



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

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In the Matter of



DECISION

FCP/142318

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**PRELIMINARY RECITALS**

Pursuant to a petition filed July 13, 2012, under Wis. Admin. Code § DHS 10.55, to review a decision by the Community Care Inc. in regard to Medical Assistance/Family Care (FC), a hearing was held on September 25, 2012, at Sheboygan, Wisconsin.

The issue for determination is whether the agency properly reduced Petitioner's SHC hours from 29.9 hours/week to 3.7 hours/week effective July 18, 2012.

There appeared at that time and place the following persons:

**PARTIES IN INTEREST:**

Petitioner:



Respondent:

Department of Health Services

1 West Wilson Street

Madison, Wisconsin 53703

By: Brian Schildbach

Community Care Inc.

615 S. 8<sup>th</sup> St., Ste 130

Sheboygan, WI 53081

**ADMINISTRATIVE LAW JUDGE:**

Debra Bursinger

Division of Hearings and Appeals

**FINDINGS OF FACT**

1. Petitioner is a resident of Sheboygan County.
2. Petitioner is a 69 year old male with diagnoses of: history of stomach cancer, diabetes type 2, dementia and peripheral neuropathy. He has a history of falls and experiences significant pain in

his shoulders, back legs and feet due to the peripheral neuropathy. Petitioner is ambulatory. He is unable to participate in meal preparation, shopping, laundry and housekeeping due to poor stamina. He lives with his wife who is his primary caregiver.

3. On December 9, 2011, an In-Home Assessment Tool (IHAT) was completed for the Petitioner. It is noted on the IHAT that Petitioner is able to dress/undress self on good days with Petitioner's wife assisting as needed. It is also noted that the Petitioner's wife assists the Petitioner with tub baths by helping with washing, water temperature adjustment and stand-by assistance. It indicates that Petitioner's wife assist with blood sugar monitoring 3x/day. The IHAT additionally indicates the Petitioner requires 24 hour supervision due to dementia and monitoring of overall health. It notes the family provides extensive to total assistance with all ADLs. As a result of the assessment, the Petitioner was approved for 12.0 hours/week of Supportive Home Care (SHC) for assistance with ADLs and 17.9 hours/week for Routine Homemaking.
4. On June 7, 2012, the interdisciplinary team (IDT) conducted a home visit. The Petitioner and his wife were present for the visit. The IDT reviewed the social work assessment, nursing assessment, in-home assessment tool, long term care functional screen, member centered plan and individualized service plan. There was discussion about the Petitioner's granddaughter who previously provided informal support to the Petitioner and his wife but is no longer able to provide support because she is now required to provide care to her ill father.
5. A Resource Allocation Decision (RAD) review was conducted at the Petitioner's home on July 3, 2012. An IHAT was used to determine the assistance needed by the Petitioner. The IHAT, dated July 2, 2012, indicates that the member is able to dress/undress self. It notes the Petitioner's wife adjusts water temperature for Petitioner's showering and also provides stand-by assistance if he needs help. The IHAT indicates the Petitioner's wife assists him with blood sugar monitoring daily. Based on the IHAT, the agency reduced the Petitioner's SHC hours for ADLs to 2.4 hours/week and for Routine Homemaking to 1.3 hours/week for a total of 3.7 hours/week.
6. Petitioner's Individual Service Plan dated July 1, 2012 indicates he has had the following needs for formal supports since June 1, 2008: Assistance with bathing 1x/week; laying out clothes daily; hair removal/grooming 1x/week; medication reminders 3x/week; blood sugar checks daily; transportation to medical appointments routine and as needed; cleaning bedroom and laundry 1x/week. The Petitioner's wife has assisted with these formal supports as well as other informal support for coordination of healthcare services, financial management, assistance with translating English, transportation for recreational activities. Other family members have provided informal support including socialization and other assistance to the Petitioner and his wife as they are able.
7. On August 9, 2012, another IHAT was completed. Based on the IHAT, the agency determined the Petitioner needs SHC hours for ADLs of 3.6 hours/week and Routine Homemaking of 1.4 hours/week for a total of 5.0 hours/week. Specifically, the agency added 1.3 hours/week for toileting and an additional linen change that had not been included in the July 2, 2012 IHAT.
8. On July 13, 2012, the Petitioner filed an appeal with the Division of Hearings and Appeals.

