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## STATE OF WISCONSIN Division of Hearings and Appeals

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In the Matter of



### DECISION

Case #: FCP - 212136

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### PRELIMINARY RECITALS

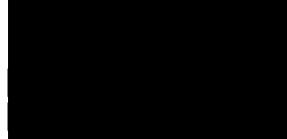
Pursuant to a petition filed on February 13, 2024, under Wis. Admin. Code § DHS 10.55, to review a decision by the MY Choice Family Care regarding Medical Assistance (MA), a hearing was held on April 24, 2024, by telephone. Hearings scheduled for March 6, 2024, and March 27, 2024, were rescheduled at the request of the petitioner or her representative.

The issue for determination is whether the petitioner's appeal regarding the termination of nursing services received as part of the Family Care program is now moot.

There appeared at that time the following persons:

#### PARTIES IN INTEREST:

Petitioner:



Petitioner's Representative:

Ericka Sutton  
1402 Pankratz St. Suite 111  
Madison, WI 53704

Respondent:

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

By: Andrew Larson  
MY Choice Family Care  
10201 Innovation Dr, Suite 100  
Wauwatosa, WI 53226

#### ADMINISTRATIVE LAW JUDGE:

Jason M. Grace  
Division of Hearings and Appeals

## FINDINGS OF FACT

1. Petitioner (CARES # ) is a resident of Milwaukee County.
2. The petitioner was enrolled in the Family Care Program (FCP), with My Choice Wisconsin her managed care organization (MCO).
3. On February 2, 2024, the MCO's Grievance and Appeal Committee issued the petitioner a notice that indicated it was upholding the earlier determination to terminate her nursing home services. Per the Notice, that determination was based on a finding that the petitioner's needs can be supported in a less restrictive environment.
4. On February 13, 2024, the petitioner timely appealed the MCO's determination to the Division of Hearings and Appeals (DHA). Included with The Request for A State Fair Hearing form was a copy of the Notice referenced in Findings of Fact 3. An administrative hearing was scheduled for March 6, 2024.
5. On or about February 19, 2024, the petitioner or her representative requested the March 6, 2024 hearing be rescheduled. It was rescheduled to March 27, 2024.
6. On or about February 29, 2024, the petitioner was disenrolled from the FCP. It appears this was a result of a failure to timely complete her MA renewal.
7. On or about March 20, 2024, the petitioner or her representative requested a reschedule of the hearing scheduled for March 27, 2024. The hearing was rescheduled to April 24, 2024.
8. On April 19, 2024, the petitioner, by her authorized representative and an ombudsman from the Board on Aging & Long Term Care, submitted a letter brief and exhibits.
9. The hearing with the DHA was ultimately held on April 24, 2024. As of the hearing, the petitioner was still not enrolled in the FCP and had not filed an appeal with the DHA contesting disenrollment from MA or the FCP.

## DISCUSSION

The Family Care program (FCP) provides appropriate long-term care services for elderly or disabled adults. It is considered to be a subprogram of MA. Medicaid Eligibility Handbook, 1.1.2. 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 Department contracts with managed care organizations (MCOs) throughout the state to provide case management services to Partnership members. Case management services include the development of individual service plans (ISPs) and the authorization of allowable and appropriate long term care services. Wis. Admin. Code §DHS 10.44(f). The ISP must reasonably and effectively address all of the FCP recipient's long-term needs and outcomes, assist the recipient to be as self-reliant and autonomous as possible, and be cost effective when compared to alternative services or supports that could meet the same needs and achieve similar outcomes. Id

In this case, the petitioner filed an appeal contesting the termination of nursing services that she had been receiving as part of the FCP benefits package. Based on the information presented at hearing, the petitioner was disenrolled from the FCP at the end of February 2024 for failing to timely complete her MA renewal. As her MA benefits were terminated, she was disenrolled from the FCP. It appears at some later date she was able to complete the MA renewal and backdate MA benefits to the beginning of March 2024. It is unclear why she was not re-enrolled in the FCP after her MA eligibility was re-established. It was indicated that her MA is currently funding the cost of her nursing home placement. Of note, she did not file an appeal contesting disenrollment from MA or the FCP.

A matter is moot if the review sought cannot have a practical effect on the existing controversy. See *Racine v. J-T Enterp.*, 64 Wis. 2nd 691, 702; 221 N.W. 2nd 869, 875 (1974). Here, the petitioner was contesting the MCO's termination of nursing services she previously received as part of the FCP benefits package. She is no longer enrolled in the FCP. As such, her appeal regarding the services she previously received as part of the FCP is moot.

I would note that the petitioner is able to reapply for the FCP. She may also seek to file an appeal contesting the original termination/disenrollment from MA and/or FCP. Petitioner needs to be mindful of the appeal deadlines. If she is later re-enrolled in the FCP, the MCO would likely conduct a new assessment of whether nursing services are appropriate as part of the FCP benefits package. She would have the right to file an appeal if she requests and is denied those services.

### **CONCLUSIONS OF LAW**

The petitioner's appeal regarding the termination of nursing services received as part of the Family Care program is now moot as she is no longer enrolled in the Family Care program.

**THEREFORE, it is**

**ORDERED**

That the petitioner's appeal is 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, 5<sup>th</sup> 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

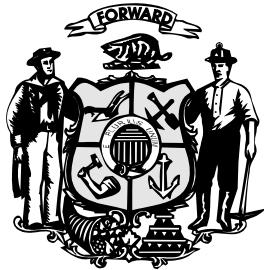
You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Health Services, 1 West Wilson Street, Room 651, **and** on those identified in this decision 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 2nd day of May, 2024

\s 

Jason M. Grace  
Administrative Law Judge  
Division of Hearings and Appeals



## State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

Brian Hayes, Administrator  
5<sup>th</sup> Floor North  
4822 Madison Yards Way  
Madison, WI 53705-5400

Telephone: (608) 266-7709  
FAX: (608) 264-9885  
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Internet: <http://dha.state.wi.us>

The preceding decision was sent to the following parties on May 2, 2024.

MY Choice Family Care  
Office of Family Care Expansion  
Health Care Access and Accountability  
[REDACTED]