



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

In the Matter of

[REDACTED]

DECISION

FCP/143584

PRELIMINARY RECITALS

Pursuant to a petition filed September 1, 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 October 24, 2012, at Eau Claire, Wisconsin.

The issue for determination is whether Community Health Partnership correctly seeks to discontinue chiropractic services for the petitioner.

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: Sarah Dixon
Community Health Partnership
Eau Claire, WI

ADMINISTRATIVE LAW JUDGE:

Michael D. O'Brien
Division of Hearings and Appeals

FINDINGS OF FACT

1. The petitioner is a resident of Eau Claire County.
2. The petitioner receives Family Care Medical Assistance through Community Health Partnership.
3. The petitioner receives chiropractic services every week or two, which Community Health Partnership pays for.

4. The petitioner has significant back pain that has been exacerbated by falls while walking.
5. Chiropractic treatment relaxes the petitioner's back and relieves pain there ; this makes it easier for her to walk.
6. Community Health Partnership seeks to end the petitioner's chiropractic treatment and conduct a physical therapy evaluation to determine the cause of her back pain and poor balance.

DISCUSSION

The petitioner receives Family Care Medical Assistance benefits through Community Health Partnership. This health-service delivery system is 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* . Once a person is found eligible for the Family Care Program, Wisconsin law requires the CMO to assess her 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).

When determining whether a service is necessary, Community Health Partnership must review, among other things, 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, § DHS 107.02(3)(e)1.,2.,3.,6. and 7. "Medically necessary" means a medical assistance service under ch. DHS 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. Admin. Code, § DHS 101.03(96m).

The petitioner has been receiving chiropractic treatment through Community Health Partnership to alleviate stiffness and pain in her back that has been exacerbated by frequent falls. Community Health Partnership seeks to end this treatment and substitute a physical therapy evaluation to determine the cause of her back problems, irregular gait, and frequent falls. The petitioner opposes ending the chiropractic treatment.

There is no medical evidence that the chiropractic treatment provides long-term relief for the petitioner's back and gait problems, and it seems obvious that a physical therapy evaluation may provide insight into the cause of her problems, which could lead to better treatment. But this does not mean that Community Health Partnership is currently justified in ending the chiropractic treatment. It presented very little medical documentation or testimony concerning the petitioner's condition, so the best evidence of the effectiveness of the chiropractic treatment is the testimony of the petitioner and her daughter that after the treatment the petitioner's back is more relaxed and has less pain, which helps her walk better. This relief may be temporary, but if impermanence barred a service many of the drugs now covered by medical assistance would also be barred from coverage.

Community Health Partnership's implied position is that medical assistance rules allow the petitioner either chiropractic treatment or a physical therapy evaluation, but not both. Medical assistance services do have to be cost effective, which means that recipients cannot receive every desirable service. Nevertheless, in the matter before me, I find no reason to end chiropractic services that apparently provide some relief to the petitioner. She currently receives those services every week or two at a cost of \$60 per session. This appears to be a reasonable amount to spend for the relief she testified this service provides.

Contrary to Community Health Partnership's implied position, there is nothing mutually exclusive about providing both chiropractic and physical therapy services. If Community Health Partnership goes ahead and pays for a physical therapy evaluation, it may lead to medical evidence—which is now lacking—that the petitioner's problems can be treated more effectively through services other than (or in addition to) chiropractic services. Such evidence could justify modifying her services. But right now the best evidence available indicates that chiropractic services are medically necessary, and Community Health Partnership must continue to provide them.

I note to the petitioner that if Community Health Partnership provides a physical therapy evaluation and she refuses to cooperate in receiving that evaluation, it could affect her whether her other services continue.

CONCLUSIONS OF LAW

Community Health Partnership must continue to provide chiropractic services to the petitioner because the preponderance of the credible evidence indicates that these services are medically necessary.

THEREFORE, it is

ORDERED

That this matter is remanded to Community Health Partnership with instructions to certify within 10 days of the date of this decision that it will continue to pay for chiropractic services for the petitioner.

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 14th day of November, 2012

Michael D. O'Brien
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 14, 2012.

Community Health Partnership
Office of Family Care Expansion