COURT OF APPEALS
DECISION
DATED AND FILED

September 22, 2016

Diane M. Fremgen
Clerk of Court of Appeals

NOTICE

This opinion is subject to further editing. If published, the official version will appear in the bound volume of the Official Reports.

A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. *See* WIS. STAT. § 808.10 and RULE 809.62.

Appeal No. 2015AP1657 **Cir. Ct. No. 2014CV9197**

STATE OF WISCONSIN **IN COURT OF APPEALS**
DISTRICT I

MARGARET BACH,

PLAINTIFF-APPELLANT,

V.

LABOR AND INDUSTRY REVIEW COMMISSION,

DEFENDANT-RESPONDENT,

AARON BACH, EASTER SEALS SOUTHEAST WISCONSIN, LIFE NAVIGATORS AND MILWAUKEE COUNTY,

DEFENDANTS.

APPEAL from an order of the circuit court for Milwaukee County: CHRISTOPHER R. FOLEY, Judge. *Affirmed*.

Before Lundsten, Higginbotham and Sherman, JJ.

¶1 PER CURIAM. Margaret Bach, pro se, appeals a circuit court order that affirmed the decision of the Labor and Industry Review Commission (LIRC) denying her claim for unemployment compensation benefits. LIRC determined that Margaret is not eligible for unemployment benefits because the services that she was paid to perform are excluded from the definition of employment under WIS. STAT. § 108.02(15)(km) (2011-12).[1] For the reasons discussed below, we affirm.

BACKGROUND

¶2 Margaret is the mother of Aaron Bach, who was born in September 1988. Aaron suffers from significant disabilities as a result of a brain tumor. Aaron is unable to make legal, financial, medical and educational decisions for himself, and requires twenty-four-hour personal supervision.

¶3 In Wisconsin, Medicaid dollars are available to assist disabled adults to remain in their homes with supportive care. Milwaukee County's Department of Family Care Managed Care Organization (hereinafter, Family Care Program) has contracted with the State of Wisconsin to manage those funds. Funding available through the Family Care Program is available to provide the following two types of services: (1) supportive health care, which can include companionship, meal preparation, general housekeeping, laundry services, transportation to appointments, and personal care services such as bathing, dressing, and grooming; and (2) medical, which Family Care Program guidelines specify are to be provided by a licensed medical professional. When an individual

[1] All references to the Wisconsin Statutes are to the 2011-12 version unless otherwise noted.

is enrolled in the Family Care Program, an interdisciplinary team, which consists of a care manager and a registered nurse, develops a care plan based on the individual's needs at that time.

¶4 When an individual is approved to receive funding through the Family Care Program, he or she chooses one of the following three methods for securing workers to provide supportive health care services: (1) the individual's interdisciplinary team authorizes services for the individual through a supportive home care provider with whom the Family Care Program has contracted (the health-directed support model); (2) the individual selects someone to provide services to him or her, and that person is hired by an agency with whom the Family Care Program has contracted (the co-employment support model); or (3) the individual, or individual's legal representative, selects someone to provide services to him or her and a fiscal agent undertakes payroll and bookkeeping responsibilities (the self-directed support model).

¶5 During the time period at issue here, March 2010 through October 2011, Margaret was paid for providing services to Aaron. Margaret resided with Aaron and Aaron, through his guardian, elected to utilize the self-directed model for obtaining supportive care services. Margaret filled out and submitted to Aaron's corporate guardian an application entitled "Family Care Fiscal Agent—Care Management Organization Self-Directed Support" to be a worker to provide services to Aaron. Margaret also completed and submitted to Aaron's corporate guardian a document captioned "Employee Responsibilities Under Fiscal Agent," which provided information that timesheets were to be submitted to Aaron's fiscal agent by the end of the pay period, and that any additional hours must be approved by Aaron's case manager and/or a registered nurse.

¶6 In October 2011, Aaron was removed from Margaret's home and placed in a group home setting. Upon Aaron's removal from Margaret's home, Margaret ceased to receive compensation for providing services to Aaron. Thereafter, Margaret filed a claim for unemployment compensation benefits. In June 2012, the Department of Workforce Development (DWD) denied Margaret's claim on the ground that Margaret had provided care and companionship services to a disabled family member, Aaron, who was her employer, and that under WIS. STAT. § 108.02(15)(km), such services are not covered by the Wisconsin Unemployment Insurance Law. *See* § 108.02 *et seq.*

¶7 Margaret appealed the DWD's determination, which was affirmed by an administrative law judge (ALJ) on July 31, 2012. Margaret petitioned LIRC for review of the ALJ's decision. LIRC set aside the ALJ's decision and remanded the matter to the DWD for further investigation into whether Milwaukee County, rather than Aaron, was Margaret's employer.

