



FH
[REDACTED]

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]

DECISION

FCP/144705

PRELIMINARY RECITALS

Pursuant to a petition filed October 22, 2012, under Wis. Admin. Code § DHS 10.55, to review a decision by the Milw Cty Dept. Family Care in regard to Medical Assistance, a telephonic hearing was held on January 16, 2013, at Milwaukee, Wisconsin. At the request of petitioner, a hearing set for December 4, 2012 was rescheduled.

The issue for determination is whether the Milwaukee County Department of Family Care correctly reduced the petitioner's FCP-paid Supportive Home Care (SHC) from 26.75 to 23.75 hours per week effective November 1, 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: Lisa Muenzenberger, care manager
Milwaukee County Department of Family Care
901 N. 9th Street, Room 307A
Milwaukee, WI 53233

ADMINISTRATIVE LAW JUDGE:

Gary M. Wolkstein
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a 67 year old resident of Milwaukee County who is enrolled in the Family Care Program (FCP). She lives with her daughter, [REDACTED] who is her caregiver.

2. The petitioner is diagnosed with diabetes, congestive heart failure, arthritis, renal disease, fatigue, and cancer during the past five years.
3. Petitioner needs supervision and assistance with some of her activities of daily living (ADL) and IADL tasks.
4. Based upon the Resource Allocation Decision (RAD) process, the Milwaukee County Department of Family Care conducted Median Task Guide for Supportive Services assessments of the petitioner's ADL and IADL on October 10, 2012. Those assessments determined that petitioner had total SHC and PCW needs of 23.75 which is three hours less than her prior hours of 26.75 hours per week.
5. The following items were reduced in the petitioner's SHC and PCW time allotments: a) meal preparation for breakfast and lunch reduced 70 minutes per week because caregiver already needed to prepare meals and only specially pureed foods for the petitioner; b) laundry reduced 110 minutes per week because caregiver can do multiple loads of laundry at a launder mat and thus extra loads are less needed; c) bathing reduced 105 minutes per week because petitioner can sit in the bathtub unassisted while caregiver performs other tasks.
6. The Milwaukee County Department of Family Care sent an October 18, 2012 Notice of Action to the petitioner stating that the petitioner's FCP-paid Supportive Home Care (SHC) hours were reduced from 26.75 to 23.75 hours per week effective November 1, 2012.
7. During the January 16, 2013 hearing, petitioner was unable to refute with any convincing evidence the reasons for the reduction in her SHC set forth in Finding of Fact #5 above.

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).

I conclude that the reduction of FC-paid SHC hours was accurate or appropriate, given the evidence in the hearing record. 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 Department’s 2010 CMO contracts (especially, p. 253 on SHC) may be viewed at <http://dhs.wi.gov/lc/lc/StateFedReqs/FC-RC-CMO-Contracts.htm>. Having established that SHC and PCW hours can be a covered service, the question that remains is, how many SHC and PCW hours are essential to meeting the petitioner’s needs?

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.

...

(Emphasis added)

Wis. Admin. Code §DHS 10.44(2)(f).

In this case, the central issue is whether the CMO’s proffered service plan with the reduction of SHC/PCW from 26.75 to 23.75 hours per week was “cost-effective” and achieve similar outcomes. Family Care staff authorized a combination of services determined to be effective and cost effective, while maximizing support of the petitioner’s daughter and caregiver, [REDACTED]. See above Findings of Facts. The county agency met its burden of proof to establish a prima facie case that it correctly reduced the petitioner’s SHC hours from 26.75 TO 23.75 hours per week.

During the January 16, 2013 hearing, this Administrative Law Judge (ALJ) provided opportunities for the petitioner to offer specific testimony to refute the Department's Median Task Guide assessments which determined and reduced petitioner's SHC hours by 3 hours per week. The petitioner was unable to provide any specific testimony or evidence to refute the Median Task Guide assessments and calculations that petitioner needed only the reduced SHC of 23.75 hours per week.

The petitioner's representative has not met her burden of persuasion to refute that the Milwaukee Department of Family Care correctly reduced the petitioner's SHC hours with additional supportive services. The petitioner was upset at the reduction, but she nevertheless has the burden of persuasion to establish specific, credible and reliable testimony or evidence to refute that the Family Care Program's reduction of petitioner's SHC was incorrect. In reviewing the hearing record, petitioner has not met such burden. Accordingly, based upon the above, I must conclude that the Milwaukee County Department of Family Care correctly reduced the petitioner's FCP-paid Supportive Home Care (SHC) from 26.75 to 23.75 hours per week effective November 1, 2012.

CONCLUSIONS OF LAW

The Milwaukee County Department of Family Care correctly reduced the petitioner's FCP-paid Supportive Home Care (SHC) from 26.75 to 23.75 hours per week effective November 1, 2012.

THEREFORE, it is

ORDERED

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 13th day of February, 2013

\sGary M. Wolkstein
Administrative Law Judge
Division of Hearings and Appeals



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The preceding decision was sent to the following parties on February 13, 2013.

Milw Cty Dept Family Care
Office of Family Care Expansion