



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]

DECISION

FCP/147157

PRELIMINARY RECITALS

Pursuant to a petition filed February 4, 2013, under Wis. Admin. Code, §DHS 10.55, to review a decision by Western Wisconsin Cares to deny a service under the Family Care Program (FCP), a hearing was held on February 28, 2013, by telephone.

The issue for determination is whether the FCP agency correctly denied a request to have petitioner's wife paid to assist in his cares.

PARTIES IN INTEREST:

Petitioner:

[REDACTED]

Respondent:

Department of Health Services
1 West Wilson Street
Madison, Wisconsin 53703

By: Jennifer Neuhaus
Western Wisconsin Cares
P.O. Box 254
Sparta, WI 54656

ADMINISTRATIVE LAW JUDGE:

Brian C. Schneider
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner is a resident of Monroe County who receives FCP services.
2. On January 23, 2013, petitioner made a request with the agency that his wife be paid for care assistance she provides to him, specifically help with shampooing and dressing.
3. By a noticed dated January 30, 2013, the agency denied the request because it concluded that FCP policy does not allow such services to be paid when performed by a spouse.

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. It is authorized in the Wisconsin Statutes, §46.286, and is described comprehensively in the Wisconsin Administrative Code, Chapter DHS 10.

The Managed Care Organization (MCO) must develop an Individual Service Plan (ISP) in partnership with the client. Wis. Admin. Code, §DHS 10.44(2)(f). The ISP must reasonably and effectively address all of the client's long-term needs and outcomes to assist the client to be as self-reliant and autonomous as possible, but nevertheless must be cost effective. While the client has input, the MCO does not have to provide all services the client desires if there are less expensive alternatives to achieve the same results. Wis. Admin. Code, §DHS 10.44(1)(f); DHS booklet, Being a Full Partner in Family Care, page 9. ISPs must be reviewed periodically. Admin. Code, §DHS 10.44(j)(5).

Wis. Stat., §46.287(2)(a)1 provides that a person may request a fair hearing to contest the reduction of services under the FCP program, among other things, directly to the Division of Hearings and Appeals. In addition, the participant can file a grievance with the MCO over any decision, omission, or action of the MCO. The grievance committee shall review and attempt to resolve the dispute. If the dispute is not resolved to the participant's satisfaction, she may then request a hearing with the Division of Hearings and Appeals. If the person chooses to not grieve a decision or omission and appeals directly, the decision must be reviewed by the Department's MCO monitoring unit. Wis. Stat., §46.287(2)(b). Apparently the monitoring unit upheld the denial in this case.

State FCP policy provides guidelines for payment of family members for FCP services. Part I, Section B of the guidelines provides that a family member can be paid in certain situations, specifically if the service "exceeds the normal family care giving responsibilities for a person in a similar family relationship who does not have a disability." That provision is further explained in Section I.C, that typical services assumed by a spouse include routine laundry, meal preparation, shopping, cleaning, assisting with mobility, companionship, and transportation/escorting. Services that exceed typical support responsibilities include toileting, bathing, and personal care that the person cannot do for himself.

I admit that upon hearing the issues I assumed that this would be an easy decision in the agency's favor, but after reviewing the guidelines I am not so sure. Certainly shampooing would come under bathing. Petitioner's specific request at the time was for help putting his coat on, but at the hearing he mentioned that he now needs help with dressing as well because he is unable to pull his pants up (the 1/23/13 agency case note mentions that his wife puts on his shirts, shoes, and socks).

I conclude that under the plain reading of the policy shampooing and assisting with dressing are exceptional services for which a family member can be paid. Shampooing is an aspect of bathing that petitioner cannot do himself. Dressing is a personal care that petitioner cannot do himself without assistance. Admittedly this does not involve a great deal of time, but it could add up to a few hours per week. Since the agency has not actually assessed the time it would take I cannot order a specific amount of time for which petitioner's wife could be paid, but I find that clearly the policy would allow her to be paid for such personal care services. I thus will order the matter to be remanded to the agency with instructions to assess the need for these personal care services and the amount of time necessary to complete them, with the result being that petitioner's wife be designated as a personal care worker responsible for the services.

CONCLUSIONS OF LAW

The agency incorrectly denied petitioner's request to have his wife paid for providing personal care services because FCP guidelines allow payment for such services by a family member.

THEREFORE, it is

ORDERED

That the matter be remanded to the agency with instructions to assess the need for personal care services for petitioner and the amount of time necessary to complete them, with the result being that petitioner's wife be designated as a personal care worker responsible for the services. The agency shall do so within 10 days 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 4th day of March, 2013

\sBrian C. Schneider
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 March 4, 2013.

Western Wisconsin Cares-FCP
Office of Family Care Expansion