¶8 In May 2013, DWD reinstated its June 2012 decision, determining that Aaron was Margaret's employer and that the services she performed for him are not covered by the Unemployment Insurance Law. Margaret appealed DWD's redetermination. In June 2013, following a hearing at which only Margaret appeared and testified, an ALJ affirmed DWD's May 2013 redetermination that Margaret is not entitled to unemployment benefits. The ALJ agreed with the DWD that Margaret's employer was Aaron and that the services she provided for Aaron were excluded from coverage under the Unemployment Insurance Law.

¶9 Margaret petitioned LIRC for review of the ALJ's June 2013 decision. LIRC set aside the ALJ's decision and remanded the matter for a new hearing and decision. LIRC's decision notes that Milwaukee County is "a

necessary party to determine" who Margaret's employer was and that Milwaukee County should be provided notice of the new hearing.

¶10 A new hearing was held in January 2014, and both Margaret and Eva Williams, the chief clinical officer of the Family Care Program testified. Following the hearing, an ALJ again affirmed DWD's denial of unemployment benefits to Margaret.

¶11 Margaret petitioned LIRC for review of the ALJ's decision and in March 2014, LIRC set aside the ALJ's decision and remanded for another new hearing, which LIRC stated was, this time, to include testimony from Milwaukee County on the issue of whether Aaron was receiving long-term support services under WIS. STAT. ch. 46 and 51 or personal assistance services under WIS. STAT. ch. 47.

¶12 Following this fourth, and final, hearing, the ALJ again affirmed DWD's denial of unemployment benefits. In a lengthy written June 2014 decision, the ALJ addressed whether, under WIS. STAT. § 108.02(15)(km), Margaret was ineligible for unemployment benefits. The ALJ concluded that Aaron, not Milwaukee County, was Margaret's employer. In reaching that conclusion, the ALJ found that "[t]here was no competent evidence" that Milwaukee County completed employer functions such as overseeing her hiring paperwork, her timesheets, or ensuring Margaret was properly paid for her time. The ALJ rejected Margaret's argument that Aaron could not be her employer because on his own, he is incapable of performing typical employer responsibilities. The ALJ concluded that the services provided by Margaret fell within the realm of care and companionship, and that because a family member was her employer, she is ineligible under § 108.02(15)(km) to receive

unemployment benefits. In addition, the ALJ concluded that even if Milwaukee County was Margaret's employer, Margaret was still not eligible for unemployment benefits because under § 108.02(13)(k), Milwaukee County was excluded from the definition of "[e]mployer."[2]

¶13 Margaret petitioned LIRC for review of the ALJ's June 2014 decision. LIRC affirmed the ALJ's decision, adopting the ALJ's findings and conclusions as its own.

¶14 Margaret sought review of LIRC's decision by the circuit court. The circuit court affirmed LIRC's decision. Margaret appeals.

DISCUSSION

¶15 The issue in this case is whether Margaret is eligible to receive unemployment benefits for the services she was paid to provide for Aaron. Margaret contends that LIRC erred in determining that under WIS. STAT. § 108.02(15)(km), and alternatively § 108.02(13)(k), she is ineligible to receive unemployment benefits for those services.

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[2] During the time period at issue here, WIS. STAT. § 108.02(13)(k), provided:

> "Employer" does not include a county department aging unit, or, under s. 46.2785, a private agency that serves as a fiscal agent or contracts with a fiscal intermediary to serve as a fiscal agent under s. 46.27(5)(i) or 47.035 as to any individual performing services for a person receiving long-term support services under s. 46.27(5)(b), 46.275, 46.277, 46.278, 46.2785, 46.286, 46.495, 51.42, or 51.437 or personal assistance services under s. 47.02(6)(c).

Section 108.02(13)(k) has since been amended to provide: "'Employer' does not include a county department, an aging unit …." *See* 2015 Wis. Act 334, § 2.

