



FH
[REDACTED]

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]

DECISION

FCP/142966

PRELIMINARY RECITALS

Pursuant to a petition filed August 10, 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 November 28, 2012, at Waukesha, Wisconsin. The record was held open an additional 21 days to allow the agency to review and respond to exhibits submitted by the Petitioner at the hearing and to allow the Petitioner to reply to the agency's response to the exhibits. The record was closed on December 19, 2012.

The issue for determination is whether the agency properly reduced the Petitioner's supportive home care hours from 38.5 hours/week to 20 hours/week effective August 15, 2012.

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: Lindsay Marschke
Care Wisconsin
2802 International Lane
PO Box 14017
Madison, WI 53708-0017

ADMINISTRATIVE LAW JUDGE:

Debra Bursinger
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Waukesha County.

2. Petitioner has diagnoses that include encephalopathy syndrome with recurring episodes of viral encephalitis, Epstein Barr, TBI, seizure disorder, vertigo, adrenal gland insufficiency, fibromyalgia, CFS, chronic insomnia, depression, low back pain, chronic pain, IBS, GERD, hypothyroidism, chronic fatigue, vitamin D deficiency, obesity hypogammabulinemia, macrocytic anemia, sinusitis, palpitations, hypocalcemia, cysantonomia, selective IG deficiency, chronic syncopal episodes/dizziness, severe osteoporosis.
3. The Petitioner receives support from a caregiver, PH, funded by the MCO through SDS. PH is the father of the Petitioner's 8 year old child who also resides with the Petitioner.
4. On August 1, 2012, the agency issued a Notice of Action to the Petitioner informing her that the agency intended to reduce to supportive home care hours from 38.5 hours/week to 20 hours/week. The areas of dispute include meal preparation, home cleaning, grocery shopping, medication administration/management and supervision.
5. Pursuant to an assessment on January 21, 2011, the Petitioner's In Home Care Plan allowed the the following amount of time for the disputed services:
 - Meal Preparation Breakfast: 70 minutes/week
 - Meal Preparation Lunch: 70 minutes/week
 - Meal Preparation Dinner: 140 minutes/week
 - Meal Preparation Snack: 70 minutes/week
 - Medication Administration: 105 minutes/week
 - Simple Treatments: 15 minutes/week
 - Routine Home Care: 455 minutes/week
 - Supervision: 630 minutes/week
 - Grocery shopping: 60 minutes/week
6. The assessment on July 26, 2012 removed the items listed in FOF#5 from the Petitioner's In Home Care Plan. These are the items in dispute. The agency also added time to certain other tasks in the Petitioner's Care Plan. These items are not in dispute.
7. The Petitioner's primary outcome is "I want to stay out of a nursing home and maintain my family unit."
8. On August 10, 2012, the Petitioner filed an appeal with the Division of Hearings and Appeals.

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. Whenever the local Family Care program decides that a person is ineligible for the program, or when the CMO discontinues an ongoing service in the service plan, the client is allowed to file a fair hearing request. Because a service reduction is sought here, the Petitioner appropriately sought a fair hearing for a further, de novo review of the CMO decision. Wis. Admin. Code §DHS 10.55(1).

The state code language on the scope of permissible services for the FC reads as follows:

DHS 10.41 Family care services. ...

(2) SERVICES. 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, Stat., the long-term support 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.

Note: The services that typically will be required to be available include adaptive aids; adult day care; assessment and case planning; case management; communication aids and interpreter services; counseling and therapeutic resources; daily living skills training; day services and treatment; home health services; home modification; home delivered and congregate meal services; nursing services; nursing home services, including care in an intermediate care facility for the mentally retarded or in an institution for mental diseases; personal care services; personal emergency response system services; prevocational services; protective payment and guardianship services; residential services in an RCAC, CBRF or AFH; respite care; durable medical equipment and specialized medical supplies; outpatient speech; physical and occupational therapy; supported employment; supportive home care; transportation services; mental health and alcohol or other drug abuse services; and community support program services.

Wis. Admin. Code §DHS 10.41(2).

Supportive home care and personal care services are included in the list of covered services in the statutory note above.

The 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).

There are also Guidelines for Paying Family Caregivers established by DHS. These guidelines can be found online at: <http://www.dhs.wisconsin.gov/lc/PDFs/famcaregvr.pdf>. Relevant portions of those guidelines state as follows:

Part I. Competency of and Accountability for Work Performed by Paid Family Caregivers

...

B. Family Care Policy. A person in the member's family, including the spouse of a member, shall be paid by the MCO for services if the interdisciplinary team (IDT) authorizes the service. The IDT need to take into consideration the following when deciding whether or not to authorize the service (these conditions are found in the MCO contract): . . .

3. The family member will either:

- a. Provide an amount of service that exceeds normal family caregiving responsibilities for a person in a similar family relationship who does not have a disability; or
- b. Find it necessary to forego paid employment in order to provide the service and is not receiving a pension (including Social Security retirement benefits).

...

Part III. Authorizing Types of Services, Number of Hours and Reimbursement for Paid Family Caregivers.

