



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

██████████
██████████
██████████

DECISION

FCP/172738

PRELIMINARY RECITALS

Pursuant to a petition filed March 09, 2016, under Wis. Admin. Code § DHS 10.55, to review a decision by the Community Care Inc. in regard to Medical Assistance (MA), a hearing was held on May 10, 2016, at ██████████ Wisconsin.

The issue for determination is whether the Family Care Program (FCP) correctly denied the petitioner's request for transportation to a ██████████ in ██████████ six days per week.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

██████████
██████████
██████████

Respondent:

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

By: ██████████
Community Care Inc.
205 Bishops Way
Brookfield, WI 53005

ADMINISTRATIVE LAW JUDGE:

Corinne Balter
Division of Hearings and Appeals

FINDINGS OF FACT

1. The petitioner is a resident of Outagamie County. He receives services through the Family Care Program (FCP).
2. The petitioner has a history of opiate addiction.

3. Most recently he was receiving [REDACTED] through a [REDACTED] in [REDACTED] Wisconsin. In September 2016 the Family Care team was informed that the petitioner refused to stop taking Valium. The petitioner maintains that he is also prescribed Valium. Due to the petitioner's refusal to stop taking Valium, the [REDACTED] administratively discharged the petitioner from their program. He was titrated off [REDACTED]. The FCP had provided transportation to this clinic.
4. In November 2016 the petitioner resided at the [REDACTED]. In that month staff called police because of the smell of marijuana in the petitioner's room. The facility did not allow alcohol. The staff also caught the petitioner with alcohol in his room.
5. The petitioner continued to reside at the [REDACTED]. On January 16, 2016 staff found the petitioner unconscious in his room. The petitioner had overdosed on opiates, and had to be Narcaned back to life.
6. On January 19, 2016 the petitioner requested rides to the [REDACTED]. The FCP requested the petitioner's doctor's order for [REDACTED]. The petitioner provided a consultation report from the [REDACTED] that stated the petitioner had reported to the clinic that he had not used any addictive substances recently. His near death overdose occurred four days prior. The petitioner did not disclose this overdose to the [REDACTED]. The FCP denied the petitioner's transportation request.
7. The petitioner returned home in February 2016. The FCP set up supportive home care for the petitioner. Supportive Home Care staff reported that the petitioner was using alcohol and marijuana.
8. On February 25, 2016 the petitioner again requested transportation to the [REDACTED]. The FCP again denied this request.
9. On February 25, 2016 the agency sent the petitioner written notice that they had denied his request for transportation to the [REDACTED].
10. On February 26, 2016 the Supportive Home Care agency refused to provide services to the petitioner because one of their staff members had witnesses the petitioner participate in a drug transaction. The FCP has been unable to find a supportive home care agency willing to provide services to the petitioner. The petitioner again asked for transportation to the [REDACTED], which the FCP again denied.
11. On February 27, 2016 the petitioner was found in his home unconscious. He was Narcaned back to life, and hospitalized until February 20, 2016 when he returned home.
12. On March 11, 2016 the Division of Hearings and Appeals received the petitioner's Request for Fair Hearing.

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 under Wisconsin Statutes, § 46.286, and is described comprehensively in the Wisconsin Administrative Code, Chapter DHS 10. See also, *Medicaid Eligibility Handbook* at §29.1 *et seq.*, available at <http://www.emhandbooks.wi.gov/meh-ebd/>. Whenever the local Family Care program decides to deny, reduce, or terminate a service, the client is allowed to file a fair hearing request. The petitioner did so here.

In this case, the petitioner requested transportation services to the [REDACTED] six days a week. The petitioner lives in [REDACTED] Wisconsin, not [REDACTED]. He is unable to attend the [REDACTED] [REDACTED] because he refused to comply with the program resulting in his administrative

termination from that Methadone program. The petitioner has a long history of opium substance abuse. He refuses to try any other treatment alternative because he believes methadone is the only treatment option that works for him.

Since being terminated from the [REDACTED] the petitioner has had two opium overdose episodes requiring the administration of Narcan. He was also caught and cited for using marijuana while staying in a rehab facility. The FCP is unable to find any supportive home care for the petitioner because of his drug use. There was an episode of a home care worker smelling marijuana and another episode of a home care worker witnesses a drug transaction between the petitioner, and presumably his dealer. The petitioner was less than honest with the [REDACTED] when he reported that he had not used drugs having had a near death overdose episode four days prior. The petitioner's drive is to find and use any type of drugs and alcohol available to him. He does not care about lying to obtain drugs nor if his drug use negatively impacts his health, safety, and well-being.

Family Care had been providing transportation to the [REDACTED] until the petitioner was terminated from that program. The petitioner now seeks transportation to a [REDACTED] much further from his house because the [REDACTED] will no longer provide him [REDACTED]. The petitioner denied any illegal drug use after being titrated from [REDACTED]. In this case the FCP denial of the petitioner's transportation request was reasonable given the petitioner's history.

CONCLUSIONS OF LAW

The Family Care Program (FCP) correctly denied the petitioner's request for transportation to a [REDACTED] in [REDACTED] six days per week.

THEREFORE, it is

ORDERED

That the petition 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, 5005 University Avenue, Suite 201, 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, Madison, Wisconsin 53703, **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 Milwaukee,
Wisconsin, this 2nd day of June, 2016

\sCorinne Balter
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 June 2, 2016.

Community Care Inc.
Office of Family Care Expansion
Health Care Access and Accountability