¶16 As we explain more fully below, we affirm LIRC's determination that Margaret is not eligible for unemployment benefits on the ground that her employment is excluded by WIS. STAT. § 108.02(15)(km). Because our decision on this issue is determinative, we do not reach the question of whether Margaret is also ineligible for benefits under § 108.02(13(k). *See* ***Sweet v. Berge***, 113 Wis. 2d 61, 67, 334 N.W.2d 559 (Ct. App. 1983) (if a decision on one point disposes of the appeal, the court will not decide other issues raised).

¶17 Before we address Margaret's arguments as to her eligibility for unemployment benefits under WIS. STAT. § 108.02(15)(km), we first determine our standard of review in this case.[3]

A. Standard of Review

¶18 In reviewing a decision of an administrative agency, it is the decision of the agency, rather than the decision of the circuit court, that is reviewed. ***Hilton v. DNR***, 2006 WI 84, ¶15, 293 Wis. 2d 1, 717 N.W.2d 166. This case requires us to review LIRC's application of WIS. STAT. § 108.02(15)(km) to the facts at hand to determine whether Margaret's

[3] Margaret also contends that LIRC's decision should be overturned because LIRC's decision "violates constitutional law and the very purpose of unemployment insurance." Margaret's argument in this regard is difficult to follow, conclusory, and lacks citation to legal authority supporting her assertions that LIRC's decision violates constitutional principles. For these reasons, we decline to address this contention further. *See* ***Associates Fin. Servs. Co. of Wis., Inc. v. Brown***, 2002 WI App 300, ¶4 n.3, 258 Wis. 2d 915, 656 N.W.2d 56 (this court does not generally address conclusory arguments); ***State v. Pettit***, 171 Wis. 2d 627, 646, 492 N.W.2d 633 (Ct. App. 1992) (this court does not generally address unsupported legal arguments).

In addition, throughout her brief, Margaret raises issues unrelated to the question before us on appeal. These include issues related to quality and effectiveness of Aaron's corporate guardian and whether Aaron is receiving the proper level of care in his current placement. We do not address any issues unrelated to the question of whether Margaret is entitled to unemployment benefits.

employment is or is not covered under Wisconsin's Unemployment Insurance Law, WIS. STAT. ch. 108. This presents this court with a mixed question of fact and law.

¶19 We will uphold LIRC's factual findings if they are supported by "credible and substantial evidence." ***American Mfrs. Mut. Ins. Co. v. Hernandez***, 2002 WI App 76, ¶11, 252 Wis. 2d 155, 642 N.W.2d 584; WIS. STAT. § 102.23(6) (2013-14). Whether Margaret was an employee of Aaron or the Department of Family Care is a question of law. *See* ***Kress Packing Co. v. Kottwitz***, 61 Wis. 2d 175, 177, 212 N.W.2d 97 (1973), *superseded in part by statute as stated in* ***Acuity Mut. Ins. Co. v. Olivas,*** 2007 WI 12, ¶87, 298 Wis. 2d 640, 726 N.W.2d 258. In general, the application of facts to the legal standard is reviewed de novo by this court. *See* ***Koenig v. Pierce Cty. Dep't of Human Servs.***, 2016 WI App 23, ¶17, 367 Wis. 2d 633, 877 N.W.2d 632. However, an agency's application of a legal standard may be entitled to deference on review. ***Cargill Feed Div./Cargill Malt and AIG Cas. Co. v. LIRC***, 2010 WI App 115, ¶15, 329 Wis. 2d 206, 789 N.W.2d 326.

¶20 Our supreme court has explained the levels of deference and when they apply as follows:

> A reviewing court accords an agency's statutory interpretation no deference when the issue is one of first impression, when the agency has no experience or expertise in deciding the legal issue presented, or when the agency's position on the issue has been so inconsistent as to provide no real guidance. When no deference to the agency decision is warranted, the court interprets the statute independently and adopts the interpretation that it deems most reasonable.
>
> A reviewing court accords due weight deference when the agency has some experience in an area but has not developed the expertise that places it in a better position

> than the court to make judgments regarding the interpretation of the statute. When applying due weight deference, the court sustains an agency's interpretation if it is not contrary to the clear meaning of the statute—unless the court determines that a more reasonable interpretation exists.
>
> Finally, a reviewing court accords great weight deference when each of four requirements are met: (1) the agency is charged by the legislature with the duty of administering the statute; (2) the agency's interpretation is one of long standing; (3) the agency employed its expertise or specialized knowledge in forming its interpretation; and (4) the agency's interpretation will provide uniformity and consistency in the application of the statute. When applying great weight deference, the court will sustain an agency's reasonable statutory interpretation even if the court concludes that another interpretation is equally or more reasonable. The court will reverse the agency's interpretation if it is unreasonable—if it directly contravenes the statute or the state or federal constitutions, if it is contrary to the legislative intent, history, or purpose of the statute, or if it is without a rational basis.