...

B. Family Care Policy. When a member requests that a family member be paid to provide a needed service, the following rules apply (see MCO contract):

1. If the team is allowed by the MCO to authorize this request, the team must, in conjunction with the member, use the RAD or another standardized decision making guidelines that have been approved by the Department to make the decision.

...

3. If the team, using the RAD, has determined that the service itself is not necessary or appropriate and therefore declines to provide or authorize the service, the request for payment to a family member to provide the service should also be denied. When the team denies the service and/or the request to have the family member provide the care, the team must give the member written notice of the decision.

4. If the team has decided that the service is necessary, based on the RAD method, then the team must also use the RAD to determine whether or not to have the family member act as the caregiver. The guidelines described below may assist with the decision.

C. Guidelines for authorizing types of services, number of hours and rate of pay for family caregivers.

...

2. Types of Services. In general, family members may be compensated for services/supports needed that exceed the typical care-giving/support responsibilities for any family member of the same age and could be considered a “special care-giving responsibility” due to the member’s disability.

a. Family members can be informed that, typically, the MCO does not pay family members for activities that a relative/family member would normally provide for another family member as a matter of course in the usual relationship among members of a family.

- Services that are typically assumed to be the responsibility of family members are routine laundry, meal preparation, shopping, usual cleaning, general supervision, non-medical supervision, assisting with mobility, companionship and transportation/escorting.
- Services that are considered to exceed the typical care-giving/support responsibilities of a family member are toileting, bathing (other than set-up), other personal care the member is unable to do for himself or herself, frequent laundry due to incontinence/illness, medical miles (these should be billed to a common carrier/MA), complete transfer assist, or other unique services that may be considered by the IDT for consumer-specific situations.

b. If the member becomes ill, there may be an occasional need to perform certain “hands on tasks” ie assistance with bathing, cooking special meals, checking on the individual during the night, etc. When these types of services go from occasional to routine, the team may wish to revisit a decision not to pay the family member for providing them.

...

5. Supervision. Supervision of the family care member when the relative/family member is on the premises is generally not compensated unless the Family Care member needs a level of supervision beyond stand-by supervision “in case” something occurs.

There are 5 areas of dispute with regard to the Care Plan developed by the agency which reduced the Petitioner’s supportive home care hours.

Meal Preparation

In January, 2011, the Petitioner’s care plan noted that the Petitioner required assistance with meal preparation 3x/day as well as a snack 2x/day. The Care Plan stated that this service would include: “prepare light meal, warm up frozen or refrigerated meal. Add beverage. Thicken liquids prepared and give if ordered. Ensure or other supplement given if ordered.” The notes indicate the Petitioner is able to prepare simple meals (microwave) if she is feeling well but she cannot get into higher or lower cabinets to get ingredients nor do any bending.

The agency contends that meal preparation for the Petitioner does not exceed typical care-giving responsibilities and would normally be provided in the course of a family relationship. The Petitioner asserts that her family caregiver provides meals to her more often than he provides meals for himself and feeds her separate and different meals. It is her contention that his meal preparation for her is a special caregiving responsibility.

The Petitioner's meal schedule is fairly typical with 3 meals/day and 2 snacks/day. She does not require a special diet. Therefore I conclude, based on the evidence that the agency is correct in its finding under the guidelines that meal preparation for the Petitioner is a typical care-giving responsibility. The agency correctly reduced supportive home care hours for this task based on the guidelines.

Medication Administration

The Petitioner takes numerous medications and other treatments. The long-term care functional screen indicates that the Petitioner needs assistance at least 1x/day for 3-7 days/week. Specifically, it indicates that she requires assistance with set-up 3 – 4x/day and she needs weekly monitoring. The notes from January, 2011 indicate that the Petitioner requires reminders and cueing to take her meds at designated times. In addition, the caregiver must give the Petitioner a weekly injection. In addition, simple treatments were included in the care plan for 5 minutes/week to include: “wound care/dressing changes. Analgesic rubs, hot/cold pack application – requires special instructions section note.”

The agency eliminated time for medication management/administration with the exception of time for administering the weekly injection. The July, 2012 plan includes 45 minutes/week for the caregiver to assist the Petitioner with the injections.

It is noted by the agency that the Petitioner often sleeps through the times when she is required to take her medications due to issues related to insomnia.

The Petitioner contends that she continues to need assistance from her caregiver to set up her medications and to help administer the medications. While the evidence presented indicates that the process of assisting the Petitioner in setting up medications would be a typical care-giving responsibility, the fact that the Petitioner is not able, on her own, to administer her medications at the appropriate times due to her insomnia would be considered a special care-giving responsibility. The evidence I have suggests that the Petitioner takes medications at two different times during the day. Based on this evidence, I conclude that it is reasonable to allow 5 minutes, 2x/day for medication administration in addition to the 45 minutes/week allotted by the agency for the injections.

