



FH
[REDACTED]

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

In the Matter of

[REDACTED]

DECISION

FCP/143442

PRELIMINARY RECITALS

Pursuant to a petition filed August 25, 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 November 07, 2012, at Kenosha, Wisconsin.

The issue for determination is whether Petitioner's request for a powered operated vehicle (i.e., a power scooter) was correctly denied.

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: Kathryn Clusen & Jessie Lohr
Community Care Inc.

ADMINISTRATIVE LAW JUDGE:

David D. Fleming
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Kenosha County.
2. Petitioner filed this appeal to contest the denial of her request for a power operated vehicle (POV); essentially a powered scooter. The initial denial by the case management organization was in June

2012. Petitioner then asked for a local appeal. That appeal sustained the denial. That local appeal denial was in August 2012.

3. Petitioner is diagnosed with fibromyalgia, arthritis in her knee and hip, scoliosis, high blood pressure, medication dependent diabetes and stomach problems. She is 51 years of age. Petitioner would like the motorized scooter for grocery shopping, going to doctor 's appointments and getting about in the community. Petitioner does live on the bus line. She does have support from her daughter. Petitioner does have personal care worker services and supportive home care services provided to her by the family care program. Petitioner is able to walk about two blocks but then needs to rest.
4. Petitioner previously had a motorized scooter but it fell into disrepair and is no longer repairable.
5. The reasons for the denial were that Petitioner's goal on her most recent review was to have no hospitalizations; that Petitioner has support available from family and friends and public transportation available; that the scooter is not medically necessary; that the Medicaid guidelines or Community Care guidelines do not permit a POV unless the individual is confined to bed or wheelchair and that Petitioner would not use the scooter in her home to complete her instrumental activities of daily living.
6. The case management organization could not indicate how much a motorized scooter would cost but estimates that it would be between \$6000 and \$8000.

DISCUSSION

The Family Care Program, which is supervised by the Department of Health and Family 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. *Wis. Admin. Code, §§ DHS 10.44(2)(e) & (f)*. 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 client. *Wis. Admin. Code, §DHS 10.44(2)(f)*. The ISP must reasonably and effectively address all of the client's long -term needs and outcomes to assist the client to be as self-reliant and autonomous as possible, but nevertheless must be cost effective. While the client has input, the CMO does not have to provide all services the client desires if there are less expensive alternatives to achieve the same results. *Wis. Admin. Code, §DHS 10.44(2)(f); DHS booklet, Being a Full Partner in Family Care, page 9.*

I am going to sustain the denial here although I do not subscribe to all of the CMO's rationale for the denial. The CMO did not provide cites to the Medicare or Community Care guidelines that they indicate require that a person be confined to bed or wheelchair in order to obtain a motorized scooter. I do not give much credence to the goal as of Petitioner's latest review as to have no hospitalizations as being a reason

for the denial. Finally, the requirement that a motorized scooter be used in the home for completion of the instrumental activities of daily living (IADLs) is not documented.¹

Nonetheless, it is apparent that Petitioner does have supports available to her. Her daughter does help her with shopping, etc. She does live on a bus line. She is able to walk approximately 2 blocks before pain and/or fatigue require her to rest. Most of the trips Petitioner wishes to make are within this 2 block distance. Petitioner does use a Rollator, a walker like device that has a seat so that a person can sit and rest. She also uses this inside her home. Finally, the FCP has offered the services of a transportation company for Petitioner. Though Petitioner complains that it takes 2 or 3 days' notice to arrange a ride, I note that this would still handle transportation to most medical appointments. I am, therefore, persuaded at this point that the denial is correct. If, however, Petitioner's condition or living circumstances change she may renew her request.

CONCLUSIONS OF LAW

That the evidence is not sufficient to demonstrate that the requested power scooter meets the standards necessary for approval for payment by the Family Care Program at this time.

THEREFORE, it is

ORDERED

That this appeal 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

¹ Per the *Wis. Admin. Code*, § DHS 10.13(32) – IADLs are the management of medications and treatments, meal preparation and nutrition, money management, using the telephone, arranging and using transportation and the ability to function at a job site.

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 3rd day of December, 2012

\sDavid D. Fleming
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 December 3, 2012.

Community Care Inc.
Office of Family Care Expansion