



STATE OF WISCONSIN  
Division of Hearings and Appeals

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In the Matter of

[REDACTED]  
[REDACTED]  
[REDACTED]

DECISION

FCP/147962

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**PRELIMINARY RECITALS**

Pursuant to a petition filed March 11, 2013, under Wis. Admin. Code § DHS 10.55 and 42 C.F.R. 438.408(f), to review a decision by the Care Wisconsin in regard to Medical Assistance (MA)-related Wisconsin Partnership Program, a hearing was held on April 4, 2013, at Madison, Wisconsin.

The issue for determination is whether the Partnership Program correctly determined the number of supportive home care hours being provided to the petitioner.

There appeared at that time and place the following persons:

**PARTIES IN INTEREST:**

Petitioner:

[REDACTED]  
[REDACTED]  
[REDACTED]

Respondent:

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

By: Christine Beck, RN  
Care Wisconsin (provider of Partnership benefits)

**ADMINISTRATIVE LAW JUDGE:**

Nancy J. Gagnon  
Division of Hearings and Appeals

**FINDINGS OF FACT**

1. Petitioner is a resident of Dane County.
2. The petitioner has been enrolled in the Wisconsin Partnership Program (Program), with services provided through Care Wisconsin, since September 2012. He had been receiving 18.25 supportive home care (SHC) hours weekly. A Care Wisconsin nurse performed a Long-Term Care functional Screen Report for the petitioner in January 2013. Based on that Report, Care

Wisconsin determined that the petitioner required fewer SHC hours. On January 30, 2013, the Department's agent issued written notice to the petitioner advising that his home care hours would be set at 12.75 hours weekly, beginning February 15. The petitioner timely requested an external (MetaStar) reconsideration, which was denied on February 21. The petitioner then appealed to this office; aid was continued pending appeal.

3. The petitioner, age 60, has diagnoses of diabetes mellitus II, obesity (approximately 400 pounds), fibromyalgia, gout, asthma, esophageal reflux, degenerative joint disease, depression and anxiety disorder. He transfers independently, but uses a scooter for ambulation. *See*, Exhibit 3, Dr. Ringdahl letter. The petitioner requires minimal physical assistance with bathing, dressing and grooming. He is able to eat and toilet himself independently. He takes medication, which is set-up in a cassette. The petitioner performs as-needed nebulizer treatments daily, without assistance; he sometimes requires assistance with his twice daily blood sugar checks. The petitioner is able to fully communicate, use a telephone, and does not require overnight supervision. He does not wander, and is currently not self-injurious. The petitioner lives alone with a pet bird in an apartment, which is across the street from a grocery store.
5. Following an in-home assessment by a Care Wisconsin assessor in January, the Program determined that the petitioner's care needs could be met with 12.75 hours of service weekly. The hours were meant to cover time for bathing assistance, dressing, (but not undressing), grooming, skin care, shopping, laundry, and general housecleaning. Of special note, the 12.75 hour total does not include time for breakfast and lunch meal preparation; dinner preparation time of 20 minutes remains in the service plan. Routine home care was increased from 3 hours weekly to 4 hours weekly.
6. The petitioner is capable of preparing his own simple breakfast and lunch. He is also capable of performing his own nebulizer treatments.

### DISCUSSION

The Wisconsin Partnership Program (Program) is a type of managed healthcare delivery system. It is designed to save money for the federal and state governments by coordinating care provision under "one roof" under a "capitated" arrangement, *i.e.*, a uniform fee per person served by the system. The Department, operating under a federal waiver, must provide for all Medicaid and Medicare covered services required by participating recipients ("members") utilizing Medicaid and Medicare certified providers. *See*, 42 USC § 1315; *see also*, 42 USC §§ 1396n(a) & (b); Wis. Stat. §49.45(32); *Medical Assistance Eligibility Handbook (Handbook)*, §§ 30.1 *et seq.*, online at <http://www.emhandbooks.wisconsin.gov/meh-ebd/meh.htm>. The target groups for such members are the "frail elderly" and persons "under 65 years of age with disabilities". *See*, *Wisconsin Partnership Program Waiver*, Section IV, B, effective January, 1999. The Department performs this task by delegating service delivery to a private provider known as the "partnership organization" or a "managed care organization" (MCO). In Dane County, that organization is currently Care Wisconsin.

The partnership organization functions like a health management plan and is responsible for arranging all long-term care services needed by an enrollee through the use of an interdisciplinary team comprised of a nurse practitioner, registered nurse, and social worker/social services coordinator. The partnership organization has responsibilities that are delineated in the contract with the Department of Health Services (DHS). One such responsibility is to determine the number of service hours required to meet the member's needs. *See*, *2013 Family Care and Family Care Partnership Program Contract (Contract)*, §§ V-K, VII-C, & Addendum XII-A-20, available online at <http://dhs.wisconsin.gov/wipartnership/ProPublications.htm>. Care Wisconsin performed that function in this case.

Care Wisconsin determined 12.75 hours was adequate to meet the petitioner's home care needs. The MCO reduced the petitioner's shower/shampoo time by 5 minutes to 30 minutes daily, reduced his undressing time from 10 minutes daily to zero, reduced his meal preparation time from 40 to 20 minutes daily, reduced his blood sugar testing from 10 to zero minutes daily, reduced his nebulizer time from 5 to zero minutes daily. Times for dressing (10 minutes daily) and skin care (5 minutes daily) were unchanged. The MCO *increased* home care time from 3 hours weekly (1 hour for housecleaning, 1 hour for laundry, 1 hour for grocery shopping) to 4 hours weekly (2 hours for housecleaning due to allergies, 1 hour for laundry, 1 hour for grocery shopping).

The petitioner objects to the reduction in time. In particular, he would like more meal preparation time due to his alleged lack of fine motor dexterity, which prevent him from preparing food. He points out that he is diabetic and requires a healthy diet. A healthy diet can be achieved without elaborate food preparation (*e.g.*, fresh fruit, quickly prepared tossed salad, microwaved frozen vegetables and diet entrees). Thus, I am upholding the reduction in meal preparation time for breakfast and lunch. The elimination of time for the as-needed nebulizer treatments also appears reasonable. However, the fine motor coordination needed for blood sugar checks appears to be a hit-and-miss thing for the petitioner, due to neuropathy-related tingling and numbness in his fingers; he cannot wait until he is having a good day or time of day to perform this essential daily task. Although it is a close call, I will restore the 10 minutes daily for such testing. Finally, I will restore the bathing and hair shampoo time to the prior 35 minutes daily. Thirty minutes is commonly allotted for bathing in personal care worker time cases, and an additional 5 minutes for shampooing is not unreasonable. Thus, my conclusion is that 105 weekly minutes (1.75 hours weekly) shall be added to the service plan for this case. In all other respects, the MCO's service hours determination is sustained.

### **CONCLUSIONS OF LAW**

1. The petitioner's needs can be met by 14.50 SHC hours weekly (beginning 2/15/13).

**THEREFORE, it is**

**ORDERED**

That the petition is remanded to Care Wisconsin with instructions to immediately modify the petitioner's care plan to include **14.5** SHC hours weekly effective February 15, 2013, and to report this accomplishment to DHA within 10 days of the date of this Decision. In all other respects, the petition 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 6th day of June, 2013

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\sNancy J. Gagnon  
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 6, 2013.

Care Wisconsin  
Office of Family Care Expansion