



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

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

FCP/142241

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, a hearing was held on September 04, 2012, at Sheboygan, Wisconsin.

The issue for determination is

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]

Appearing 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
Yeng 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. He lives at home with his parents and brother. Petitioner is non-ambulatory and uses both a manual

wheelchair and a POV for mobility. At home, transfers are accomplished with the assistance of a ceiling track lift system which transports petitioner from his bed to the bathroom or to his pool.

3. Petitioner attends a full-time day program five days per week from 9 AM until 2:30 PM. He receives supportive health care through the Family Care Program during his waking hours and is authorized for 360 hours of supportive health care per month.
4. On May 31, 2012, the agency advised petitioner that it would decrease the number of authorized supportive home care hours from 360 to 251 per month.

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 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, the CMO met with petitioner's guardian and reviewed his daily schedule along with the tasks required by supportive health care staff. The number of authorized hours was reduced to take into account the fact that petitioner's mother is generally responsible for petitioner during the overnight hours. The agency also took advantage of the fact that since petitioner lives with others, there are tasks, such as cleaning, which are routinely performed by family members for the benefit of the entire family and not just for petitioner. I see nothing unreasonable in the agency's action; while petitioner's parents assert that they are becoming older and will not be able to provide for petitioner's needs, this is an issue that can be dealt with in the future if and when it arises.

CONCLUSIONS OF LAW

The agency did not act improperly when it reduced petitioner's monthly supportive health care hours from 360 to 251 per month.

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