



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

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION
Case #: FCP - 173280

PRELIMINARY RECITALS

Pursuant to a petition filed on March 31, 2016, under Wis. Admin. Code § DHS 10.55, to review a decision by the Care Wisconsin First, Inc. regarding Medical Assistance, a hearing was held on July 14, 2016, by telephone. Hearings scheduled for May 4, 2016 and June 14, 2016, were rescheduled at petitioner's request.

The issue for determination is whether the respondent correctly denied petitioner's request for a remote buzzer entry system.

There appeared at that time the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED] |
[REDACTED] |
[REDACTED]

Respondent:

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

By: [REDACTED]
Care Wisconsin First, Inc.
PO Box 14017
Madison, WI 53708-0017

ADMINISTRATIVE LAW JUDGE:

Peter McCombs
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner is a resident of Dane County.

2. On February 17, 2016, petitioner requested a shower slide bar and a remote door buzzer to allow access to her rental unit.
3. On February 18, 2016, the respondent denied the requested door buzzer, indicating that a key lock box would address her needs safely and effectively. On that same date, the respondent denied the shower slide bar because petitioner has a caregiver who can assist with showering.
4. Petitioner does not have a wheelchair, but testified that she only has use on one ankle and does not ambulate. Petitioner was the victim of a past sexual assault.
5. Petitioner appealed the denials on March 31, 2016.

DISCUSSION

The Family Care Program (FCP), 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 in the Wisconsin Statutes, §46.286, and is described comprehensively in the Wisconsin Administrative Code, Chapter DHS 10.

In the FCP, the CMO must develop an Individual Service Plan (ISP) in partnership with the client. Wis. Adm. Code, §DHS 10.44(2)(f). The ISP must reasonably and effectively address all of the client's long-term needs and outcomes to assist the client to be as self-reliant and autonomous as possible, but nevertheless must be cost effective. While the client has input, the CMO does not have to provide all services the client desires if there are less expensive alternatives to achieve the same results. Wis. Adm. Code, §DHS 10.44(1)(f); see also DHS booklet, Being a Full Partner in Family Care, page 9. ISPs must be reviewed periodically. Wis. Adm. Code, §DHS 10.44(j)(5).

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 or proceed to a fair hearing. Petitioner opted to pursue the instant fair hearing process.

With regard to the requested shower slide door, petitioner addressed this issue in her request for services, which was denied by the respondent. The respondent determined that petitioner now has a caregiver, who is charged with assisting her with showering. The petitioner did not specifically address this issue in testimony at hearing, and it appears that the caregiver assistance has negated the need for a shower slide bar. As such, the respondent's denial of this request is affirmed.

As to the door buzzer, the respondent reported that caregivers already have keys to petitioner's apartment. Furthermore, the respondent indicates that the petitioner is not bed-bound, and a door lock box would provide safe and effective access to her home. The petitioner argues that, as a victim of a previous sexual assault, and in light of her physical issues pertaining to ambulation, a lock box is simply not feasible. Her physician wrote:

...[Petitioner's] caregivers provided a video to demonstrate the current situation with her door buzzer, which is nowhere near a place that [petitioner] can safely reach it...and due to the plush carpeting in her home, she is unable to access this in her transport chair. As it is now, [petitioner] can only have people buzzed into her apartment when a caregiver who has an entry fob and key to her apartment is present, which is only for 2-3 hours per day. The people that [petitioner] has had to buzz into her apartment include people for mail and package deliveries, drug delivery, home health services, transportation services, safety assessment, food delivery, EMS services..., and ...social visits from friends. However, due to the nature of these problems accessing her door buzzer, she has had to cancel or

reschedule extremely important visits, had appointments have to wait in the cold if they arrive before her caregivers, missed deliveries and had to waste her home support hours on package pickup, which is not consistent with her caregiving plan.

She also established that her landlord has indicated that he will not allow a lock box. See, Exhibit 3. Based upon the testimony and documentation provided, I find that the respondent incorrectly denied petitioner's request for a door buzzer.

CONCLUSIONS OF LAW

1. The respondent has established that it correctly denied petitioner's request for a shower slide bar, as she has caregivers who are assigned the task of assisting petitioner with showering.
2. The petitioner has established the need for a door buzzer.

THEREFORE, it is

ORDERED

That this matter is remanded to the respondent to rescind its denial of petitioner's request for a door buzzer, and approve the request for a door buzzer. The door buzzer approval shall be completed within 10 days following issuance of this decision. In all other respects, petitioner's appeal is hereby 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, **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 25th day of August, 2016

\s _____
Peter McCombs
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin \DIVISION OF HEARINGS AND APPEALS

Brian Hayes, Administrator
Suite 201
5005 University Avenue
Madison, WI 53705-5400

Telephone: (608) 266-3096
FAX: (608) 264-9885
email: DHAmail@wisconsin.gov
Internet: <http://dha.state.wi.us>

The preceding decision was sent to the following parties on August 25, 2016.

Care Wisconsin First, Inc
Office of Family Care Expansion
Health Care Access and Accountability