 10.44(2)(f).

CMOs must “comply with all applicable statutes, all of the standards in this subchapter and all requirements of its contract with the department.” Wis. Admin. Code, § DHS 10.44(1).

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 matter, petitioner has the burden of proof because he is requesting a new service. The agency can then rebut the petitioner's case to show it acted correctly.

Petitioner's mother appeared for the petitioner at hearing. She testified that petitioner does not get the outdoor activities at █████ like he did at camp and therefore there is no duplication of services. She testified that he had been taken into the community on some occasion (e.g., to tour a fire station) by █████ but due in large part to COVID restrictions, did nothing like the overnight therapeutic camp for which they requested funding. █████ is a locked facility that provides 1:4 supervision for petitioner and provides the services it does on site, not in the community. In addition, his Care Plan has an outcome for maintaining community involvement. She further argues that any safety concerns were addressed by the camp with 1:1 supervision and provision of a quiet room should petitioner need it. She provided information regarding the preparation that was done to ensure petitioner could transition to the summer camp safely and how the IRIS program had provided the same service in previous years when he was receiving MA benefits from that program.

MCW's contract with the Department requires that it provide services necessary to support members' outcomes. See Contract Between Department of Health Services and MCW (Contract), Article V, available online at <https://www.dhs.wisconsin.gov/familycare/mcos/fc-fcp-2022-generic-final.pdf>. Duplication of services is a consideration because all MA services must be medically necessary and cost effective. See Contract at Addendum VII, A and Wis. Admin. Code, § DHS 101.03(96m).

At hearing, MCW did not rebut the petitioner's mother's testimony that the camp services do not duplicate the services at █████ or that there were ultimately any safety concerns with the supervision at camp. At the time the request was made, the camp met his needs as it relates to his outcome for community involvement. Based on all of the foregoing reasons, I find that the petitioner met his burden to show that the requested summer camp was medically necessary.

CONCLUSIONS OF LAW

1. Petitioner met his burden to show that the requested summer camp was medically necessary.

THEREFORE, it is

ORDERED

That the petition for review be remanded to MCW so that within 10 days from the date of this Order, it rescind its decision to deny the summer camp and to take the administrative steps necessary to reimburse petitioner for the cost of same. In all other respects, the petition for review herein be and the same 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.

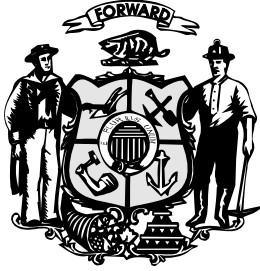
APPEAL TO COURT

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 Milwaukee,
Wisconsin, this 15th day of February, 2024

\s _____
Kelly Cochrane
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 February 15, 2024.

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