



FH
[REDACTED]

**STATE OF WISCONSIN
Division of Hearings and Appeals**

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

FCP/147785

PRELIMINARY RECITALS

Pursuant to a petition filed February 27, 2013, under Wis. Admin. Code § DHS 10.55, to review a decision by the Western Wisconsin Cares-FCP in regard to Medical Assistance, a telephone hearing was held on March 28, 2013.

The issue for determination is whether the respondent correctly seeks to reduce the petitioner's supportive home care/transportation hours from 3 hours to 1 hour per week.

There appeared at that time the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]

Respondent:

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

By: Christine Wainwright
Western Wisconsin Cares-FCP

ADMINISTRATIVE LAW JUDGE:

Peter McCombs
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Monroe County.
2. The petitioner is blind.
3. On January 28, 2013, the respondent notified the petitioner that it intended to reduce her supportive home care hours she receives from 3 hours to 1 hour per week as of February 14, 2013.

4. The petitioner had been allowed three hours of supportive home care per week due to health issues related to her feet and the fact that she lived alone. The health issues with her feet have diminished, and petitioner's adult son now resides in petitioner's home.
5. The supportive home care/transportation hours were being utilized to take petitioner grocery shopping, run errands, and provide general transportation services.
6. Petitioner's son does not drive, and does not possess a driver's license.
7. The petitioner requires 1 hour a week of supportive home care to meet her needs.

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 a care maintenance organization (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 decision. Wis. Admin. Code §DHS 10.55(1).

The state code language on the scope of permissible services 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 (SHC) and transportation services are included in the list of covered services in the statutory note above. Having established that SHC and transportation hours can be a covered service, the question that remains is, how many hours are essential to meeting the petitioner's needs?

The respondent has employed a Resource Allocation Decision Method Worksheet to allow case managers to consistently determine the number of hours required by each recipient. The reviewer in this case, after meeting with petitioner and assessing her capabilities and needs, used the worksheet to determine that 1 hour per week was warranted. See Exhibit 3.

The change in the reduction of hours relates in large part to the respondent's findings that the prior bases for approval of 3 hours, i.e. health issues pertaining to feet, and petitioner residing alone, were no longer evident. Respondent's representatives testified that the foot issues have diminished, and petitioner's adult son now lives with her. The respondent further noted that the reduction did not involve expecting petitioner's son to do anything more than what he would normally do in his own home.

The petitioner counters that her son does not help around the home, does not drive, and sleeps much of the day, while staying up late at night. The respondent notes that it was aware that the son did not drive, and that is the reason for the eligibility for 1 hour weekly. The respondent's representatives testified that it is assumed that the son can do general household cleaning and basic meal preparation.

Based on the preponderance of the evidence, I conclude that the result of the respondent's determination is justified and I do not find reason to increase the eligible hours beyond the 1 hour now approved. This is not to diminish the necessary services that petitioner has received previously, however, I cannot find that the agency made an incorrect determination based on the information provided and considered at the time of the assessment. As petitioner shares a home with her son, it is not unreasonable to expect that her son can complete normal shared cleaning and meal preparation tasks. The 1 hour for transportation, with the intention of assisting in petitioner's community integration is reasonable. Noting that she was unsure of how the reduction would actually affect her, the petitioner failed to demonstrate that the respondent incorrectly reduced her supportive home care/transportation hours. The petitioner also did not refute respondent's finding that her health issues with her feet have alleviated.

I add that it is the long-standing position of the Division of Hearings & Appeals that the Division's hearing examiners lack the authority to render a decision on equitable, or fairness, arguments. See, Wisconsin Socialist Workers 1976 Campaign Committee v. McCann, 433 F.Supp. 540, 545 (E.D. Wis.1977). This office must limit its review to the law as set forth in statutes, federal regulations, and administrative code provisions.

CONCLUSIONS OF LAW

The respondent correctly determined that the petitioner requires 1 hour of supportive home care each week.

THEREFORE, it is **ORDERED**

The petitioner's appeal is 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 28th day of May, 2013

\sPeter McCombs
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 May 28, 2013.

Western Wisconsin Cares-FCP
Office of Family Care Expansion