



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

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In the Matter of

(petitioner)

DECISION

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FCP-20/61122

**PRELIMINARY RECITALS**

Pursuant to a petition filed December 24, 2003, under Wis. Stat. §49.45(5) and Wis. Adm. Code §HA 3.03(1), to review a decision by the Office of Strategic Finance (OSF) in regard to Medical Assistance (MA) via the Family Care Program, a hearing was held on January 21, 2004, at Fond du Lac, Wisconsin.

There are two issues for determination: (1) whether this office has subject matter jurisdiction herein, and (2) whether petitioner's CMO correctly denied her request for an electric scooter.

There appeared at that time and place the following persons:

**PARTIES IN INTEREST:**

*Petitioner:*

(petitioner)

*Respondent:*

Wisconsin Department of Workforce Development  
Bureau of Workforce Programs  
201 East Washington Avenue  
P.O. Box 7935  
Madison, WI 53707-7935

By: Brenda Christ-Gosieu  
Creative Care Options  
50 North Portland Street  
Fond Du Lac, WI 54935

**ADMINISTRATIVE LAW JUDGE:**

Kenneth P. Adler  
Division of Hearings and Appeals

**FINDINGS OF FACT**

1. Petitioner (SSN xxx-xx-xxxx) is a resident of Fond du Lac County. She resides in a facility with a large lobby located approximately 25 feet from her apartment.
2. Petitioner has been enrolled in the Family Care program (Creative Care Options, Inc.) since at least December 2000.

3. Petitioner is somewhat independent with ambulation. She must utilize a walker for mobility within her apartment and for long distances. Petitioner was provided with a manual wheelchair in 2002 for long distances, but she decided she did not wish to use that equipment.
4. A support staff completes petitioner's grocery shopping. She does not accompany staff to the store due to time and effort considerations.
5. A case manager assistant takes petitioner to her doctor appointments, the pharmacy, and to a restaurant or store at the conclusion of those activities. Petitioner does not have family or significant others who could help her leave her apartment more often.
6. Petitioner can enter automobiles without much difficulty. However, she finds it difficult to board a Human Services van or the Handivan due to having to step up into the vehicle.
7. Petitioner's Individual Service Plan includes: (1) taxi service, (2) Handivan, and (3) case manager assistant for transportation. There is no mention of an electric scooter or other personal mode of ambulation/transportation.
8. During July 2003 petitioner informed the Family Care provider that she had received a physician's prescription for a scooter. Petitioner requested this equipment to be able to go out of her home for shopping and social events. She indicated she would not be using the scooter in her home.
9. On September 23, 2003 the Family Care provider issued a denial of the scooter request. A second denial was then issued on October 30, 2003. The basis for the denial was a determination there were more cost effective, and perhaps desirable methods of meeting petitioner's transportation needs. The Family Care provider had consulted with several of petitioner's physician's who confirmed petitioner did not require the scooter for ambulation in her home, and therefore it did not meet Medicare criteria.
10. Two suggestions were a Senior Services or private taxi. The agency also suggested additional supportive homecare hours to take petitioner shopping, or increasing the current CMA hours to take petitioner shopping. All of these suggestions were declined by petitioner.
11. On November 10, 2003 an informal Grievance Committee meeting was scheduled for December 11, 2003.
12. Petitioner attended the December 11, 2003 Grievance Committee meeting.
13. On December 11, 2003, after meeting with petitioner, the Grievance Committee issued a denial, concluding there were more cost effective alternatives and options available to meet petitioner's long-term care outcomes.
14. Petitioner is able to use a walker to ambulate around her home and outside. She has consistently explained the request for a scooter was so she could access the outdoors and socialize with other friends who have scooters.

### **DISCUSSION**

The Family Care program, which is supervised by the Department of Health and Family Services, is designed to provide appropriate long-term care services for elderly or disabled adults. Whenever the local Family Care program decides that a person is ineligible for the program, or when the CMO denies a requested service, the client is allowed to file a local grievance. The petitioner did so here, and the original service denial was upheld.

