



FH  
[REDACTED]

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

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In the Matter of

[REDACTED]

DECISION

FCP/143507

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**PRELIMINARY RECITALS**

Pursuant to a petition filed August 30, 2012, under Wis. Admin. Code § DHS 10.55, to review a decision by the Community Health Partnership in regard to Medical Assistance, a hearing was held on September 19, 2012, at Eau Claire, Wisconsin.

The issue for determination is whether Community Health Partnership correctly denied the petitioner's request for prior authorization for medical transportation.

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: Stephanie Thomas  
Community Health Partnership  
Eau Claire, WI

**ADMINISTRATIVE LAW JUDGE:**

Michael D. O'Brien  
Division of Hearings and Appeals

**FINDINGS OF FACT**

1. The petitioner (CARES # [REDACTED]) is a resident of Eau Claire County.
2. The petitioner had arm and shoulder surgery in December 2010 in Rochester, Minnesota. She continued to have decreased strength scheduled a follow-up appointment with her surgeon for July 11, 2012.

3. On July 10, 2012, the petitioner requested that Community Health Partnership pay for transportation to her medical appointment in Rochester. Community Health Partnership agreed to pay for the doctor's visit but denied the request for transportation because it contends that she should have first determined if a local physician could see her.
4. On March 28, 2012, the petitioner's family medicine physician in Eau Claire wrote a letter "To Whom It May Concern" indicating that the petitioner was continuing to have problems with her arm. She then stated:

[The petitioner] has respectfully requested follow-up with the operating surgeon. The procedure that he did is only apparently done by a very small number of people in the entire country. None of the local orthopedic physicians feel comfortable assessing this since they are not procedures that are in their repertoire. Since they do not do these procedures, they do not feel confident or comfortable assessing what, if anything, is indicated or if she at an end point.

Therefore, I would respectfully request that she be allowed a follow-up visit with Dr. Elhassan to assess her situation.

### DISCUSSION

The petitioner receives Family Care Medical Assistance benefits through Community Health Partnership. These benefits include medical transportation. She seeks reimbursement for a trip taken on July 12, 2012, to see a specialist in Rochester for a follow-up evaluation to surgery she had had 1 ½ years earlier. Community Health Partnership paid for the medical appointment but denied reimbursement for the transportation because it contends that she should have first inquired about receiving care from a local doctor.

Family Care Medical Assistance is a health-service delivery system authorized by a medical assistance waiver under 42 USC 1315 and is designed to increase the ability of the frail elderly and those under 65 with disabilities to live where they want, participate in community life, and make decisions regarding their own care. Family Care recipients are placed under the roof of a single private provider, called a care maintenance organization (CMO), that receives a uniform fee, called a capitation rate, for each person it serves. The CMO is responsible for ensuring that the person receives all the Medicaid and Medicare services available to her. The theory behind the program is that it will save money by providing recipients with only the services they need rather than requiring that they enroll in several programs whose services may overlap.

Each CMO signs a contract with the State of Wisconsin that sets forth exactly what services it must render. Community Health Partnership's contract requires it to provide services to physically and developmentally disabled adults and frail elders who are financially eligible for medical assistance and "[f]unctionally eligible as determined via the Long-term Care Functional Screen..." *Contract Between Department of Health and Family Services and Community Health Partnership, Inc.* . Once a person is found eligible for the Family Care Program, Wisconsin law requires the CMO to assess his needs and create an individual service plan that meets those needs and values. This plan must provide services and support at least equal to those she would receive under the Wisconsin Medical Assistance Program and the various MA Waivers program. It can provide additional services that substitute for and augment these services if they are cost effective and meet her needs. Wis. Admin. Code, § DHS 10.41(2).

Community Health Partnership's contract calls for it to provide medical transportation as described in Wis. Admin. Code, § DHS 107.23. *Contact*, p.280. Medical assistance reimburses medical travel for eligible recipients, but the program requires prior authorization for "[a]ll SMV transportation to receive MA-covered services." Wis. Admin. Code § DHS 107.23(2)(f). The Family Care program offers some flexibility concerning prior authorization requests for medical transportation. Community Health

Partnership's contract with the State of Wisconsin states: "MCOs will determine which services require prior authorization and use the member-centered planning process to define the service limitations, rather than using the requirements in DHS 107." *Contract*, pp.277 and 278. Community Health Partnership did not provide any documentation of its prior authorization policy, but I will assume it had one and that the petitioner's oral request for services the day before her appointment satisfied the procedural requirements of that policy.