### **DISCUSSION**

The Family Care program, which is supervised by the Department of Health Services, is designed to provide appropriate long-term care services for elderly or disabled adults. Whenever the local Family Care program decides that a person is ineligible for the program, or when the CMO discontinues an ongoing service in the service plan, the client is allowed to file a fair hearing request. Because a service reduction is sought here, the Petitioner appropriately sought a fair hearing for a further, de novo review of the CMO decision. Wis. Admin. Code §DHS 10.55(1). It is the agency's burden to prove by a preponderance of the evidence that the reduction in services and hours is appropriate.

I conclude that the reduction of FC-paid SHC hours was not accurate or appropriate. The state code language on the scope of permissible services for the FC reads as follows:

DHS 10.41 Family care services. ...

(2) SERVICES. 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, Stat., the long-term support 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.

Note: The services that typically will be required to be available include adaptive aids; adult day care; assessment and case planning; case management; communication aids and interpreter services; counseling and therapeutic resources; daily living skills training; day services and treatment; home health services; home modification; home delivered and congregate meal services; nursing services; nursing home services, including care in an intermediate care facility for the mentally retarded or in an institution for mental diseases; personal care services; personal emergency response system services; prevocational services; protective payment and guardianship services; residential services in an RCAC, CBRF or AFH; respite care; durable medical equipment and specialized medical supplies; outpatient speech; physical and occupational therapy; supported employment; supportive home care; transportation services; mental health and alcohol or other drug abuse services; and community support program services.

Wis. Admin. Code §DHS 10.41(2).

Supportive home care is included in the list of covered services in the statutory note above. Having established that SHC hours can be a covered service, the issue is whether the agency has appropriately determined the SHC hours that are essential to meeting the P etitioner's needs.

The skeletal legal guidance that pertains to determining the type and quantity of daily care services that must be placed in an individualized service plan (ISP) is as follows:

HFS 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 10.44(2)(f).

In applying the code's service plan standards, I conclude that the results of the agency's July and August, 2012 SHC determinations are not justified. There was little evidence presented to demonstrate that there is a difference between the Petitioner's need for SHC in December, 2011 when he was awarded 29.9 hours weekly, and his need in July and August, 2012, when the agency reduced the hours to 3.7 and then to 5 hours weekly.

The most significant area of reduction of SHC hours for the Petitioner is with supervision. In December, 2011, the agency determined the Petitioner's condition required 90 minutes/day of supervision. In July and August, 2012, the agency eliminated SHC hours for supervision. At the hearing, the agency testified that the reason it reduced the time is due to the Petitioner not having a history of wandering or self-injury. I note that there was no testimony regarding the initial reason for allowing 90 minutes/day of supervision in December, 2011. The December, 2011 IHAT notes the Petitioner has dementia and a resulting need for 24 hour supervision. There was no testimony about what has changed in the Petitioner's condition between December, 2011 and July, 2012 regarding the dementia and need for 24 hour supervision. The agency did note in the Petitioner's ISP that the Petitioner mostly goes out for doctor appointments and that while he is around the house, he watches TV, sleeps or watches his dogs play. This is not sufficient to indicate whether there is a change in his need for 24 hour supervision. In addition, the Petitioner's representative presented evidence to demonstrate that the level of available informal support from family members has decreased. Further, with the agency's proposed reductions in assistance to perform ADLs and Routine Homemaking, the Petitioner's wife could be required to take on more tasks herself and leave less time to provide supervision to the Petitioner. Based on the evidence, I cannot conclude that the agency has met its burden of proving that there has been a change in the Petitioner's condition to warrant a reduction in supervision time.