Under some circumstances, the client may then request a fair hearing through this office (Division of Hearing and Appeals). The state code specifically enumerates the fact patterns under which this office has jurisdiction to conduct a fair hearing on a Family Care program issue:

**10.55 Fair Hearing. (1) RIGHT TO FAIR HEARING.**

... The following matters may be contested through a fair hearing:

- (a) *Denial of eligibility* under s. HFS 10.31(5) or 10.32(4).
- (b) *Determination of cost sharing* requirements under s.HFS 10.34.
- (c) *Determination of entitlement* under s. HFS 10.36.
- (d) *Failure of a CMO to provide timely services* and support items that are included in the plan of care.
- (e) *Reduction of services* or support items in the enrollee's individualized service plan, except in accordance with a change agreed to by the enrollee.
- (f) *An individualized service plan that is unacceptable* to the enrollee because any of the following apply...
- (g) *Termination of the family care benefit* or involuntary disenrollment from a CMO.
- (h) *Determinations of protection of income and resources* of a couple for maintenance of a community spouse...
- (i) *Recovery of incorrectly paid family care benefit payments...*
- (j) *Hardship waivers*, as provided in s.HFS 108.02(12)(e), and placement of liens as provided in ch. HA 3.
- (k) *Determination of temporary ineligibility* for the family care benefit resulting from divestment of assets under s. HFS 10.32(1)(I).

*(emphasis added)*

Wis. Admin. Code §HFS 10.55(1).

Petitioner has requested a fair hearing for an issue that cannot be the subject of a fair hearing. There is no question that petitioner remains eligible for the Family Care program. However, she seeks to compel the CMO to provide a new service (the scooter), which is apparently not listed in her individualized service plan (ISP). Unfortunately, petitioner's ISP is not in the hearing record, but neither party noted the scooter was listed in the ISP. Based on the assumption that the scooter is not listed as a provided service in the ISP, I conclude that petitioner's issue is not among those enumerated in the jurisdictional code section above. Therefore, I have no authority to reach the merits of this dispute, and cannot override the CMO's decision.

In passing, I note that this type of restriction on an administrative law judge's jurisdiction is not unprecedented. An ALJ is not allowed to take jurisdiction over disagreements pertaining to provision of new (as opposed to termination of ongoing) services in the Community Options Program. E.g., Community Options Guidelines, VI-1 (10-94); s.46.27(7m), Wis. Stats

**CONCLUSIONS OF LAW**

The Division of Hearings and Appeals lacks jurisdiction to review the CMO's determination that petitioner would not be provided a new service (an electric scooter), when that service is not listed in the petitioner's Individualized Service Plan.

**NOW, THEREFORE, it is**

**ORDERED**

*That the petition for review herein be and the same is hereby dismissed.*

### **REQUEST FOR A NEW HEARING**

This is a final fair hearing decision. If you think this decision is based on a serious mistake in the facts or the law, you may request a new hearing. You may also ask for a new hearing if you have found new evidence which would change the decision. To ask for a new hearing, send a written request to the Division of Hearings and Appeals, P.O. Box 7875, Madison, WI 53707-7875.

Send a copy of your request to the other people named in this decision as "PARTIES IN INTEREST."

Your request must explain what mistake the examiner made and why it is important or you must describe your new evidence and tell why you did not have it at your first hearing. If you do not explain these things, your request will have to be denied.

Your request for a new hearing must be received no later than twenty (20) days after the date of this decision. Late requests cannot be granted. The process for asking for a new hearing is in sec. 227.49 of the state statutes. A copy of the statutes can found 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 no more than thirty (30) days after the date of this hearing decision (or 30 days after a denial of rehearing, if you ask for one).

Appeals for benefits concerning Family Care Program must be served on Department of Health and Family Services, P.O. Box 7850, Madison, WI, 53707-7850, as respondent.

The appeal must also be served on the other "PARTIES IN INTEREST" named in this decision. The process for Court appeals is in sec. 227.53 of the statutes.

Given under my hand at the City of  
Madison, Wisconsin, this 25th day of  
February, 2004

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/sKenneth P. Adler  
Administrative Law Judge  
Division of Hearings and Appeals  
426/KPA