MercyCare Ins. Co. v. Wisconsin Comm'r of Ins., 2010 WI 87, ¶¶29-31, 328 Wis. 2d 110, 786 N.W.2d 785 (internal citations omitted). Where great weight deference is appropriate, the agency's determination will be sustained if reasonable—even if another determination is more reasonable. ***Barron Elec. Co-op. v. PSC***, 212 Wis. 2d 752, 761, 569 N.W.2d 726 (Ct. App. 1997). Where due weight deference is given, we will sustain an agency's determination if reasonable, unless another interpretation is more reasonable. ***Id.*** at 762–63. Finally, under de novo review, "'the weight to be afforded [the agency's] interpretation is no weight at all.'" ***Id.*** at 763 (quoted source omitted).

¶21 The parties disagree over the appropriate level of deference we should accord LIRC's application of WIS. STAT. § 108.02(15)(km). Margaret argues that we should give no deference to LIRC's application of

§ 108.02(15)(km) because LIRC has "no familiarity or expertise" in the areas of protective placement, guardianship, and social services.

¶22 Margaret misconstrues the legal issue before LIRC, and now before this court on appeal. The legal issue presented in this case is whether Margaret is eligible to receive unemployment benefits. Margaret does not, and could not, argue that LIRC lacks expertise in deciding this issue. Although issues relating to protective placement, guardianship, and social services underlie how Margaret came to care for Aaron in her home, and how that care subsequently ceased, none of those issues are determinative of the outcome in this case. Accordingly, we reject Margaret's contention that LIRC's decision is entitled to no deference.

¶23 The question remains whether due deference or great deference is appropriate. We need not determine whether LIRC's decision is entitled to due weight or great weight deference because we conclude that under either standard we would affirm LIRC's application of WIS. STAT. §§ 108.02(15)(km).

B. WISCONSIN STAT. § 108.02(15)(km)

¶24 WISCONSIN STAT. § 108.02(15) defines "[e]mployment" for purposes of WIS. STAT. ch. 108 as "any service, including service in interstate commerce, performed by an individual for pay." However, this broad definition of employment is subject to (km), which provides:

> "Employment," as applied to work for a given employer other than a government unit or a nonprofit organization, except as the employer elects otherwise with the department's approval, does not include service:
>
> 1. *Provided by an individual to an ill or disabled family member who is the employing unit for such service, if the service is personal care or companionship.* For purposes of this subdivision, "family member" means a … child …. (Emphasis added.)

¶25 LIRC determined that the services Margaret was paid to perform for Aaron do not fall within the above definition of employment because Margaret's employer was Aaron and the services she provided Aaron was "personal care and companionship."

¶26 Margaret argues that her employer was the Family Care Program, not Aaron. Margaret also argues that the services she provided Aaron were more than "personal care and companionship." We address each of Margaret's contentions in turn below.

1. Margaret's Employer

¶27 In challenging LIRC's determination that Margaret was an employee of Aaron, not the Family Care Program, Margaret makes two primary arguments.

¶28 First, Margaret argues that Aaron could not have been her employer because he has been adjudicated mentally incompetent. Margaret asserts in conclusory fashion that because Aaron has been found to be incompetent, he does not have the capacity to form a legally binding contract, and therefore, cannot be Margaret's employer. LIRC does not dispute Aaron's incompetency. LIRC argues, however, that through his guardian, Aaron is capable of being Margaret's employer.

¶29 Margaret does not cite any legal authority in support of her argument that Aaron, acting through his guardian, could not be her employer because of his incompetency, and presents this court with only a conclusory assertion that Aaron could not be her employer in light of his incompetency. This court need not consider conclusory assertions or assertions that are not supported by legal authority. *See* ***State v. Pettit***, 171 Wis. 2d 627, 646-67, 492 N.W.2d 633 (Ct. App.

