



FH



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

In the Matter of



DECISION

FCP/143532

PRELIMINARY RECITALS

Pursuant to a petition filed August 31, 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 15, 2012, at Milwaukee, Wisconsin.

The issue for determination is whether Community Care Inc. d/b/a/ PACE Partnership (herein after referred to as Community Care), correctly denied Petitioner's request for a motorized wheelchair.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:



Petitioner's Representative:

Rachael Schweitzer
1402 Pankratz Street, Suite 111
Madison, WI 53704-4001

Respondent:

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

By: Community Care d/b/a PACE Partnership:

Shelita McCloud, Program Director
Christine Porter, Social Worker
Daniel Stein, Physical Therapist
Nancy Pejsa, Nurse Practitioner
Simona Johnson, Registered Nurse
Melissa Powell, Team Facilitator,

ADMINISTRATIVE LAW JUDGE:

Mayumi M. Ishii
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES #  is a resident of Milwaukee County.

2. Petitioner utilizes a manual wheel chair that reclines.
3. During the summer of 2011, Petitioner requested a Power Operated Vehicle (POV), specifically a motorized wheelchair. (Exhibit 2)
4. Community Care evaluated Petitioner and found him able to use the requested wheelchair and began training him to use the motorized wheelchair. However, Petitioner's training ceased because he had to be moved from his home to a nursing home temporarily because of a house fire, and then Petitioner was hospitalized for a period of time. (Exhibit 2; Testimony of Daniel Stein, Physical Therapist)
5. Petitioner participated in physical therapy between January 2012 and March 2012 during which he was working on increasing control of his head and trunk. By mid-January 2011, Petitioner partially met his PT goals. (Exhibit 4)
6. On August 17, 2012, Petitioner renewed his request for a motorized wheel chair. On August 20, 2012, Petitioner's interdisciplinary team completed a Resource Allocation Decision Method (RAD) form and concluded that Petitioner is not an appropriate candidate for a motorized wheelchair because he does not have sufficient head and trunk control to safely operate the requested wheelchair and because he tested positive for methamphetamines, which the interdisciplinary team asserted supported the conclusion that Petitioner is not able to safely operate a motorized wheelchair. (Exhibit 6)
7. On August 23, 2012, Community Care sent Petitioner a Notice of Action, indicating that his request for a POV/motorized wheelchair was denied because it was not a safe or effective means of supporting his desired outcomes. (Exhibit 1)
8. Petitioner filed a request for fair hearing that was received by the Division of Hearings and Appeals on August 31, 2012.

DISCUSSION

The Family Care Program is a subprogram of Wisconsin's Medical Assistance (MA) program and is intended to allow families to arrange for long-term community-based health care and support services for older or impaired family members without resort to institutionalization, *Wis. Stats.* §46.286; *Wis. Admin. Code* §DHS 10.11. The Family Care Long Term Care program (FCP) is a long-term care benefit for the elderly, people with physical disabilities and those with developmental disabilities. *Medicaid Eligibility Handbook (MEH)*, §29.1.

An individual, who meets the functional and financial requirements for Family Care, participates in Family Care by enrolling with a Care Management Organization (CMO), which, in turn, works with the participant and his/her family to develop an individualized plan of care. *See Wis. Stats.* §46.286(1) and *Wis. Admin. Code* §DHS 10.41. The CMO, in this case Community Care d/b/a Pace Partnership, implements the plan by contracting with one or more service providers.

Wis. Admin. Code DHS 10.41(2) states that:

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, Stats., the long-term support community options program under s. 46.27, Stats., and specified 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.

Emphasis added

Wis. Admin Code DHS 10.44(2)(f) states that the CMO, in partnership with the enrollee, shall develop an individual service plan for each enrollee that meets 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. ...

One of Petitioner's desired outcomes is to be able to go out into the community and socialize independently. (Exhibit 6) Petitioner requested the motorized wheelchair so that he would not have to constantly rely upon a friend or family member to push his wheelchair around. (Id.) However, Wis. Admin. Code DHS 10.44(2) (e) 1 and 2, requires Petitioner's health and safety to be considered in determining Petitioner's strengths and long term goals. Further, the Wisconsin Administrative Code states that the CMO, through its case management team, shall monitor the health and safety of the enrollee. Wis. Admin. Code §DHS 10.44(2)(d)3, *emphasis added*.

It is Community Care's position that Petitioner cannot safely operate a motorized wheelchair, because he cannot lift and turn his head to see where he is going and to check for oncoming pedestrians or vehicles. It is also Community Care's position that Petitioner cannot safely operate a motorized wheelchair because he drinks too much and uses illicit drugs, specifically methamphetamine.

Petitioner denied using any illicit drugs and asserts that his head and trunk control have improved sufficiently to use a motorized wheelchair.

It is a well-established principle that a moving party generally has the burden of proof, especially in administrative proceedings. State v. Hanson, 295 N.W.2d 209, 98 Wis. 2d 80 (Wis. App. 1980). In a case involving an application for assistance, the applicant has the initial burden to establish he or she met the application requirements. The burden then shifts to the agency to explain why it concluded the applicant was not eligible for the requested benefits. Thus, Petitioner bears the burden to prove that he meets the criteria for approval of a motorized wheelchair.

With regard to the allegations of drug use and alcohol abuse, there is insufficient evidence to substantiate this. No witnesses have been presented to show that Petitioner drinks to excess, although alcohol might be contraindicated by the medications he is currently taking. Further, the urinalysis report submitted by Community Care clearly states that the results have not been confirmed by an independent analytical method and as such, are to be used for medical purposes only. (Exhibit 6) As such, the urinalysis report has been disregarded for the purposes of this legal proceeding. However, the record does support Community Care's assertion that Petitioner lacks sufficient head and trunk control to safely operate a motorized wheelchair at this time.

Community Care did not provide any progress notes or evaluations from Petitioner's physical therapist clearly and explicitly stating that Petitioner reached maximum benefit from therapy and that Petitioner's level of head and trunk control would not allow him to safely operate a motorized wheelchair. However, it appeared from this writer's observation at the hearing that Petitioner is extremely limited in his ability to control his trunk and head.

During the hearing, Petitioner did not make any movements to rotate his trunk; he lifted his head only when trying to demonstrate control, but did not maintain his head in an upright position and was only able to show that he could turn his head, at best, about 45 degrees, bilaterally. I would note that the January 2012, progress note indicated that one of his goals was to be able to hold his head upright for at least 30 seconds, and that the goal had been partially met, in that he could hold his head up 50% of full head elevation. (Exhibit 4)

Based upon the foregoing, it is found that Petitioner lacks sufficient head and trunk control to adequately see what is around him and as such, he is at risk of colliding with other people, objects or vehicles in or crossing his path.

CONCLUSIONS OF LAW

Community Care correctly denied Petitioner's request for a motorized wheelchair.

THEREFORE, it is ORDERED

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 Milwaukee,
Wisconsin, this 20th day of November, 2012.

\sMayumi M. Ishii
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

David H. Schwarz
Suite 201
5005 University Avenue
Madison, WI 53705-5400

Telephone: (608) 266-3096
FAX: (608) 264-9885
email: DHAmail@wisconsin.gov
Internet: <http://dha.state.wi.us>

The preceding decision was sent to the following parties on November 20, 2012.

Community Care Inc.
Office of Family Care Expansion
rachael.schweitzer@wisconsin.gov