To receive reimbursement for transportation, the petitioner must meet the generic criteria required to receive any service provided by medical assistance. These include the medical necessity of the service, the appropriateness of the service, the cost of the service, the extent to which less expensive alternative services are available, and whether the service is an effective and appropriate use of available services. Wis. Adm. Code § HFS 107.02(3)(e)1.,2.,3.,6. and 7. "Medically necessary" means a medical assistance service under ch. HFS 107 that is:

- (a) Required to prevent, identify or treat a recipient's illness, injury or disability; and
- (b) Meets the following standards:
  1. Is consistent with the recipient's symptoms or with prevention, diagnosis or treatment of the recipient's illness, injury or disability;
  2. Is provided consistent with standards of acceptable quality of care applicable to the type of service, the type of provider, and the setting in which the service is provided;
  3. Is appropriate with regard to generally accepted standards of medical practice;
  4. Is not medically contraindicated with regard to the recipient's diagnoses, the recipient's symptoms or other medically necessary services being provided to the recipient;
  5. Is of proven medical value or usefulness and, consistent with s. HFS 107.035, is not experimental in nature;
  6. Is not duplicative with respect to other services being provided to the recipient;
  7. Is not solely for the convenience of the recipient, the recipient's family, or a provider;
  8. With respect to prior authorization of a service and to other prospective coverage determinations made by the department, is cost-effective compared to an alternative medically necessary service which is reasonably accessible to the recipient; and
  9. Is the most appropriate supply or level of service that can safely and effectively be provided to the recipient.

Wis. Adm. Code, § DHS 101.03(96m).

Apparently, not many doctors perform the surgery the petitioner received. Her primary physician prepared a letter on March 28, 2012, indicating that the petitioner was continuing to have problems with her arm and that she

has respectfully requested follow-up with the operating surgeon. The procedure that he did is only apparently done by a very small number of people in the entire country. None of the local orthopedic physicians feel comfortable assessing this since they are not procedures that are in their repertoire. Since they do not do these procedures, they do not feel confident or comfortable assessing what, if anything, is indicated or if she at an end point.

Therefore, I would respectfully request that she be allowed a follow-up visit with Dr. Elhassan to assess her situation.

Community Health Partnership's representative contends that she had not seen this letter previously, but the petitioner testified that she gave it to them and kept a copy for herself. I have no way of knowing for certain if Community Health Partnership had seen the letter before. However, the petitioner has had a number of teams from Community Health Partnership working with her, so it is possible that the letter got misplaced. She could have avoided any problem by having her physician send the letter directly to Community Health Partnership. Still, her testimony was believable because it was specific and, given that

she had no legal action pending back in March when the letter was written, she had no reason to obtain the letter other than to give it to Community Health Partnership. Based upon this, I find it more likely than not that she did provide the letter to Community Health Partnership before requesting the trip to Rochester.

The ultimate question is whether there is sufficient evidence to warrant reimbursement for the transportation. That depends upon whether it was necessary for the petitioner to see the doctor in Rochester rather than one in Eau Claire. Because medical assistance must provide basic services to a large number of persons at a reasonable cost, the presumption is that if a person can receive adequate services close to home, those services should be favored over those farther away, even if the distant provider may be somewhat more qualified than the nearer one. The petitioner's family physician clearly states that the local orthopedic physicians do not feel comfortable assessing the petitioner and determining what future treatment she should receive because they do not perform the procedure she received. It would have been helpful if the petitioner's physician had more thoroughly explained how she reached this conclusion, but, even as written, the statement has sufficient probative value to consider it. Because this statement directly addresses Community Health Partnership's reason for denying the service—that the petitioner should see a local physician—I find that seeing a doctor in Rochester was appropriate and medically necessary. This means that the transportation to that doctor was also appropriate and medically necessary. Therefore, Community Health Partnership must reimburse the petitioner for her transportation costs.

### **CONCLUSIONS OF LAW**

The costs associated with the petitioner's July 11, 2012, visit to a physician in Rochester are reimbursable because they were medically necessary.

**THEREFORE, it is**

**ORDERED**

That this matter is remanded to Community Health Partnership with instructions that within 10 days of the date of this decision it reimburse the petitioner for her transportation costs to from Rochester, Minnesota, on July 11, 2012. This reimbursement shall be at a rate and manner consistent with Community Health Partnership's policies. If the petitioner disagrees with the reimbursement she receives, she may file a new appeal.

### **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 2nd day of November, 2012

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Michael D. O'Brien  
Administrative Law Judge  
Division of Hearings and Appeals



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The preceding decision was sent to the following parties on November 2, 2012.

Community Health Partnership  
Office of Family Care Expansion