Routine Home Care

At issue in this case is home cleaning for the bathroom, kitchen, living room, garbage removal, dishes and changing linens. In addition, routine home care includes grocery shopping which is at issue in this case. Further, the agency eliminated an additional home care task related to running errands for the Petitioner which the Petitioner appeals.

With regard to home cleaning services, the Care Plan noted that 60 minutes/week is the maximum amount of time that may be allotted. Specifically for the Petitioner, the January, 2012 Care Plan included housekeeping for cleaning the bedroom (surface dusting, vacuuming, floor cleaning, changing linens), cleaning the bathroom, cleaning the kitchen (check refrigerator for spoiled food, clean sink, countertops, tables/chairs, stove, microwave, fan, sweep and mop floors), cleaning the living room (dusting, vacuuming floor, sweep and mop floor), garbage removal, changing linens and doing dishes. The July, 2012 Care Plan eliminated cleaning the bathroom, kitchen and living room as well as garbage removal and doing dishes. It continued to allot 60 minutes/week for cleaning the bedroom and changing linens based on the Petitioner's incontinence issues which require special care -giving. I note that the January, 2011 case notes indicate that the Petitioner's daily incontinence issues require clean-up throughout the home. Therefore, I find it reasonable to continue to allow cleaning of the bathroom, kitchen and living room to allow for special care-giving related to the Petitioner's incontinence. I find there is no special care-giving responsibility related to the Petitioner's condition and garbage removal or doing dishes.

With regard to grocery shopping, the Petitioner did not present any evidence to demonstrate that this is a special care-giving task for her caregiver that exceeds the typical responsibilities of a family caregiver. Therefore, I conclude the agency properly reduced the Petitioner's hours related to grocery shopping.

The January, 2011 Care Plan included 455 minutes/week for an additional home care task. Specifically, the plan indicates that the member does not drive and needs assistance for running errands. "Caregiver goes for member or accompanies member. Reordering of medication, picking up meds, doctors appts, MH appointments, shopping, banking etc."

There is no dispute that the Petitioner cannot drive a car. The Petitioner has a scooter and a lift for her van to allow her to get out into the community for outings and errands and doctor appointments. She contends that she requires the assistance of her caregiver to go on these outings and this assistance exceeds typical care-giving due to her medical conditions. While transportation itself is listed in the guidelines as a typical care-giving task, the Petitioner does require extra assistance with her scooter and lift and assistance with completing or conducting her errands. Based on the evidence presented, I conclude it is reasonable to allow 30 minutes/day for assistance with outings for medical appointments and errands related to the Petitioner's medical conditions .

Supervision

Care Wisconsin has Program Guidelines for In Home Supervision. It notes that in home supervision is only paid in exceptional circumstances where a member requires constant supervision and intervention due to health and safety concerns. The IDT is to utilize the RAD process to make a decision and also must consider the member's outcomes and safety concerns, whether the member requires 24 hours supervision and why the member can't be left alone.

In this case, the January, 2011 Care Plan allowed for 630 minutes/week of supervision. The Case Notes indicate that the Petitioner struggles with ongoing and chronic health conditions which cause dizziness, weakness and fatigue. She reports episodes of ataxic attacks where she freezes in place. She requires caregiver to provide assistance with ambulation and transfers. Petitioner also has osteoporosis in both knees. Petitioner is at risk for falls. Due to obesity, the Petitioner is unable to provide adequate cleansing after bowel movements and urinary incontinence. Medical issues have affected her mental health. She suffers from depression and insomnia. With regard to the telephone, the notes indicate the member is able to use the phone independently and has a working phone.

The LTC functional screen indicates that overnight care and supervision is required because the caregiver cannot get at least 6 hours of uninterrupted sleep/night. From January, 2011, the notes indicate the member requires overnight care in case of an emergency. She requires assistance from the caregiver to toilet. The July, 2012 notes indicate the member requires assist on some nights for incontinence care and in case of emergency.

The evidence leads me to conclude that the physical and mental health conditions of the Petitioner require a significant amount of supervision to ensure the Petitioner's safety and to meet her outcome of remaining in her home. I conclude that 630 minutes/week is reasonable to meet these outcomes and to ensure the Petitioner's safety.

CONCLUSIONS OF LAW

Based on the evidence, I conclude that the agency properly reduced the Petitioner's supportive home care hours for meal preparation, grocery shopping, garbage removal and doing dishes. Based on the evidence, I conclude that the Petitioner requires 5 minutes, 2x/day for medication administration/management in addition to the 45 minutes/week for an injection; 30 minutes/day or 210 minutes/week for additional routine home care related to transportation, medical appointments and errands; and 90 minutes/day or 630 minutes/week for supervision. This is in addition to the items already included in the July, 2012 Care Plan that were not disputed.

THEREFORE, it is

ORDERED

That the agency take the administrative steps necessary to adjust the Petitioner's Care Plan in accordance with this decision. Specifically, the Petitioner's Care Plan should be revised to 35 hours/week of supportive home care. These actions shall be taken as soon as possible but no later than 10 days after the date of this decision.

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 22nd day of January, 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 January 22, 2013.

Care Wisconsin
Office of Family Care Expansion