



FH
[REDACTED]

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]

DECISION

FCP/144795

PRELIMINARY RECITALS

Pursuant to a petition filed October 25, 2012, under Wis. Admin. Code § DHS 10.55, to review a decision by the Milwaukee County Department of Family Care in regard to Medical Assistance, a telephonic hearing was held on December 04, 2012, at Milwaukee, Wisconsin.

The issue for determination is whether there is sufficient reliable evidence in the record to determine whether the Milwaukee County Department of Family Care (Department) correctly and properly discontinued the petitioner's Family Care Program (FCP) personal care worker (PCW) payments during the period of August 17, 2012 to 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: Lillian Alford, quality improvement supervisor
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 43 year old resident of Milwaukee County who resides in a household of one.
2. The petitioner received benefits through the Family Care Program (FCP).

3. The petitioner's daughter, [REDACTED] [REDACTED] provided personal care worker (PCW) services for the petitioner during the period of August 17, 2012 to November 1, 2012.
4. During October, 2012, the Milwaukee County Department of Family Care reviewed the petitioner's eligibility for continued Family Care benefits.
5. The Milwaukee County Department of Family Care discontinued the petitioner's PCW payments to her daughter during the period of August 17, 2012 to November 1, 2012, but failed to send any adequate or timely notice of such discontinuance of PCW payments during that period.
6. The Milwaukee County Department of Family Care sent an October 14, 2009 Notice of Decision to the petitioner stating that her Family Care eligibility was discontinued effective November 1, 2012.

DISCUSSION

During the December 4, 2012 hearing, the Milwaukee County Department of Family Care (Department) representative did not dispute that it failed to send any notice to the petitioner indicating that personal care worker (PCW) payments to petitioner's caregiver would discontinue as of August 17, 2012. As a result, the Department failed to provide adequate and timely notice of such discontinuance of PCW payments to petitioner's caregiver, [REDACTED] [REDACTED]. The Department also was unable to establish with any reliable, non-hearsay testimony or evidence during the hearing that it had correctly discontinued the petitioner's PCW payments from August 17, 2012 to November 1, 2012. The Department did send a proper October 16, 2012 notice to the petitioner of the November 1, 2012 discontinuance of her FCP benefits. Accordingly, I conclude that based upon the evidence in the hearing record, there is insufficient reliable evidence in the hearing record to determine whether the Milwaukee County Department of Family Care correctly and properly discontinued the petitioner's Family Care Program (FCP) personal care worker payments during the period of August 17, 2012 to November 1, 2012.

CONCLUSIONS OF LAW

There is insufficient reliable evidence in the hearing record to determine whether the Milwaukee County Department of Family Care correctly and properly discontinued the petitioner's Family Care Program (FCP) personal care worker payments during the period of August 17, 2012 to November 1, 2012.

THEREFORE, it is

ORDERED

The matter is remanded to the Milwaukee County Department of Family Care (Department) with instructions to: a) investigate and re-determine the petitioner's eligibility for personal care worker payments from the Family Care Program retroactive for the period of August 17, 2012 to November 1, 2012; and b) issue to the petitioner a new notice of decision which explains in detail the county's re-determination of petitioner's Family Care Program personal care worker payments from August 17, 2012 to November 1, 2012, within 10 days of 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 Madison,
Wisconsin, this 8th day of January, 2013

\sGary M. Wolkstein
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 8, 2013.

Milw Cty Dept Family Care
Office of Family Care Expansion