



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

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

DECISION

FCP/172806

PRELIMINARY RECITALS

Pursuant to a petition filed March 15, 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 April 20, 2016, at Milwaukee, Wisconsin.

The issue for determination is whether Community Care, Inc. (Community Care) correctly reduced the number of hours the Petitioner receives Adult Day Services from Milwaukee Center for Independence.

The record was held open until the end of the day to give Community Care an opportunity to submit the Petitioner's member centered plan and the contract entered into with Petitioner's AFH. The member centered plan has been marked as Exhibit 7 and entered into the record. The agency submitted Appendix F of a contract, but the parties to the contract are not identified, nor is there a signature page showing agreement to the terms of the contract, nor is there a contract term stated in the exhibit. This copy of Appendix F has been marked as Exhibit 8 and entered into the record.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED] |
[REDACTED]
[REDACTED]
[REDACTED]

Respondent:

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

By: [REDACTED] Family Care Manager
Community Care Inc.
205 Bishops Way
Brookfield, WI 53005

ADMINISTRATIVE LAW JUDGE:

Mayumi M. Ishii

Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner is a resident of Milwaukee County.
2. On January 15, 2016, the Petitioner moved into an Adult Family Home (AFH) from an “all-inclusive group home”. (Exhibit 2)
3. On January 19, 2016, Community Care sent the Petitioner a notice that her adult day program services would be reduced from 5 days per week to 3 days per week, effective February 3, 2016. (Exhibit 3)
4. On an unspecified date, Petitioner’s guardian filed a grievance. On March 1, 2016, the Petitioner’s guardian met with Community Care’s grievance and appeal committee and a decision was made to uphold the reduction in adult day services, effective March 16, 2016. (Exhibit 2)
5. The record contains no documentation showing that Petitioner was given written notice of the grievance and appeal committee’s decision and advised of her appeal rights.
6. The Petitioner’s guardian, on behalf of the Petitioner, filed a request for fair hearing that was received by the Division of Hearings and Appeals on March 15, 2016. (Exhibit 1)
7. Petitioner is diagnosed with mild mental retardation, dysphagia and downs syndrome. (Exhibit 7)
8. Petitioner enjoys socializing, enjoys functional activities during the day, enjoys being out in the community, and has friends that she has made at MCFI after being in the program for 30 years. (Testimony of Petitioner’s guardian; Exhibits 4 and 7)

DISCUSSION

The Family Care Program is a subprogram of Wisconsin’s Medical Assistance (MA) program and is intended to allow families to arrange for long-term community-based health care and support services for older or impaired family members without resort to institutionalization, *Wis. Stats.* §46.286; *Wis. Admin. Code* §DHS 10.11. The Family Care Long Term Care program (FCP) is a long-term care benefit for the elderly, people with physical disabilities and those with developmental disabilities. *Medicaid Eligibility Handbook (MEH)*, §29.1.

An individual, who meets the functional and financial requirements for Family Care, participates in Family Care by enrolling with a Care Management Organization (CMO), which, in turn, works with the participant and his/her family to develop an individualized plan of care. *See Wis. Stats.* §46.286(1) and *Wis. Admin. Code* §DHS 10.41. The CMO, in this case Community Care, implements the plan by contracting with one or more service providers.

Wis. Admin. Code DHS 10.41(2) states that:

Services provided under the family care benefit shall be determined through individual assessment of enrollee needs and values and detailed in an individual service plan unique to each enrollee. As appropriate to its target population and as specified in the department's contract, each CMO shall have available at least the services and support items covered under the home and community-based waivers under 42 USC 1396n (c) and ss. 46.275, 46.277 and 46.278, Stats., the long-term support community options program under s. 46.27, Stats., and specified services and support items under the state's plan for medical assistance. In addition, a CMO may provide other services that substitute for or augment the specified services if these services are cost-effective and

meet the needs of enrollees as identified through the individual assessment and service plan.

