



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

In the Matter of

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

DECISION

Case #: FCP - 212237

PRELIMINARY RECITALS

Pursuant to a petition filed on February 20, 2024, under Wis. Admin. Code § DHS 10.55, to review a denial issued by MY Choice Family Care, in its capacity as agent for the Department of health services, of a request for Family Care authorization of a home modification, a hearing was held on March 27, 2024, by telephone.

The issue for determination is whether MyChoice properly denied Petitioner's request for a ramp or vertical lift to access and exit her home.

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: Kelly Doll, Lead Supervisor
MY Choice Family Care
10201 Innovation Dr, Suite 100
Wauwatosa, WI 53226

ADMINISTRATIVE LAW JUDGE:

Teresa A. Perez
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner is an 81-year old resident of Wood County who participates in the Family Care Program.

2. Petitioner is mobility impaired and requires either a wheelchair or walker to move within her home. She is no longer able to safely walk up or down stairs even with the assistance of another person.
3. There are stairs leading up to both entrances of the mobile home where Petitioner lives.
4. Petitioner only leaves her home to go to medical appointments and when she needs to do so, she must call the local EMT services to carry her out of and into her home. She pays \$25 each time she requires that service.
5. Petitioner's mood has suffered because of her inability to leave her home and interact with people in her community.
6. Petitioner's guardian requested that MyChoice authorize a ramp or vertical lift so that Petitioner would be able to leave her home more regularly and without needing to resort to requesting EMT services to carry her.
7. Petitioner's care team concluded that either a vertical lift or a wheelchair ramp was the best option to safely meet Petitioner's long term care outcomes.
8. On November 3, 2023, MyChoice denied Petitioner's request for both the ramp and the lift based on a finding that the MCO is already supporting her outcome in another way.
9. Petitioner filed an internal appeal of the denial of the ramp and vertical lift and My Choice Wisconsin Grievance and Appeal Committee affirmed the denial on January 26, 2024.
10. On February 20, 2024, Petitioner requested a fair hearing with the Division of Hearings and Appeals.

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 needs of frail elders; individuals age 18 and older who have physical disabilities; and individuals age 18 and older who have developmental disabilities. 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. 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. See Family Care / Partnership Contract (available online at <https://www.dhs.wisconsin.gov/familycare/mcos/fc-fcp-2024-contract.pdf>). Case management includes the identification and authorization of allowable and appropriate long term care services and supports for individual FC recipients. Wis. Admin. Code, §DHS 10.44(2)(f).

The Department requires MCOs to utilize the "Resource Allocation Decision" (RAD) method when determining appropriate long-term care services for a member. See FC / P Contract, Article V, Sec. K; and Family Care / Partnership / PACE Technical Assistance Series, Issued 06/2013, Revised 02/2024 available on-line at <https://www.dhs.wisconsin.gov/familycare/mcos/communication/ta13-04.pdf>. MCOs may develop service authorization guidelines for use with the RAD but such guidelines must be approved by the department. FC / P Contract, Article V., Sec. K.1.a. Regardless of the particular service authorization policy utilized, an MCO must not deny "services that are necessary to reasonably and 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.” FC / P Contract at Article V., Sec. K.2.a. and Wis. Admin. Code §DHS 10.44(f).

The issue in this case is whether Petitioner’s MCO acted appropriately in denying Petitioner’s request for either a wheelchair ramp or vertical lift (i.e., a means to independently access and leave her home). A wheelchair ramp and vertical lift may be covered by Family Care as “home modifications” or “environmental accessibility adaptations”. The application submitted by Wisconsin to the Centers for Medicare and Medicaid Services for authorization of the Family Care Program provides the following description of the home modification benefit category:

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.*

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>).

The written Notices of Action that the MCO issued to Petitioner indicated that her request for either a wheelchair ramp or a vertical lift was denied because she always has a caregiver accompanying her when she leaves, because she recently suffered an ankle fracture, and because she is working with a physical therapist. However, at hearing, the MCO representatives acknowledged that they do not believe that Petitioner will regain the ability to get in or out of her house following physical therapy.

In the MCO’s written “Statement of Facts”, the MCO stated that “the proposed home modification was denied after discussion through the specialty consult due to [Petitioner] recovering from an avulsion fracture and because it was discussed in the specialty consult that [Petitioner] receives assistance when ambulating the stairs.” See p. 2. However, Petitioner’s guardian and caregiver both persuasively testified that Petitioner is unable to leave her home even with the assistance of another person—something the MCO representatives at hearing did not dispute. And, the “specialty consult” referenced in the MCO’s Statement of Facts did not appear at the hearing.

The MCO also provided written documentation of the RAD process it worked through, which shows that the Care Team concluded that a ramp or vertical lift are the safest, and really the only, viable options to address Petitioner’s inability to safely get in or out of her home. Yet, inexplicably, the MCO denied both.

There is no dispute that Petitioner is homebound and relies on emergency medical personnel to come to her house to carry her in and out when she needs to go to a medical appointment. This is plainly an untenable long-term solution. There also appears to be no dispute that she needs either a vertical lift or a wheelchair ramp to safely get into and out of her home. Unsurprisingly, the evidence in the record indicates that Petitioner’s morale is suffering as a result of not being trapped in her house and hoping to again engage with her neighbors and participate in the community.

At hearing, Petitioner's representatives indicated that they believe a vertical lift rather than a wheelchair ramp is needed based on measurements taken by Petitioner's care manager. I do not know what his expertise is or whether any contractors have visited Petitioner's home to offer their opinion on this. I am therefore remanding this matter to the Department / MCO to authorize either the lift or the ramp – after consulting with Petitioner and her guardian.

CONCLUSIONS OF LAW

A preponderance of the evidence in the record demonstrated that both a wheelchair ramp and a vertical lift would meet Petitioner's need to safely access her home and that one of those two modifications is needed to meet her long-term care outcomes including but not limited to safety and community integration.

THEREFORE, it is ORDERED

That the matter is remanded to the Department / MCO to, within ten days of the date of this decision: (1) authorize either a vertical lift or a wheelchair ramp after consulting with Petitioner and her guardian regarding their preference, and (2) issue a written notice to Petitioner's guardian confirming that one of those two modifications has been authorized.

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

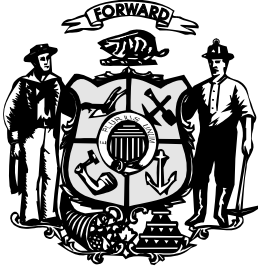
You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Health Services, 1 West Wilson Street, Room 651, **and** on those identified in this decision 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 9th day of May, 2024



\s _____
Teresa A. Perez
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 May 9, 2024.

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