Other changes were made by the agency, including the following that were disputed by the Petitioner:

- Bathing: the agency reduced assistance for bathing from 27 minutes 3x/week to 27 minutes 1x/week. The agency indicates this is based on the Petitioner's wife's statement that he takes 1 shower/week instead of 3 as he previously did. At the hearing the Petitioner's representative (his daughter) stated that the Petitioner bathes approximately 2x/week and showers 1x/week and the Petitioner's wife assists with adjusting water temperature, assists in getting the Petitioner in and out of the tub and provides stand-by assistance as needed. Based on the evidence, it is reasonable to allow 27 minutes 2x/week for assistance.
- Dressing/Undressing: the agency reduced assistance for dressing from 5 minutes 1x/day to 1 minute 1x/day based on statements from the Petitioner's wife that the Petitioner dresses himself. The Petitioner's daughter testified that the Petitioner can dress himself on occasion but that the Petitioner's wife normally must assist with dressing. Based on the evidence, it is reasonable to allow 5 minutes 1x/day for dressing/undressing.

- Clean dentures: the agency did not produce evidence regarding its reduction from 5 minutes 1x/day to 0. The Petitioner's daughter testified that the Petitioner is unable to clean his dentures and his wife must do it. Based on the evidence, it is reasonable to allow 5 minutes 1x/day for cleaning dentures.
- Toileting: the agency reduced time for toileting assistance from 8 minutes 4x/day to 5 minutes 2x/day. This was based on Petitioner's wife indicating that the Petitioner is able to get himself on and off the toilet. Originally, the agency had eliminated all time related to toileting. Upon receipt of additional information that the Petitioner is occasionally incontinent and wears incontinent products, the agency changed the IHAT in August to add 5 minutes 2x/day to assist the Petitioner. At the hearing, the Petitioner's daughter testified that the Petitioner wears incontinent products daily but he is toileteted. She testified that, generally, he can get to the toilet himself but that he is occasionally incontinent. Based on the testimony, I conclude the agency's reduction in time is reasonable.
- Changing Incontinent Client: Based on the testimony that the Petitioner wears incontinent products daily and overnight and that he is occasionally incontinent, the agency's reduction in time from 10 minutes 1x/day to 0 is not reasonable and the time should be restored.
- Medication Reminder: Based on the evidence and testimony, the Petitioner's wife must check the Petitioner's blood sugar daily as well as give him his medications. The medications are bubble-packed. In December, 2011, the agency allowed 10 minutes 3x/day for medication reminders. In July and August, 2012, the agency reduced the time to 5 minutes 3x/day. Based on the testimony, I conclude the agency's reduction in time is reasonable.
- Meal Preparation and Clean Up: The agency testified that the Petitioner's wife prepares meals for herself and the Petitioner generally eats the same meal. This was confirmed by the Petitioner's daughter. The Petitioner's condition does require some specialized meal preparation for his diabetes. The agency reduced the time for meal preparation from 12 minutes 3x/day and for clean up from 5 minutes 3x/day to 0. Based on the evidence, it is reasonable to conclude that the Petitioner's wife is able to provide this informal support for the Petitioner in the course of her routine homemaking duties.

I note that there were other reductions by the agency in routine homemaking duties, including cleaning the bathroom and linen change but the Petitioner presented no specific dispute or evidence with regard to these reductions.

Based on the evidence and testimony, I conclude that the Petitioner's credible care needs require 18.1 hours/week of SHC.

### CONCLUSIONS OF LAW

The agency did not properly reduce the Petitioner's weekly SHC hours from 29.9 to 3.7. To meet care needs, the Petitioner demonstrated that he reasonably requires 18.1 hours/week of SHC.

**THEREFORE, it is**

**ORDERED**

That the matter be remanded to the agency with instructions to immediately enter 18.1 hours of weekly SHC time, into the Petitioner's service plan, effective July 18, 2012. The agency shall provide written notice to the Petitioner of the amended plan. This shall be completed within 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, 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 24th day of October, 2012

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Debra Bursinger  
Administrative Law Judge  
Division of Hearings and Appeals

c: Office of Family Care Expansion, DHS DHAOFCE@wisconsin.gov - DHS DHAOFCE@wisconsin.gov  
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The preceding decision was sent to the following parties on October 24, 2012.

Community Care Inc.  
Office of Family Care Expansion