



FH
[REDACTED]

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

In the Matter of

[REDACTED]

DECISION

FCP/143240

PRELIMINARY RECITALS

Pursuant to a petition filed August 20, 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 December 19, 2012, at Eau Claire, Wisconsin. Hearings scheduled for September 19, 2012, October 24, 2012, and November 28, 2012, were rescheduled at the petitioner's request.

The issue for determination is whether Community Health Partnership correctly seeks to reduce the petitioner's supportive home care hours from 17 to 4.2 per week.

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 (CARES # [REDACTED]) is a resident of Eau Claire County.
2. The petitioner received Family Care Medical Assistance through Community Health Partnership.
3. The petitioner is disabled because of morbid obesity.

4. On July 3, 2012, Community Health Partnership notified the petitioner that it intended to reduce her supportive home care hours she receives through self-directed supports from a friend from 17 to 4.2 per week as of July 19, 2012. She also receives two hours a week of supportive home care from a private company. This care is used to clean her house.
5. The petitioner requires assistance getting into and out of bathtub. She has grab bars, a handheld shower and a bariatric chair that extends outside of the tub. She requires 20 minutes of assistance to perform this task and does it twice week.
6. The petitioner moves about independently using a cane, walker, and wheelchair. She has not done any walking for exercise.
7. The petitioner has been allowed one hour of supportive home care per week for a pedicure and miscellaneous home duties. She no longer receives this care because the person who provided it no longer lives with her.
8. The petitioner can dress herself using a limited wardrobe.
9. The petitioner does not require assistance to socialize.
10. The petitioner requires 4.2 hours a week of supportive home care from her self-directed supports to meet her needs.

DISCUSSION

The Family Care Program provides appropriate long-term care services for elderly or disabled adults. It is supervised by the Department of Health and Family Services, authorized by Wis. Stat. § 46.286, and comprehensively described in Chapter DHS 10 of the Wisconsin Administrative Code. The process contemplated for an applicant is to test functional eligibility, then financial eligibility, and if both standards are met, to certify eligibility. The applicant is then referred for enrollment in a care management organization (CMO), which drafts a service plan that meets the following criteria:

(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.
4. Is agreed to by the enrollee, except as provided in [subd. 5.](#)
5. If the enrollee and the CMO do not agree on a service plan, provide a method for the enrollee to file a grievance under [s. DHS 10.53](#), request department review under [s. DHS 10.54](#), or request a fair hearing under [s. DHS 10.55](#). Pending the outcome of the grievance, review or fair hearing, the CMO shall offer its service plan for the enrollee, continue negotiating with the enrollee and document that the service plan meets all of the following conditions:
 - a. Meets the conditions specified under [subs. 1. to 3.](#)
 - b. Would not have a significant, long-term negative impact on the enrollee's long-term care outcomes identified under [par. \(e\) 2.](#)

- c. Balances the needs and outcomes identified by the comprehensive assessment with reasonable cost, immediate availability of services and ability of the CMO to develop alternative services and living arrangements.
- d. Was developed after active negotiation between the CMO and the enrollee, during which the CMO offered to find or develop alternatives that would be more acceptable to both parties.

Wis. Admin. Code § DHS 10.44(2)(f).

CMOs must “comply with all applicable statutes, all of the standards in this subchapter and all requirements of its contract with the department.” Wis. Admin. Code, § 10.44(1)

The Self Directed Supports section program allows the recipient to purchase her own care under some circumstances. *Contract for Family Care Program between the Wisconsin Department of Health Services, Division of Long-Term Care and Community Health Partnership*, p.69. The petitioner has used this section to pay a companion who until recently lived with her for supportive home care services. The *Contract* at p. 277 defines *supportive home care* as “the provision of services to directly assist persons with daily activities and personal needs to meet their daily living needs and to insure adequate functioning in their home.” Community Health Partnership has been approving 17 hours a week of supportive home by this companion. It now seeks to reduce this to 4.2 hours per week. The petitioner also receives two hours of supportive home care from a private company; Community Health Partnership does not seek to reduce this care. It currently pays for the following supportive home care she receives from her companion:

1. Peri Care and miscellaneous household duties:	31 hours per month
2. Meal preparation:	2 hours per month
3. Bath & shampoo:	12.9 hours per month
4. Walking assistance:	4.3 hours per month
5. Laundry and light cleaning:	8.6 hours per month
6. Banking:	1 hour per month
7. Grocery & personal shopping:	4 hours per month
8. Social outings:	4 hours per month

This comes to 67.8 hours per month, which Community Health Partnership rounded to 68 hours and divided by four to get 17 hours per week. It seeks to reduce some of the services and eliminate others. It proposes that the petitioner receive the following care:

1. Partial bath twice a week:	40 minutes per week
2. Apply lotion:	70 minutes per week
3. Shaving & hair removal twice a week	30 minutes per week
4. Grocery & errands:	60 minutes a week
5. Laundry at home :	20 minutes per week
6. Meal preparation once a week:	30 minutes per week

Community Health Partnership ended peri-care and miscellaneous household services because the caregiver no longer lives with the petitioner and thus cannot provide them. It ended walking assistance because the petitioner never used it. It ended social outings because it contends that it is unnecessary to pay to provide companionship for the petitioner. For the services it continued to support, it bases the time it takes to perform those services on a standard task list. The petitioner contends her companion should be allowed extra time because she is legally blind and thus cannot drive herself on errands. She also contends that it takes longer than 20 minutes for bathe. Finally, she states that her caregiver spends much more than 17 hours a week caring for her.

Community Health Partnership has established that the petitioner does not use the walking and peri-care services she had previously been allowed. I also agree that the petitioner's provider does not have to be paid to provide socialization because the petitioner has family and friends she can see. Her companion's physical problems do not entitle her to additional compensation because the petitioner and not her companion is the one enrolled in the Family Care Program, which means that Community Health Partnership's sole duty is to ensure that the petitioner receives the services she needs. Finally, I have heard no convincing evidence that the tasks performed for the petitioner should take longer than the standard amount of time allotted for each task. Although she has physical problems, this is true of anyone who receives these services. She has the burden of proof, and she has not shown, great as her needs are, that they are any worse than average for someone who receives these services. Based upon this, I uphold Community Health Partnership's decision.

CONCLUSIONS OF LAW

Community Health Partnership correctly determined that the petitioner requires 4.2 hours of supportive home care through Self Directed Supports each week.

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 9th day of January, 2013

\sMichael D. O'Brien
Administrative Law Judge
Division of Hearings and Appeals



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The preceding decision was sent to the following parties on January 9, 2013.

Community Health Partnership
Office of Family Care Expansion