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STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

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

DECISION
Case #: FCP - 212977

PRELIMINARY RECITALS

Pursuant to a petition filed April 10, 2024, under Wis. Admin. Code, §DHS 10.55, to review a decision by Inclusa, Inc. regarding the Family Care Program (FCP), a hearing was held on May 8, 2024, by telephone.

The issue for determination is whether the agency had a basis for changing petitioner's non-medical transportation services.

PARTIES IN INTEREST:

Petitioner:

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

Respondent:

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

By: Mary Wipperfurth
Inclusa, Inc.
3349 Church St Suite 1
Stevens Point, WI 54481

ADMINISTRATIVE LAW JUDGE:

Brian C. Schneider
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner is a resident of Marathon County. He is eligible for the FCP with Inclusa as his managed care organization (MCO).
2. Petitioner has a number of medical conditions including heart issues, chronic pain, kidney disease, obesity, and anxiety. He has been in the FCP with his current team for approximately eight years.
3. Petitioner does not drive and requires transportation assistance. When in the community he uses a power wheelchair for mobility. His primary social/community activity is going to movies, but the theater is not on a bus route, so throughout his FCP eligibility petitioner has been allowed ten non-medical transportation trips per month using a specialized medical transport. They have been broken down to six “business hours” trips and four “non-business hours” trips. Currently the business hour trips are billed at \$18.90 per trip, and the non-business hour trips are billed at \$31.75 per trip. Petitioner uses the non-business hour trips because his movies often end after business hours (5:00 PM; petitioner regularly goes to Tuesday matinees because the prices are discounted that day).
4. In early 2024 the MCO reviewed petitioner’s services. It was determined that petitioner’s community integration could be served without the need for so many non-business trips. By a notice dated March 5, 2024, the MCO informed petitioner that his monthly transportation would be modified to nine business hour trips and one non-business hour trip. Petitioner filed a grievance, but the committee upheld the determination by a notice issued April 4, 2024.
5. Services were continued in place pending this decision.

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); DHS booklet, Being a Full Partner in Family Care, page 9. ISPs must be reviewed periodically. Admin. Code, §DHS 10.44(j)(5).

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).

Transportation to community activities is an allowed service under the FCP. See 2024 FCP standard MCO contract, found at www.dhs.wisconsin.gov/familycare/mcos/fc-fcp-2024-contract.pdf, specifically at Addendum VI, number 26, "Transportation (specialized transportation) – community integration." As with all services, such transportation must be sufficient to meet the person's community integration needs but be cost effective. FCP contract, Article VI, Part D, §A.

The issue here is whether there is a basis for changing the non-medical transportation services. Since it is a change, it is the burden of the agency to prove the need for the change. When asked about the process for changing the services, Mr. Belmas from Inlusa essentially admitted that the company was requiring the care teams to look at services for cost effectiveness, in other words, the company is seeking to cut costs. That is the only basis for the change in this case, and I have to say that the care team had to go through some mental gymnastics to come up with this change. Petitioner has been told, essentially, to change the routine that he has grown comfortable with and dependent on to save the MCO essentially \$38.55 per month (the difference between a business hour trip and a non-business hour trip is \$12.85, and the change is a replacement of three non-business hour trips with three business trips). There is no allegation that petitioner is exceeding his budget. Essentially the position of the MCO is that petitioner, a person who has anxiety and does not handle changes well, should change his community activities so that the MCO can save \$38 per month. I hazard to suggest that the administrative cost of making the change, with team investigation, the cost of a grievance hearing, and the cost of attending this fair hearing, probably far surpassed the yearly \$462 savings that the change entailed.

I conclude that the MCO has not shown that the proposed change is warranted by petitioner's circumstances. There has been no change in petitioner's condition or preferred community integration, and it has not been alleged that an FCP budget decrease necessitates the change. The services must be restored.

CONCLUSIONS OF LAW

The MCO has not shown a financial or medical basis for reducing petitioner's non-medical transportation services.

THEREFORE, it is

ORDERED

That the matter be remanded to the MCO with instructions to restore petitioner's non-medical transportation services to six monthly business hour trips and four monthly non-business hour trips. The MCO shall take the action within 10 days 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

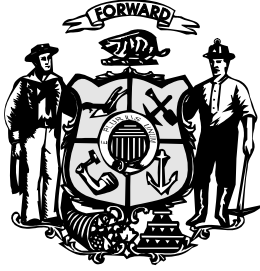
You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Health Services, 1 West Wilson Street, Room 651, **and** on those identified in this decision 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 13th day of May, 2024


vs _____

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 May 13, 2024.

Inclusa Inc/Community Link
Office of Family Care Expansion
Health Care Access and Accountability