1992) (we will not decide issues that are inadequately briefed), and ***Associates Fin. Servs. Co. of Wis., Inc. v. Brown***, 2002 WI App 300, ¶4 n.3, 258 Wis. 2d 915, 656 N.W.2d 56 (we will not consider conclusory assertions). Furthermore, Margaret does not dispute in her reply brief LIRC's argument that Aaron could be her employer through his guardian. A proposition asserted by a respondent on appeal and not disputed by the appellant's reply is taken as admitted. ***Schlieper v. DNR***, 188 Wis. 2d 318, 322, 525 N.W.2d 99 (Ct. App. 1994).

¶30 Nonetheless, we note that a guardian is appointed to act for his or her ward. *See* ***In re Guardianship and Protective Placement of Catherine P.***, 2006 WI App 105, ¶86, 294 Wis. 2d 637, 718 N.W.2d 205. In effect, the guardian becomes the surrogate decisionmaker for the ward. *See* ***Matter of Guardianship of L.W.***, 167 Wis. 2d 53, 76-78, 482 N.W.2d 60 (1992) (guardian acts as surrogate decisionmaker for ward regarding whether life-sustaining medical treatment should be withheld). WISCONSIN STAT. § 54.25(1)(b) (2013-14) gives a guardian the authority to "secure any necessary care or services for the ward that are in the ward's best interests." It logically follows that Aaron's guardian, acting as a surrogate decisionmaker for Aaron, could retain services for Aaron's care. In the absence of Margaret developing an argument to the contrary, we conclude that despite his incapacity, Aaron, through his guardian, could serve as Margaret's employer.

¶31 Second, Margaret argues that it is more reasonable to conclude that she was an employee of the Family Care Program and not Aaron because the Family Care Program performed the functions of an employer. Margret asserts that the Family Care Program had "total control on decisions for Aaron's care," and that it "determined how many workers Aaron could have, how many hours they could work, and what their hourly pay would be."

¶32 The Unemployment Compensation Insurance law defines the term "[e]mployee" as "any individual who is or has been performing services for pay for an employing unit, whether or not the individual is paid directly by the employing unit …." WIS. STAT. § 108.02(12)(a). Without citing to legal authority, both parties discuss the "has been performing services … for an employing unit" test by reference to the four employee-employer relationship factors used for Worker's Compensation Act, WIS. STAT. ch. 102 purposes. We follow their lead, without opining definitively on whether such factors are the full or apt measure.

¶33 The Worker's Compensation Act defines an "[e]mployee" as any person "in the service of another under any contract of hire, express or implied …." WIS. STAT. § 102.07(4)(a). In ***Kress Packing Co.,*** 61 Wis. 2d at 182, the court stated that the primary factor for determining whether a person is in the service of another, that is to say whether there is an employee-employer relationship, is whether the alleged employer has a right to control the details of the alleged employee's work. *See also* ***Acuity Mut. Ins. Co.***, 298 Wis. 2d 640, ¶¶87-88, and ***County of Barron v. LIRC***, 2010 WI App 149, ¶12, 330 Wis. 2d 203, 792 N.W.2d 584. In assessing the right to control, the following four subfactors are to be considered: (1) direct evidence of the exercise of the right of control; (2) the method of payment of compensation; (3) the furnishing of equipment or tools for the performance of the work; and (4) the right to fire or terminate the employment relationship. ***Kress Packing Co.***, 61 Wis. 2d at 182; ***Barron***, 330 Wis. 2d 203, ¶12.

¶34 Both WIS. STAT. ch. 108.02, the unemployment compensation law, and the Worker's Compensation Act define an employee as someone in the service of another. We can perceive no reason why the factors for determining whether an

individual is an employee of a particular employing unit set forth in ***Kress Packing Co.*** should not be applied in the context of ch. 108.02. Accordingly, in the absence of any authority to the contrary, we look to those factors to determine whether LIRC's determination that Margaret had an employee-employer relationship with Aaron was less reasonable than Margaret's assertion that her employer was the Family Care Program.

¶35 As to the first subfactor, exercise of the right of control, the evidence established that Aaron was responsible for choosing Margaret as his care provider, and for training and supervising Margaret. Aaron was responsible for establishing Margaret's work schedule and ensuring that Margaret did not exceed the number of hours authorized by the Family Care Center. Aaron was responsible for verifying Margaret's time sheets. Aaron was also responsible for ensuring that any vehicle Margaret transported him in was properly functioning.

