



FH
[REDACTED]

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]

DECISION

FCP/142375

PRELIMINARY RECITALS

Pursuant to a petition filed July 13, 2012, under Wis. Admin. Code §DHS 10.55, to review a decision by the Milwaukee County Department of Family Care in regard to Medical Assistance (MA), a hearing was held on October 25, 2012, at Milwaukee, Wisconsin.

The issue for determination is whether the agency properly reduced petitioner's supportive home care (SHC) hours.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]

Respondent:

Department of Health Services
1 West Wilson Street
Madison, Wisconsin 53703

By: Bridget Sabesan, RN for FCP at Curative
Milwaukee County Dept. of Family Care
1220 W Vliet St
Milwaukee, WI 53205

ADMINISTRATIVE LAW JUDGE:

Kelly Cochrane
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Milwaukee County. Petitioner is a participant in the Family Care Program (FCP) and lives with her 9 year old daughter in a duplex, which is owned by her uncle who lives in the upper unit. Petitioner is diagnosed with mental retardation.

2. On May 23, 2012 the petitioner's Family Care Interdisciplinary Team (IDT) completed a six - month review of petitioner's case. At that review, a Case Manager (CM) and Registered Nurse (RN) interviewed petitioner's caregiver and assessed petitioner's needs.
3. Based upon the review, petitioner's supportive home care hours were reduced from 20 hours to 8.25 hours per week. On June 4, 2012 the agency issued a notice to petitioner advising her of that reduction. Exhibit 5. Of note, the agency stated that the IDT "does not feel that you are "unsafe" to be alone/unsupervised and has discontinued these approved [supervision/7 hours] hours", the IDT "does agree that you need assistance with shopping but does not feel that more than one hour of shopping per week is necessary to acquire yo ur purchases", "you shared with us that you can prepare light meals and can successfully reheat foods thus we have decreased the time allotted for meal preparation." Ultimately the reduction in hours occurred in the areas of bathroom and kitchen cleaning, meal preparation and laundry because the IDT found that petitioner only requires prompts and reminders, not actual assistance in the performance of those tasks, and in the areas of shopping and supervision as stated above.
4. At some point thereafter, petitioner filed an appeal with the MCO Grievance and Appeal Committee, and a hearing was held on July 3, 2012. On July 5, 2012 the agency issued a letter to petitioner advising her that her SHC was still reduced, but not to the extent previously noticed. The MCO Grievance and Appeal Committee's decision was to reduce the SHC to 9.25 hours weekly, a one hour increase from what the IDT determined.

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).

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 services are included in the list of covered services in the statutory note above. The Department's 2012 CMO contracts may be viewed at <http://www.dhs.wisconsin.gov/lc/lc/StateFedReqs/FC-RC-CMO-Contracts.htm>. Having established that SHC hours can be a covered service, the question that remains is, how many SHC hours are essential to meeting the petitioner's needs?

The agency has developed a personal care screening tool to allow case managers to consistently determine the number of hours required by each recipient. The screening tool allots a specific amount of time in each area the recipient requires help, which the reviewer can then adjust to account for variables missing from the screening tool's calculations. The reviewer in this case, after meeting with petitioner and assessing her capabilities, used the tool to determine that 8.25 hours per week were warranted. See Exhibit 9. The grievance committee increased the amount to 9.25 by adding back in one hour for meal preparation.

The change in the reduction of SHC relates in large part to the time allotted for supervision. The IDT did not feel that petitioner was unsafe to be alone and unsupervised and discontinued those supervision hours. The IDT argues that supervision of the member when a family member is on the premises is generally not compensated unless the member needs a level of supervision beyond stand-by supervision "in-case" something occurs. Essentially the IDT argues that while petitioner was found to need some prompts and reminders for tasks in her home, she also was working in a supported employment program at the Milwaukee Center For Independence where she prepares and serves food, and walked to and from the program daily. She also lives with her 9 year old daughter with whom she walks to school every day. She was found to be able to make her own light meals, and reheat foods on the stove or in the microwave. It was only at the hearing that petitioner and her caregiver (sister) began to argue to the IDT that petitioner would be unsafe without all of the previously allotted time for SHC in this area. Petitioner's sister gave an example of how petitioner might wander when out of the home, or that she could not cook safely. She was described as having mood swings which may cause her to isolate herself in her home, even when her daughter is there.

As to the other areas of bathroom and kitchen cleaning, meal preparation, laundry, and shopping, the IDT found that petitioner only requires prompts and reminders, not actual assistance in the performance of those tasks. It was also the IDT's position that the previously allotted SHC hours had included time relating to tasks performed for petitioner's daughter. The IDT provided a copy of the Preferred Caregivers Guidelines that the IDT uses to assess individuals. In that Guideline that agency is reminded that the SHC services are to be provided for the member only, not her daughter. See Exhibit 4. Therefore the time eventually allotted relates only to the time the IDT would allow for reminding petitioner as to those tasks, not for any time related to how those tasks relate to her daughter. Thus, things like reminders to clean the bathroom after her daughter, or laundry for her daughter, are not included in the allotted time. Again, the testimony at hearing on petitioner's behalf was that petitioner needed constant reminders and cueing to stay on task. It was also suggested that many of those tasks were actually completed by the caregiver because petitioner could not complete them correctly even with instruction. The testimony was that petitioner is not safe doing these tasks on her own.

Based on the preponderance of the evidence, I conclude that the result of the SHC determination is justified and I do not find reason to increase the SHC hours beyond the 9.25 hours now approved. This is not to diminish the services her sister provides or that petitioner requires them, however, I cannot find that the agency made an incorrect determination based on the information provided to it at the time of the assessment. The information provided at the assessment showed that petitioner was able to complete household task with prompts. The petitioner's representative admitted that she may not have provided all

of the information about petitioner's behavior problems at the time of the assessment. The time allowed based on the information presented is reasonable, and I note that in some areas SHC time was in fact increased. The information at hearing by petitioner and her representatives now suggests that petitioner is unsafe in her home. This information should be presented to the IDT through another assessment so that the IDT can truly understand and evaluate what services petitioner needs – whether it be additional SHC or new housing altogether to address the safety issues now presented. I also note that if the situation is as dangerous as presented at hearing, one would question how petitioner is able to care safely for her daughter. The agency reasonably argued at hearing that even if petitioner had left the stove on once, or had been cued to stand and wait in one location but did not, that those two episodes would not have been addressed or “cured” by additional SHC; rather, the IDT would have to look into whether 24-hour supervision is required.

I add, assuming petitioner finds this decision unfair, that it is the long-standing position of the Division of Hearings & Appeals that the Division's hearing examiners lack the authority to render a decision on equitable arguments. See, Wisconsin Socialist Workers 1976 Campaign Committee v. McCann, 433 F.Supp. 540, 545 (E.D. Wis.1977). This office must limit its review to the law as set forth in statutes, federal regulations, and administrative code provisions.

CONCLUSIONS OF LAW

The agency properly reduced petitioner's supportive home care (SHC) hours to 9.25 hours weekly.

THEREFORE, it is

ORDERED

That the petition for review herein be 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 served and 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 7th day of November, 2012

Kelly Cochrane
Administrative Law Judge
Division of Hearings and Appeals



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The preceding decision was sent to the following parties on November 7, 2012.

Milw Cty Dept Family Care
Office of Family Care Expansion