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

In the Matter of

[REDACTED]

DECISION

FCP/142240

PRELIMINARY RECITALS

Pursuant to a petition filed July 10, 2012, under Wis. Admin. Code § DHS 10.55, to review a decision by the Community Care Inc. in regard to Medical Assistance provided under the Family Care program, a hearing was held on September 4, 2012, at Sheboygan, Wisconsin.

The issue for determination is whether the agency properly denied petitioner's request for repairs to his POV (motorized conveyance).

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]

Also for petitioner:

[REDACTED]

Also appearing:

Patsy O'Kelly, Care Supervisor

Jennifer Machliz, Manager

Respondent:

Department of Health Services

1 West Wilson Street, Room 651

Madison, Wisconsin 53703

By: Tamara Sesing, Care Manager Yang Vang, RN
Community Care Inc.

ADMINISTRATIVE LAW JUDGE:

Michael A. Greene

Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner is a resident of Sheboygan County.
2. Petitioner is a 23-year old male who is diagnosed with cerebral palsy and other impairments. Petitioner is non-ambulatory and uses both a manual wheelchair and a POV for mobility.
3. On May 7, 2012, petitioner requested repairs to the fender and to right-hand motor of the POV, noting that the brake did not work properly and that this posed a safety issue, particularly when petitioner was being transferred into the van for transport to his day program.
4. Petitioner’s request was denied on May 30, 2012. Reasons for the denial were that the repair would not be an effective way of supporting petitioner’s outcome regarding greater independence; that the service was not needed and that petitioner’s outcome was already being supported in another way; that the service was not considered to be a safe way to support petitioner’s outcome and that the repair would not be the most cost-effective way to support petitioner’s outcome.

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. *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. DHS §§10.44(2)(e) & (f), Wis. Adm. Code. 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 to achieve the same results.

DHS 10.44 Standards for performance by CMOs.

...

(2) CASE MANAGEMENT STANDARDS. The CMO shall provide case management services that meet all of the following standards:

...

(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 the agency 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, the agency's primary concern was petitioner's ability to properly drive and control the POV. The agency noted,

[Petitioner] has physical aggressions such as: scratching, grabbing and biting. [Petitioner's] physical aggression occurs multiple times per day. His injurious behavior toward others such as scratching and biting has decreased to approximately weekly...His physical aggressions have caused severe injuries to staff. On one occasion [petitioner] became upset, grabbed out for staff and scratched the caregiver's eyeball causing injury. He has also broken the skin when scratching others.

Resource Allocation Decision Method at 1. With specific reference to the POV,

While driving his POV, [petitioner] would grab other's belongings and may destroy them. He is likely to pick up items and drop them on the floor.

There are safety concerns while driving the POV, he may drive into walls or too close to others. He has run over people's toes. [He] may refuse to drive his chair when prompted to join an activity or move to a new location. It can be difficult for [him] to maneuver through crowds of people. He does not consistently recognize safety hazards such as stairs or steep areas that could cause significant injury.

Id. The agency noted that within a six-week period in the spring of 2012, there were 17 incidents when petitioner's chair was "powered down or driven for him based on unsafe/aggressive behaviors." These included stopping in the middle of road and driving into people or objects, *id.* at 1-2.

The agency also noted that petitioner had recently received a custom-fitted manual wheelchair, that the POV almost five years old and that there had been over \$9,000 in repairs and modifications made to the POV since its purchase for \$12,316.52, *id.* at 2.

An item is not medically necessary when it is not at the appropriate level that can be safely and effectively provided to the recipient, Wis. Admin. Code §DHS 101.3(96m)(b)9. The agency established that petitioner's use of a POV could not be established while assuring a reasonable level of safety for petitioner and for his caregivers. The cost effectiveness of a repair to a piece of equipment purchased when petitioner weighed less than 182 pounds at a time when petitioner weighs 244 pounds should also be seriously considered. The advantages of the motorized chair are minor considering that he is frequently removed from the chair to prevent skin breakdown and the fact that the evidence shows that he cannot operate it safely. I conclude that the agency has sustained its burden of proof in support of its decision to deny repairs to the POV.

CONCLUSIONS OF LAW

Where petitioner demonstrated an inability to operate the POV safely and the POV was already old and ill-suited to petitioner's current build, the agency properly denied petitioner's request to make repairs to the POV.

THEREFORE, it is

ORDERED

That the petition for review herein be and hereby is dismissed.

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 8th day of October, 2012

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

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



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

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The preceding decision was sent to the following parties on October 8, 2012.

Community Care Inc.
Office of Family Care Expansion