FH
[redacted]

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[redacted]

DECISION

FCP/146990

PRELIMINARY RECITALS

Pursuant to a petition filed January 30, 2013, under Wis. Admin. Code § DHS 10.55, to review a decision by the Community Care Inc. in regard to the Family Care Program (FCP), a telephonic hearing was held on May 01, 2013, at Milwaukee, Wisconsin. At the request of petitioner, a hearing set for March 19, 2013 was rescheduled. At the request of the parties, the record was held open for submission of responsive closing arguments by the parties to DHA. The county agency timely submitted its closing argument to DHA which is received into the hearing record. The petitioner failed to submit any responsive closing argument to DHA.

The issue for determination is whether the Family Care Program correctly discontinued the petitioner's Personal Emergency Response Services (PERS) effective January 11, 2013 due to lack of medical necessity.

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: Jane Young, social worker
Community Care Inc.
205 Bishops Way
Brookfield, WI 53005

ADMINISTRATIVE LAW JUDGE:
Gary M. Wolkstein
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [redacted]) is a 63 year old resident of Milwaukee County.
2. The petitioner receives Family Care Program services through Community Care, Inc. HMO.
3. Emergency response services provide a communication link for persons who are home alone and may need emergency assistance. Community Care HMO can provide this unit so that family or friends will be contacted in an emergency situation or the Emergency Response System will be activated, if appropriate.
4. Community Care approved a Personal Emergency Response system (PERS) for the petitioner as of May 1, 2012 because petitioner's significant other passed away, and petitioner stated that she had no cell phone for her personal safety (falls).
5. The hearing record indicates that petitioner has had cell phones availability during many occasions that the Family Care program has contacted petitioner.
6. Petitioner has inappropriately misused used her PERS for calls regarding food, general questions, and to alleviate her loneliness.
7. The petitioner is seen by team nursing staff early morning Sunday through Saturday for blood sugar monitoring and insulin administration.
8. During November, 2012, petitioner's first responder to her PERS left the area, and petitioner was unable to specify any other person who confirmed he/she would accept the responsibility of responding to petitioner's PERS calls.
9. Community Care sent a December 31, 2012 notice to the petitioner stating that her personal emergency response system (PERS) would be discontinued effective January 11, 2013, for the following reasons: a) petitioner having cell phone availability; b) petitioner unable to provide a family member or friend who would be available to respond to petitioner's PERS calls; and c) petitioner misused the PERS for personal, non-emergency purposes.

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 denies a requested service, the client is allowed to file a local grievance. The petitioner did apparently file a local grievance, per Wis. Admin. Code §DHS 10.53, and the original service (PERS discontinuance) was upheld in that review. The petitioner then appropriately sought a fair hearing for a further, *de novo* review of the discontinuation decision.

The Family Care Program (FCP) correctly discontinued the petitioner's Personal Emergency Response Services (PERS) effective January 11, 2013 due to lack of medical necessity for the reasons set forth in Finding of Fact #5 - #9 above. 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 <u>other services that substitute</u>** for or augment the specified services if these services are **<u>cost-effective</u>** and **<u>meet the needs of enrollees</u>** as identified through the individual assessment and service plan.
> Wis. Admin. Code §DHS 10.41(2)

The Family Care Program requires a Resource Allocation Decision method for approval and continuation of a Personal Emergency Response system (PERS). Such method was used by Community Care to initially approve the petitioner's PERS as of May, 2012 primarily because she alleged not to have any cell phone. However, like any service, a request for continued approval of a Personal Emergency Response system (PERS) must meet the generic medical assistance prior authorization criteria including, among other things, the medical necessity, appropriateness, and 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 <u>usefulness</u>** and, consistent with s. DHS 107.035, is not experimental in nature;
> 6. Is not **<u>duplicative</u>** with respect to other services being provided to the recipient;
> 7. Is not solely for the **<u>convenience</u>** 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 **<u>cost-effective</u>** compared to an **<u>alternative</u>** medically necessary service which is reasonably accessible to the recipient; and
> 9. Is the **most <u>appropriate</u> supply** or level of service that can safely and effectively be provided to the recipient.

During the May 1, 2013 hearing and in its written closing argument, the Family Care program social worker, Jane Young, provided convincing testimony and evidence to establish that it correctly discontinued the petitioner's PERS as of January 11, 2013 due to the lack of medical necessity as set forth in Finding of Fact #9 above. During the hearing, petitioner was unable to refute that Community Care was correctly discontinuing her emergency services. Furthermore, petitioner failed to submit any responsive closing argument to DHA. See above Preliminary Recitals.

While I am sympathetic to the general argument of supporting an emergency response service to persons who are living alone and are at risk, the petitioner has not established that she meets the criteria for continued eligibility. Petitioner did not persuasively refute that she does have access to cell phones, that she has no person willing to respond to her PERS calls, or that she did misuse her PERS for personal convenience, and not emergency circumstances. Accordingly, based upon the entire hearing record, I conclude that the Family Care Program correctly discontinued the petitioner's Personal Emergency Response Services (PERS) effective January 11, 2013 due to lack of medical necessity.

As dicta, if petitioner's documented circumstances change, she may re-apply for PERS services from the Family Care program.

CONCLUSIONS OF LAW

The Family Care Program correctly discontinued the petitioner's Personal Emergency Response Services (PERS) effective January 11, 2013 due to lack of medical necessity.

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 19th day of June, 2013

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\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 June 19, 2013.

Community Care Inc.
Office of Family Care Expansion