



FH
[REDACTED]

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]

DECISION

FCP/144010

PRELIMINARY RECITALS

Pursuant to a petition filed September 24, 2012, under Wis. Admin. Code, §DHS 10.55, to review a decision by the Milwaukee County Dept. of Family Care to deny a requested Family Care Program (FCP) service, a hearing was held on November 7, 2012, at Milwaukee, Wisconsin.

The issue for determination is whether the requested service was cost effective.

PARTIES IN INTEREST:

Petitioner:

[REDACTED]

Respondent:

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

By: Lillian Alford
Milw. Cty. Dept. of Family Care
901 N. 9th St., Room 307A
Milwaukee, WI 53233

ADMINISTRATIVE LAW JUDGE:

Brian C. Schneider
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is an 85-year-old resident of Milwaukee County who is eligible for FCP.
2. Petitioner is diagnosed with a number of conditions including dementia, chronic renal failure, vascular disease, arthritis, asthma, and emphysema. When she enrolled in FCP she lived alone; she moved in with her daughter in September, 2010. She requires full-time supervision due to her dementia.

3. FCP covers services by an attendant 40 hours per week. Petitioner's family cares for her at other times. Petitioner requires hands-on assistance for transfers.
4. In August, 2012, petitioner's daughter requested FCP coverage of the cost of repairs for petitioner's lift chair. Petitioner has had the chair since 2008, and it was discovered that the lift mechanism had to be replaced at a cost of \$580.
5. An assessment found that petitioner lacks the cognitive skills necessary to operate the lift chair.
6. The FCP denied coverage of the repair because petitioner already requires hands-on assistance with transfers, has 24-hour care givers, and lacks the cognitive skills necessary to operate the chair.
7. Petitioner has edema in her feet. Her feet need to be elevated when she is seated.

DISCUSSION

The Family Care program, which is supervised by the Department of Health Services, is designed to provide appropriate long-term care services for elderly or disabled adults. It is authorized in the Wisconsin Statutes, §46.286, and is described comprehensively in the Wisconsin Administrative Code, Chapter DHS 10.

The Managed Care Organization (MCO) 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 MCO 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(1)(f); DHS booklet, Being a Full Partner in Family Care, page 9. ISPs must be reviewed periodically. Admin. Code, §DHS 10.44(j)(5).

Wis. Stat., §46.287(2)(a)1 provides that a person may request a fair hearing to contest a list of negative actions under the FCP program directly to the Division of Hearings and Appeals. Failure to approve a requested new service is not in the list. In addition, the participant can file a grievance with the MCO over any decision, omission, or action of the MCO. The grievance committee shall review and attempt to resolve the dispute. If the dispute is not resolved to the participant's satisfaction, she may then request a hearing with the Division of Hearings and Appeals. If the person chooses to not grieve a decision or omission and appeals directly, the decision must be reviewed by the Department's MCO monitoring unit. Wis. Stat., §46.287(2)(b).

It is unclear if the monitoring unit was asked to review the matter prior to the appeal in this case. Petitioner's appeal letter states that a grievance was not requested. Nevertheless, it appears that the MCO reviewed the request after the appeal was filed and attempted to resolve it. The matter was not resolved. I thus will review the case although it is not clear that the statutory procedure was followed.

The issue in this case is whether the MCO acted appropriately in denying petitioner's request for the repair of the lift chair. It has been noted many times in the past that there are no standards written in the law or policy on how to make such a determination. It comes down to the general criteria for determining authorization for services – medical appropriateness and necessity, cost effectiveness, statutory and rule limitations, and effectiveness of the service. See Wis. Admin. Code, §DHS 107.02(3)(e).

I conclude that the denial was appropriate. Petitioner's doctor testified about the need for the lift chair, but his entire focus was on the need to have petitioner's legs elevated. As pointed out by the agency representative, there are many ways to elevate a person's feet. The leg lift on the chair itself can be elevated

manually, and although it tends to droop, I see no reason why it could not be propped up by a bar or other object. The primary purpose of a lift chair is to assist a person with getting into and out of a chair, and since petitioner requires assistance to transfer into and out of the chair regardless of its functioning, I can conclude only that the repair of the chair is not cost effective.

CONCLUSIONS OF LAW

The request to have a lift chair repaired is not cost effective because petitioner needs assistance with transfers into and out of the chair regardless of its operation.

THEREFORE, it is ORDERED

That the petition for review herein be and the same is hereby 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

Brian C. Schneider
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.

Milw Cty Dept Family Care
Office of Family Care Expansion