



STATE OF WISCONSIN  
Division of Hearings and Appeals

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In the Matter of

[REDACTED]

DECISION

FCP/143590

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**PRELIMINARY RECITALS**

Pursuant to a petition filed September 01, 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 must allow the petitioner participate in the HMR weight-loss program.

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 weighs approximately 242 pounds, giving her a body-mass index of between 34 and 35.

4. The petitioner requests that Community Health Partnership pay for the Health Management Resource (HMR) diet. HMR is an aggressive, physician-supervised diet that limits intake to around 800 calories a day for up to 16 weeks and involves specialized foods such as liquid shakes. The diet continues indefinitely with a maintenance phase. The initial phase costs
5. The petitioner has been enrolled in the HMR program. She initially lost 150 pounds while in the program but has regained 80 pounds in the last 14 to 15 months because she often binge eats at night. As an example, she recently ate a whole carton of ice cream.
6. The petitioner has tried Weight Watchers, but has not lost weight when doing so.
7. The petitioner has severe mental health problems but stopped seeing a mental health counselor in the spring of 2012.
8. The petitioner does not exercise regularly.
9. The initial phase of HMR costs \$827 to \$1244 per month. Weekly group classes with the program's dietician but without its specialized dietary products costs \$82 per month. Weight Watchers costs \$39.95 per month. A dietician costs \$135 to \$451 for the initial visit and \$135 for each additional visit.

### 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 requests that Community Health Partnership continue to pay for HMR, a medically supervised diet that begins with liquid shakes and very low calorie intake for up to 16 weeks and can continue with a more normal diet, but still under medical supervision, for several years. Community Health Partnership denied the request because there are more cost-effective ways for the petitioner to lose weight and because she has regained 80 of the 150 pounds she lost while in the initial phase of that diet.

HMR costs \$827 to \$1244 per month. Weekly group classes with the program's dietician but without its specialized dietary products costs \$82 per month. Weight Watchers costs \$39.95 per month. A dietician costs \$135 to \$451 for the initial visit and \$135 for each additional visit. I do not doubt that the petitioner has trouble maintaining her weight, but it is difficult to see how she can be any more successful using the HMR program than any other less expensive options. She has regained the weight because of binge eating at night that includes consuming an entire bucket of ice cream in one sitting. Nothing in the HMR program would prevent her from continuing to do this because she is unsupervised throughout the day. Nor would the program force her to exercise or see a mental health professional for her serious emotional problems that lead to overeating, neither of which she has done regularly. It is true that some people simply cannot lose and maintain weight loss through a sound diet and proper exercise, but until the petitioner eats properly and exercises for an extended period of time, she has not shown that she is one of these people. Because of this, I find that there are more cost-effective ways for her to control her weight and that Community Health Partnership correctly denied funding for the HMR program.

### **CONCLUSIONS OF LAW**

Community Health Partnership correctly denied funding for the HMR program because the petitioner has not shown that it is cost-effective and medically necessary.

**THEREFORE, it is**

**ORDERED**

The petitioner's 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 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

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Michael D. O'Brien  
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](mailto:DHAmail@wisconsin.gov)  
Internet: <http://dha.state.wi.us>

The preceding decision was sent to the following parties on November 14, 2012.

Community Health Partnership  
Office of Family Care Expansion