



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]

DECISION

FCP/147283

PRELIMINARY RECITALS

Pursuant to a petition filed February 12, 2013, under Wis. Admin. Code, §DHS 10.55, to review a decision by Western Wisconsin Cares to discontinue a Family Care Program (FCP) service, a hearing was held on February 28, 2013, by telephone.

The issue for determination is whether the agency correctly discontinued home-delivered meals.

PARTIES IN INTEREST:

Petitioner:

[REDACTED]

Respondent:

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

By: Jen Curtis

Western Wisconsin Cares
1407 St. Andrew St., Suite 100
La Crosse, WI 54603

ADMINISTRATIVE LAW JUDGE:

Brian C. Schneider
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner is a 61-year-old resident of La Crosse County who receives FCP services.
2. Petitioner has atypical Parkinson's disease that restricts her movement. When she started with the program she was able to do very little independently. Therefore included in her FCP plan was once per day Meals-On-Wheels. It was delivered at noon daily, and petitioner typically would eat half at noon and the other half in the evening.
3. In 2012 petitioner was taken off of a particularly debilitating medication, and her symptoms and skills in activities of daily living improved. At a reassessment meeting in December, 2012, the

assessment team noted that petitioner was able to move around her apartment, was able to transfer on her own, was wrapping Christmas presents, and was baking cookies (apparently she burned them but the team did not see the results). She is able to get out into the community.

4. Based upon that assessment the agency determined that Meals-On-Wheels would be discontinued. The agency notified petitioner of the change by a letter dated January 4, 2013. Petitioner filed this appeal and the service was continued pending this decision.

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 action in this case.

The guideline for home delivered meals is that the recipient is unable to prepare or obtain nourishing meals without assistance. The person may be unable to plan, prepare, or obtain nutritional meals without physical assistance or may be unable to manage a special diet recommended by a physician. See Exhibit 2.

Petitioner's primary problem with making meals is that she has no experience cooking. She testified that others always cooked for her. She also experiences vertigo and has a five pound lifting limit. She occasionally experiences bouts of depression that leave her unable to cope with daily living. The agency counters that petitioner should be able to make simple meals, and if she at least tried she could handle more complicated dishes. Since she can get out into the community she does not need to have meals delivered.

I place particular importance on the series of notes from caregivers prepared for the hearing. Petitioner's psychologist writes that petitioner's level of functioning does not inspire confidence in her ability to prepare and eat well-balanced meals. He also is concerned about her memory and concentration that might impair her remembering to turn off burners and shut off an oven. Petitioner's medical doctor writes that petitioner has physical difficulty preparing meals due to pain and low endurance. Her behavioral health doctor is concerned that petitioner would resort to eating junk food without the planned, delivered meals.

At this point I find that the discontinuance of the delivered meals is at very least premature. Judging from the psychologist's notes petitioner is obsessing about the change and is overly stressed. I am concerned that

while petitioner is able to get out of the home periodically she cannot do so regularly, and physical restrictions make it difficult to make anything but simple meals, which could lead her to taking shortcuts with less nutritious items. The agency might look into a gradual transition (which I admit petitioner would likely be unresponsive to), but at present I find that the current services should continue at least until a next scheduled assessment.

CONCLUSIONS OF LAW

Petitioner remains unable to prepare and eat nutritious meals on her own, and thus the home delivered meal service should continue.

THEREFORE, it is

ORDERED

That the matter be remanded to the agency with instructions to continue petitioner's home delivered meal service.

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 6th 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 6, 2013.

Western Wisconsin Cares-FCP
Office of Family Care Expansion