



FH
[REDACTED]

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]

DECISION

FCP/143133

PRELIMINARY RECITALS

Pursuant to a petition filed August 15, 2012, under Wis. Admin. Code § DHS 10.55, to review a decision by the Wisconsin Department of Health Services' agent (Care Wisconsin) in regard to Family Care Program (FCP) benefits, a hearing was held on November 1, 2012, by telephone.

The issue for determination is whether the FC agency correctly (1) denied the petitioner's request for a new power wheelchair, and (2) denied a request for occupational therapy (OT) services.

There appeared at that time the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]

With: [REDACTED] ombudsman

Respondent:

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

By: Carmen Lord, Member Rights Spec.

Care Wisconsin
2802 International Ln
Madison, WI 53708

ADMINISTRATIVE LAW JUDGE:

Nancy J. Gagnon
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Dane County.

2. The petitioner has been found eligible for participation in the Wisconsin FCP for some time. FCP services are furnished through a local care management organization (CMO), which is under contract with the FC program.
3. The petitioner, age 67, resides in her well-maintained home in the community. The petitioner has diagnoses of seizure disorder, multiple sclerosis, urinary incontinence, frequent UTIs, atrial fibrillation, adjustment disorder, history of stroke with aphasia, history of thyroid cancer, osteoporosis, insomnia, hypertension, and hyperlipidemia.
4. The petitioner requires assistance with bathing, dressing, toileting, mobility, transfers, meal preparation, medication, and household chores.
5. The petitioner has a power wheelchair that is approximately nine years old. Prior to late June, 2012, the petitioner complained that the chair's battery was not holding a charge well, and that the seating had become uncomfortable.
6. On June 26, 2012, the petitioner requested from the FC program (1) a new power wheelchair, and (2) occupational therapy (OT) services from an OT professional, twice weekly. Currently, the petitioner receives supportive home care and personal care worker services daily, and the workers are expected to perform a home exercise program (HEP) with the petitioner.

The CMO issued a Notice of Action which denied both requests on July 2, 2012. The petitioner filed a local grievance with the CMO, which was denied on July 31, 2012. The CMO did indicate that it would try to improve the functioning of the petitioner's existing chair.

7. The petitioner subsequently filed a hearing request with this Division on August 15, 2012. Shortly before the hearing, the CMO installed a new wheelchair battery and replaced some of the wheelchair cushions.
8. At hearing, the petitioner stated that she was willing to drop the portion of her hearing request related to the wheelchair to give the new enhancements a chance to meet her needs. Dismissal of the portion of the petitioner's appeal related to the wheelchair does not bar her from filing a new request (and ultimately a fair hearing request, if necessary) if she remains dissatisfied with her wheelchair after a trial period.
9. In the past, the petitioner received weekly OT professional services at a day center operated by the CMO, plus home follow-up with her personal care workers. That arrangement was satisfactory to the petitioner. The CMO then closed its day center. The petitioner then endured a period in which the performance of her HEP with care workers at home was erratic. The petitioner's condition declined during this period. On October 1, 2012, a new home health agency was employed by the CMO for provision of personal care services, and the level of service at home has improved. The petitioner's physical condition has also improved from the unsatisfactory state it was in at the time she filed her appeal, and the petitioner described it as feeling about the same as it was when she last had an OT evaluation in May, 2012. At hearing, the petitioner suggested that one possible resolution of the disagreement over the level of OT service would be to have an updated OT evaluation, to assess her current need for service from an OT professional.

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. The petitioner appropriately sought a fair hearing for a further, *de novo* review of a Family Care CMO decision. Wis. Admin. Code §DHS 10.55.

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). Durable medical equipment (wheelchair) and occupational therapy services are included in the list of covered services in the statutory note above. The wheelchair issue is resolved for the time being. Having established that occupational therapy can be a covered service, the question that remains is, are weekly OT services essential to meeting the petitioner’s needs?

The petitioner disagrees with the CMO’s proffered service plan because it does not include weekly service time from an OT professional.

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.

...

(emphasis added)

Wis. Admin. Code §DHS 10.44(2)(f).

In applying the code service plan standards, I conclude that insufficient medical evidence has been proffered to support the need for OT twice weekly from an OT professional. OT service at the level of twice weekly is a lot, so I am not inclined to order it lightly. However, I do think that the petitioner’s request to have a new OT evaluation to assess her current status and home program is a reasonable request, and I will order it here. We cannot know what deficits developed in her functioning, after the May evaluation, due to the substandard care she received thereafter. The new OT evaluation will answer that question.

CONCLUSIONS OF LAW

1. Currently, no issue remains regarding the denial of the petitioner’s request for a new power wheelchair.
2. The petitioner has not met her burden of establishing through medical evidence that twice or once weekly OT is necessary to address her long-term care needs at this time.
3. An OT evaluation is necessary at this time to effectively address the petitioner’s long -term care needs.

THEREFORE, it is

ORDERED

That the petition is remanded to Care Wisconsin to, within 10 days of the date of this Decision, set the date for an OT evaluation for the petitioner. In all other respects, the petition 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 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 Madison,
Wisconsin, this 28th day of November, 2012

\sNancy J. Gagnon
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

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The preceding decision was sent to the following parties on November 28, 2012.

Care Wisconsin
Office of Family Care Expansion