Emphasis added

Wis. Admin Code DHS 10.44(2)(f) states that the CMO, in partnership with the enrollee, shall develop an individual service plan for each enrollee that meets all of the following conditions:

1. Reasonably and effectively addresses all of the long-term care needs and utilizes all enrollee strengths and informal supports identified in the comprehensive assessment under par. (e) 1.
2. Reasonably and effectively addresses all of the enrollee's long-term care outcomes identified in the comprehensive assessment under par. (e)(2) and assists the enrollee to be as self-reliant and autonomous as possible and desired by the enrollee.
3. Is cost-effective compared to alternative services or supports that could meet the same needs and achieve similar outcomes. ...

In the case at hand, one of Petitioner's desired outcomes is to "engage in leisure activities that are enjoyable". To meet that outcome, the Petitioner participates in the Adult Day Program at Milwaukee Center for Independence (MCFI). Petitioner attends five days per week, but Community Care wants to eliminate the service, beginning with a reduction of services to three days per week.

It is a well-established principle that a moving party generally has the burden of proof, especially in administrative proceedings. State v. Hanson, 295 N.W.2d 209, 98 Wis. 2d 80 (Wis. App. 1980). In a case involving the reduction of services, the agency has the initial burden to prove it correctly reduced the services.

Community Care argues that the MCFI Day program constitutes a duplication of services, because the new AFH that the Petitioner moved into provides the same or comparable day services as the MCFI Day program.

Petitioner's guardian testified that the services provided by AFH are not comparable because he has not seen the residents engage in any meaningful activities when he has visited with the Petitioner and because the AFH does not give her the opportunity to socialize with the friends she has made at MCFI. Petitioner's guardian testified that it is difficult for Petitioner to socialize with the other residents of the AFH because she is higher functioning than they are.

In order to prove its case Community Care must show:

- 1) What services the AFH provides
- 2) That the Petitioner is actually receiving those services
- 3) What services / activities the MCFI Day program provides

Community Care's case fails on the first prong of the analysis, because the only evidence of what activities the AFH provides is a handwritten letter from a person whose signature is illegible and whose full name could not be identified by Community Care's representative. (Exhibit 6) The letter was not even written on the letter head of the agency running the AFH. That is not reliable evidence.

Even if I could accept the letter as reliable, it is not sufficient to show that the Petitioner is receiving comparable services. First, it is unclear what is happening during the stated activity. For example, Mondays are designated as "spa day". Does that mean the residents get to go out into the community to get facials, manicures, or massages; or are they still at the AFH with a PCW painting their nails, and how long does this activity actually last? It is doubtful it takes the entire day. Second, the calendar of events in the letter shows "game night" as the only thing done on Tuesdays and "movie night" as the only thing

done on Fridays. There is nothing listed for day time activities on those days. Finally, there is only one activity listed on each day. One activity does not necessarily equate to the full day of activities provided by an adult day program.

Community Care's case also fails on the second prong of the analysis. Petitioner's guardian testified that he was unaware of the Petitioner being offered leisure activities during the times that she is at the AFH. Petitioner's guardian testified that when has been at the AFH there isn't much happening, beyond watching television. Petitioner's guardian also testified that the Petitioner is higher functioning than the other residents and as such, her interactions with them are minimal. Community Care provided no evidence to prove the Petitioner was being offered and/or provided comparable services by her AFH.

Community Care argued that the AFH is obligated under contract to provide day services, but it did not provide the necessary contract information to prove this. All it submitted was appendix F. There was nothing to show that the AFH in which the Petitioner resides entered into and signed the contract. Further, even if Petitioner's AFH was contractually obligated to provide services, this does not necessarily mean it was actually providing the services. None of Community Care's witnesses testified to actually going to the AFH and witnessing the residents engaging in meaningful day time activities.

I note that Community Care also failed to provide any reliable documentation showing the services provided by Independence First. Without that information for comparison, there is no way to know whether the services provided by the AFH are comparable.

Community Care has not met its burden to prove that it correctly reduced the number of days on which the Petitioner receives adult day services from Milwaukee Center for Independence.

CONCLUSIONS OF LAW

Community Care did not correctly reduce the Adult Day Services received by Petitioner at MCFI.

THEREFORE, it is

ORDERED

That Community Care reinstate the Petitioner's Adult Day Services from MCFI to five days per week. Community Care shall take all administrative steps necessary to complete this task 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, 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 23rd day of May, 2016

\sMayumi M. Ishii
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 23, 2016.

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