



FH

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

FCP/142121

PRELIMINARY RECITALS

Pursuant to a petition filed July 02, 2012, under Wis. Admin. Code § DHS 10.55, to review a decision by the Care Wisconsin in regard to Medical Assistance, a hearing was held on February 05, 2013, at Waukesha, Wisconsin. The record had been held open because of a pending application for the IRIS program which would have rendered this request from Care Wisconsin moot.

The issue for determination is whether the agency properly denied the Petitioner's request for reimbursement of the cost of art classes.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]

Respondent:

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

By: Carmen Lord
Care Wisconsin
2802 International Lane
Madison, WI 53704

ADMINISTRATIVE LAW JUDGE:

Debra Bursinger
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner is a resident of Waukesha County.

2. The Petitioner has been enrolled in FC since August 1, 2008 at a nursing home level of care in the FC program since August 1, 2008. He meets the Physical Disability and Developmental Disability target groups.
3. The Petitioner has diagnoses that include a hormonal/metabolic system disorder, osteoarthritis in his feet and back, sleep apnea, diabetes type II, hypertension and severe obesity. He wears a brace on his left foot. The Petitioner is also diagnosed with a depressive disorder and Pervasive Developmental Disorder NOS as well as mild cognitive/learning disabilities.
4. The Petitioner's Member Centered Plan includes the following outcomes and the ways those outcomes are being met:
 - "I want to socialize with others in the community." Petitioner attends Friendship House and music therapy. He also attends church services and goes to the library on occasion. He goes on family outings occasionally. The Petitioner utilizes formal and informal supports for these activities.
 - "I want to continue doing activities I enjoy, using my talents and following my passions." Petitioner attends music therapy once/week. He visits with peers at Friendship House. He attends church services and goes to the library on occasion. He goes on family outings occasionally. The Petitioner utilizes formal and informal supports for these activities.
 - "To maintain and improve overall health." Petitioner attends the YMCA for exercise. The YMCA has a pool that he is able to use. He has access to local parks.
5. On May 18, 2012, the Petitioner requested art classes to be included in his Family Care plan. The art classes cost \$8/week.
6. On June 12, 2012, the agency issued a Notice of Action to the Petitioner informing him that the request for art classes was denied because his outcome is being supported in other ways.
7. On July 2, 2012, an appeal was filed on the Petitioner's behalf with the Division of Hearings and Appeals.

DISCUSSION

The Petitioner receives Family Care Medical Assistance benefits through Care Wisconsin. 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 him. 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. Care Wisconsin'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 Care Wisconsin. 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 he 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 his needs. Wis. Admin. Code, § DHS 10.41(2).

When determining whether medical assistance regulations require the CMO to provide a specific service, the CMO must consider, 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.

The skeletal legal guidance that pertains to determining the type and quantity of daily care services that must be placed in an individualized service plan (ISP) is as follows:

DHS 10.44 Standards for performance by CMOs.

...

(2) CASE MANAGEMENT STANDARDS. The CMO shall provide case management services that meet all of the following standards:

...

(f) The CMO, in partnership with the enrollee, shall develop an individual service plan for each enrollee, with the full participation of the enrollee and any family members or other representatives that the enrollee wishes to participate. ... The service plan shall meet 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.

...

Wis. Admin. Code §DHS 10.44(2)(f).

Care Wisconsin has developing guidelines for determining when to approve alternative therapies which include art classes. The guideline states as follows:

“Alternative therapies are services outside the usual benefit package of health insurance providers that may have therapeutic value in managing a member's disease or disability. These include things such as . . . music, art . . . structured exercise programs, etc. . . . These services must be carefully considered by the team in order to ensure that

- There is evidence to indicate that the therapy will result in the desired health or functional outcome and
- Is the most cost effective treatment for that condition
- The therapy provides a benefit beyond the usual benefit that anyone would gain from the therapy.”

The guideline goes on to explain additional considerations in determining whether to approve a requested service including:

1. There needs to be a clear, realistic, meaningful objective goal for the therapy (for example: using music to communicate a need, using art to manage a specific behavior, able to get on bus, able to go up and down stairs . . .)
2. The member should have tried traditional therapies and should have demonstrated follow through and partnering with those.
3. Only initiate 1 new treatment at a time. . . For example, the member would not receive both music and art therapy to manage the same behavior.
4. The course of treatment should be time-limited. Determine how many visits will be needed to achieve or make significant progress toward the goal.
5. There needs to be a clear way of knowing if success is being achieved.

The guideline notes that chronic or maintenance use of alternative therapy should only be considered if the goal is clearly achieved and the therapy is necessary to maintain the achievement and no way to substitute the therapy with less expense alternatives.

The agency noted that alternative therapies are generally used to address behavior. The Petitioner does not have any behavioral issues. In addition, the agency's guidelines allow for one alternative therapy. The agency testified that the Petitioner already receives music therapy once/week to advance his outcomes of socialization and activities. Also, it is noted that the Petitioner has other alternatives for socialization and activities including Friendship House, church and access to community activities.

The Petitioner's mother testified that these are not "art therapy" but rather are art classes that are meant to give the Petitioner something to do that makes him feel good about himself. She asserts that this is a cost-effective way to help him as the cost is approximately \$8/week.

Based on the regulations and the guidelines, I conclude the agency properly denied the request for this service. The service must meet the definition of "medically necessary." While this meets his outcomes for socialization and activities, there are no demonstrated medical or behavioral issues that the art classes are meant to treat. The regulations and guidelines also do not allow for services that are duplicative. As the agency noted, the Petitioner is already receiving music therapy. While art and music classes are not necessarily duplicative in content, the purpose for the Petitioner participating in the classes is the same. Further, in order to approve an alternative therapy under the guidelines, there must be a meaningful and clear objective, a clear way of being able to measure achievement, and the request must be time-limited. There was insufficient evidence presented to allow me to conclude that this request for services meets the regulations and guidelines.

CONCLUSIONS OF LAW

Care Wisconsin properly denied art classes/therapy to the Petitioner.

THEREFORE, it is **ORDERED**

That the petition be, and hereby 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 25th day of March, 2013

\sDebra Bursinger
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 March 25, 2013.

Care Wisconsin
Office of Family Care Expansion