FH

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[redacted]

DECISION

FCP/141484

PRELIMINARY RECITALS

Pursuant to a petition filed June 8, 2012, under Wis. Admin. Code § DHS 10.55, to review a decision by the Community Care Inc. in regard to Medical Assistance, a hearing was held on September 4, 2012, at Port Washington, Wisconsin.

The issue for determination is whether the agency properly terminated petitioner's recreational services at Portal, Inc.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:
Petitioner:

[redacted]

Appearing for petitioner:

[redacted]

Respondent:

Department of Health Services
1 West Wilson Street, Room 651
Madison, Wisconsin 53703
By: No appearance
Community Care Inc.

ADMINISTRATIVE LAW JUDGE:
Michael A. Greene
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner is a resident of Ozaukee County.

2. Petitioner is a 28-year old female who is diagnosed with Down Syndrome. She is a Family Care participant and resides at an adult family home (AFH).

3. According to petitioner's most recent plan, one of her outcomes is to "continue to expand her socialization skills by exploring new social opportunities ." Until June 1, 2012, her socialization and community integration activities consisted of recreational activities with Portal, Inc. four times per month along with 18 hours of supported employment per month, also at Portal, Inc. She has participated in the Portal recreational program for four years; the program has approximately 110 potential participants and offers over 20 different activities available per month.

4. Petitioner's AFH also offers about five recreational activities per month to the 14 residents there.

5. Petitioner and her parents met with the family care agency in spring 2012 to discuss her service plan and outcomes. Following that meeting the agency issued a notice of action on May 10, 2012 in which it advised petitioner that her paid recreational services through Portal, Inc. would be terminating as of June 1, 2012. The reasons given for the termination were that petitioner did not need the service to support her outcome, that the outcome was already being supported in another way and that the service was not the most cost- efficient way to meet petitioner's outcome.

DISCUSSION

The Family Care Program (FCP), 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. *Medicaid Eligibility Handbook (MEH)*, §29.1. It is authorized under Wisconsin Statutes, §46.286, and is described comprehensively in the Wisconsin Administrative Code at Chapter DHS 10. The program is operated and administered in each county by a Care Management Organization (CMO), which in this case is Community Care, Inc. Though Family Care enrollees are full partners in the assessment of needs and strengths and in the development of care plans those plans are subject to the general requirements and limitations outlined for the program, including the requirement that a service be cost-effective compared to alternative services or supports that could meet the same needs and achieve similar outcomes, Wis. Admin. Code §§DHS 10.44(2)(e) & (f). Medical assistance and its subprograms are meant to provide only basic and necessary health care.

In the FCP, a case management organization (CMO) must develop an Individual Service Plan (ISP) in partnership with the member. Wis. Adm. Code, §DHS 10.44(2)(f). The ISP must reasonably and effectively address all of the member's long -term needs and outcomes to assist the member to be as self-reliant and autonomous as possible, but nevertheless must be cost effective. While the member has input, the CMO does not have to provide all services the member desires if there are less expensive alternatives

> DHS 10.44 Standards for performance by CMOs.
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> …
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> (2) CASE MANAGEMENT STANDARDS. The CMO shall provide case management services that meet all of the following standards:
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> …
>
> (f) The CMO, in partnership with the enrollee, shall develop an individual service plan for each enrollee, with the full participation of the enrollee and any family members or other representatives that the enrollee wishes to participate . . . The service plan shall meet 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. …

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.

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 this case, Community Care, as the CMO, would be the moving party, because it wishes to change the status quo, by terminating Petitioner's recreational activity program at Portal, Inc. Thus, Community Care had the burden to prove that its actions were correct. As there was no appearance by Community Care, there is nothing on this record that justifies its conclusions that petitioner did not require the level of services provided by Portal, Inc. and that petitioner's outcomes were being met by other, more cost -effective sources.

More to the point, in DHA Case No. FCP/140871 (July 10, 2012), Administrative Law Judge Debra Bursinger considered a very similar situation involving the same recreational services provider. There, as here, Portal, Inc. provided a much more extensive and varied schedule of events than the facility in which the petitioner was residing. In this case, petitioner's AFH provided from four to six activities a month and petitioner's parents testified that activities are not infrequently canceled or cut short to accommodate one of more participants. Portal, Inc. lists 18-21 activities per month for July and August 2012. Activities scheduled at the AFH are available to a pool of 14 residents; Portal, Inc. has some 110 participants thereby providing petitioner with greater opportunities for socialization and community integration. I agree with ALJ Bursinger who wrote, "I do not find there is evidence that engaging in the same type of activities with the same few people month after month is equivalent to the variety of activities and large number of participants offered by the Portal program. Also, the types of activities offered by Portal are more community-oriented and provide the Petitioner with greater access to the community." DHA Case No. FCP/140871 at 5.

Based on the evidence of record, the agency has not met its burden of demonstrating that the petitioner's outcome of increased socialization is being met by the activities scheduled by the AFH and that terminating petitioner's participation in Portal, Inc. would not further that goal.

CONCLUSIONS OF LAW

The AFH's activities do not meet her outcome of increased socialization. The agency has not met its burden of proving that it properly terminated petitioner from participation in the Portal, Inc. program which provides the petitioner with access to a variety of socialization activities.

THEREFORE, it is **ORDERED**

That the matter by remanded to the Family Care Program and the CMO with instructions to reinstate petitioner's participation in the Portal, Inc. recreational program retroactive to June 1, 2012. This action shall be taken within ten (10) days of the date of this decision.

REQUEST FOR A REHEARING

This is a final administrative decision. If you think this decision is based on a serious mistake in the facts or the law, you may request a rehearing. You may also ask for a rehearing if you have found new evidence which would change the decision. Your request must explain what mistake the Administrative Law Judge 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.

To ask for a rehearing, 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 for a rehearing must be received no later than 20 days after the date of the decision. Late requests cannot be granted.

The process for asking for a rehearing is in Wis. Stat. § 227.49. A copy of the statutes can be 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 with the appropriate court no more than 30 days after the date of this hearing decision (or 30 days after a denial of rehearing, if you ask for one).

For purposes of appeal to circuit court, the Respondent in this matter is the Department of Health Services. After filing the appeal with the appropriate court, it must be served on the Secretary of that Department, either personally or by certified mail. The address of the Department is: 1 West Wilson Street, Room 651, Madison, Wisconsin 53703. A copy should also be sent to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400.

The appeal must also be served on the other "PARTIES IN INTEREST" named in this decision. The process for appeals to the Circuit Court is in Wis. Stat. §§ 227.52 and 227.53.

Given under my hand at the City of Milwaukee,
Wisconsin, this 4th day of October, 2012

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Michael A. Greene
Administrative Law Judge
Division of Hearings and Appeals

c: Community Care Inc. - email
Department of Health Services - email

State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

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The preceding decision was sent to the following parties on October 4, 2012.

Community Care Inc.
Office of Family Care Expansion