¶36 The second subfactor is the method of payment of compensation. Eva Williams, the chief clinical officer for the Family Care Program, testified that Aaron elected to participate in the self-directed care model and selected Margaret as care provider. The fiscal agent was used to manage Aaron's receipt of Medicaid funds, and Margaret's wages were drawn from the fiscal agent. Margaret's specific hourly rate of pay was set by Aaron, but the Family Care Program dictated that her rate of pay must have been within a pay range established by the Family Care Program. The normal maximum number of hours Margaret was permitted to work on a weekly basis was established by the Family Care program, and Margaret was required to obtain approval from a member of Aaron's interdisciplinary team in order to work hours beyond the normal maximum.

¶37 The third subfactor is the furnishing of equipment or tools for the performance of the work. The parties have not directed this court to any testimony at the four hearings addressing this subfactor, and our review of the transcripts did not reveal any.

¶38 The fourth and final subfactor is the right to fire or terminate the employment relationship. Evidence at the hearing established that Aaron had authority to fire Margaret or to discipline her for unsatisfactory work performance. It is true that Family Care Program could also refuse to fund any potential employee not deemed appropriate or who failed to demonstrate the skills needed to care for Aaron. And we acknowledge that the Family Care Program could also cease funding for Margaret's services if the Family Care Program believed that Aaron's needs were not being satisfactorily met or if the Family Care Program determined that Aaron no longer needed Margaret's services. Still, the fact remains that Aaron, through his guardian, had the unilateral right to fire Margaret.

¶39 In sum, there were facts adduced at the hearing that support a conclusion that Aaron had the right to control details of Margaret's work, and there were also facts adduced at the hearing that support a conclusion that the Family Care Program had the right to control the details of Margaret's work. However, considering each of the four subfactors together, we cannot say that it is more reasonable to conclude that the Family Care Program was Margaret's employer. Although the Family Care Program established Margaret's pay range, the number of hours Margaret could work, and had authority to effectively end her employment, Aaron was responsible for setting Margaret's specific pay rate, setting her hours, supervising her work on a regular basis, and approving her time sheets. Both the Family Care Program and Aaron performed functions of an employer. However, the functions performed by the Family Care Program were

not so substantial in comparison to the functions performed by Aaron that we are persuaded that LIRC's conclusion that Aaron was Margaret's employer is not the most reasonable among the alternatives.

¶40 Accordingly, we conclude that it was not more reasonable to conclude that the Family Care Program, and not Aaron, was Margaret's employer.

2. Nature of Margaret's Services

¶41 Margaret also challenges LIRC's determination that the services she was paid to perform for Aaron between March 2010 and October 2011 were "personal care and companionship" and, therefore, under WIS. STAT. § 108.02(15)(km), she is ineligible for unemployment benefits.

¶42 The term "personal care" is not defined in WIS. STAT. ch. 102.08. However the term is defined in WIS. STAT. ch. 50[4] as "assistance with the activities of daily living, such as eating, dressing, bathing and ambulation, but does not include nursing care." WIS. STAT. § 50.01(4o) (2013-14).

¶43 Margaret does not dispute that she was paid to provide Aaron with "personal care and companionship" services. She argues, however, that she was also paid to provide services to Aaron that went beyond "personal care and companionship" and that she is therefore not ineligible under § 108.02(15)(km) for unemployment benefits. Margaret points to the following acts performed by her for Aaron, which she asserts demonstrate that the services she was paid to provide Aaron went beyond "personal care and companionship," that is to say, the services

[4] WISCONSIN STAT. ch. 50 empowers the Department of Health and Family Services to license and regulate the State's nursing homes. *See* WIS. STAT. § 50.02 (2013-14).

went beyond assisting Aaron with his daily living: (1) she "secured, administered, and monitored Aaron's 13 medications and coordinated his care with 8 physicians"; (2) she gave Aaron suppositories; (3) she "managed" Aaron's numerous seizures; and (4) she performed physical therapy exercises on Aaron at home as directed by Aaron's physical therapist. [5]

¶44 LIRC does not dispute that Margaret performed any of the above services for Aaron. LIRC argues, however, that it is not reasonable to conclude that Margaret was being paid for any services beyond "personal care and companionship." LIRC asserts that the Family Care Program, through which Aaron received money to pay for Margaret's services, makes a distinction between services that could be classified as "personal care and companionship" and medical care services. LIRC argues that pursuant to Family Care Program guidelines, medical care must be provided by licensed medical providers and that any family members who provide care beyond "personal care and companionship" but are not licensed or certified medical providers, are not eligible for payment for those services through the program. Dr. Williams, testified:

> The supportive home care and personal care preferred caregiver policies strictly prohibits us to pay for skilled care activities. That said, family members of enrolled members will often provide such cares unpaid, if they choose to…. But we would not pay the spouse or the family caregiver to administer a medication because that

[5] Margaret also points to an incident in 2006 in which she claims she prevented a nurse from administering medication that would have been fatal to Aaron, an incident in 1999 or 2000 when she insisted that Aaron needed to be taken to the emergency room and undergo emergency surgery after he pulled out his PICC line, and an incident that occurred sometime before 2008 when she stopped a doctor from conducting a spinal tap on Aaron that she asserts would have been fatal to Aaron. These acts by Margaret all occurred well in advance of the time period at issue here, which is March 2010 - October 2011, and are therefore not indicative of the type of services Margaret provided Aaron during that time period.

> would be considered a skilled care act…. We can pay for it if it's provided by somebody with a licensed certification.

¶45 Margaret acknowledges that she does not have a medical license or certification, but asserts that her lack of licensure or certification does not mean that the services for which she was being paid did not include any of the medical care acts identified in ¶43. However, Margaret does not cite this court to any authority in support of her argument, nor does she present this court with any argument on why it is more reasonable to conclude that she was being paid for those services than it is to conclude that she was not being paid for performing those services in light of the Family Care Program's requirement that medical care services must be performed by an individual who holds a medical license or certification in order to be eligible for compensation for those services.

¶46 We further observe that the types of activities Margaret points to are tasks that untrained persons routinely perform for family members who are incapacitated in some manner. For example, a medical professional must prescribe medications, but untrained family members routinely make sure that the medications are taken in the proper amounts and at the appropriate times. The other tasks Margaret points to follow the same pattern.

¶47 Margaret next argues that it is more reasonable to conclude that she was paid for more than providing "personal care and companionship" because she advertised for, interviewed, hired, and trained the staff who worked with Aaron in her home. However, at the January 9, 2014 hearing before the ALJ, Margaret acknowledged that Aaron's guardian, not her, had the actual legal authority and responsibility for interviewing, hiring and ensuring that all care givers were properly trained.

¶48 Margaret next argues that it is more reasonable to conclude that she was paid for providing more than "personal care and companionship" because Aaron "require[d] two staff at all times." Margaret's argument in this regard is difficult to understand. As best we can tell, Margaret argues that because of Aaron's severe disabilities and his violent tendencies, she must have been paid for providing more than "personal care and companionship," otherwise only one care provider at a time would have been necessary. We are not persuaded. It is equally plausible that one care provider provided care and companionship services while the other care provider provided medical care services. And, in any event, we have explained that Margaret fails to persuade us that she provided medical care services.

¶49 Finally, Margaret argues that it is more reasonable to conclude that she provided Aaron with more than "personal care and companionship" services because a registered nurse determined that Aaron required seven and one-half hours of personal care, but Margaret was paid for providing twenty-four hours of care per day. However, Margaret does not direct this court to any evidence that she was paid to provide anything other than "personal care and companionship" services.

¶50 In summary, we conclude that Margaret has not persuaded this court that a conclusion that Margaret was paid to provide more than "personal care and companionship" services is more reasonable than LIRC's conclusion that she was not. The crux of the matter is that, no matter what services Margaret actually provided, she only could have been paid for, and thus only was paid for, personal care and companionship, since the only other category of paid care under the program required a professional license that she did not possess.

CONCLUSION

¶51 For the reasons discussed above, we conclude that it is not more reasonable to conclude that Margaret's employer was the Family Care Program, not Aaron, or that the services for which Margaret received compensation were more than "personal care and compensation." Accordingly, we affirm LIRC's decision.

By the Court.—Order affirmed.

This opinion will not be published. *See* WIS. STAT. RULE 809.23(1)(b)5.