



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

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

FCP/148316

PRELIMINARY RECITALS

Pursuant to a petition filed March 27, 2013, under Wis. Admin. Code § DHS 10.55, to review a decision by the Milwaukee County Department of Family Care - MCO in regard to Medical Assistance, a telephonic hearing was held on July 17, 2013, at Milwaukee, Wisconsin. At the request of petitioner, hearings set for May 1, 2013, June 12, 2013, and June 18, 2013 were rescheduled. At the request of the parties, the record was held open for one month for written closing arguments to be sent to the Division of Hearings and Appeals (DHA). Those arguments were timely received at DHA and received into the hearing record.

The issue for determination is whether the Family Care Program correctly denied the petitioner's request for FC purchase of a new power lift chair rather than repairing the five year old lift chair.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]

Petitioner's Representative:

[REDACTED], Ombudsman
State of Wisconsin Board on Aging and
Long Term Care
1402 Pankratz St., Suite 111
Madison, WI 53704

Respondent:

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

By: Chris Sobczak, supervisor
Milwaukee County Department of Family Care - MCO
901 N 9th St., Room 307A
Milwaukee, WI 53233

ADMINISTRATIVE LAW JUDGE:

Gary M. Wolkstein
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Milwaukee County who is disabled. He resides in an independent apartment. His wife died more than one year ago.
2. The petitioner is diagnosed with coronary artery disease, impaired low vision, neuropathy, leg ulcers, depression, Diabetes Mellitus on Insulin, high cholesterol, hypertension, lymphedema, and peripheral vascular disease (PVD). He uses a power wheelchair for mobility.
3. The petitioner is enrolled in the Milwaukee County Family Care Program (FCP) as a Group B Waiver member, and receives supportive services from ANS Home Care.
4. The petitioner's monthly income is Social Security Disability Income (SDDI) of \$1,412.00.
5. The petitioner's power lift chair is about 5 years old. He uses it to watch TV and for leg elevation when he is not in his power wheelchair.
6. The petitioner uses his wife's power lift chair at a table at which he does his paperwork and pursues his hobbies.
7. The Family Care Program (FCP) representative stipulated that petitioner does need a second power lift chair but wants to repair his wife's May, 2008 lift chair rather than purchase a new power lift chair for the petitioner.
8. On or about March 8, 2013, petitioner requested that the Family Care program purchase a new power lift chair for his usage at a cost of about \$1,400.
9. The Family Care Program sent a March 12, 2013 Notice of Action to the petitioner stating that his request for a new power lift chair was denied. The basis for the denial was that the FC team concluded that the most cost effective option was to repair his secondary lift chair rather than purchase a new lift chair for the petitioner.
10. Metro Home Medical and Rehab Equipment sent a July 29, 2013 written estimate stating that it would charge \$286.50 to only install a new power pack and then assess what parts and labor are needed to fully repair the lift chair. The estimate stated in part: "Power pack for lift chair just to see if there is anything else wrong with lift chair. Without power pack, chair does not go up and down for serviceman to see what is going on under lift chair. Cannot guess what other parts are needed for lift chair to work properly. Additionally, labor will be needed also for us to make any more parts that have to be 'special ordered.'" The total cost to repair the lift chair is thus unknown.
11. The normal life expectancy of a power lift chair is about 5 years.

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 denial was upheld in that review. The petitioner then appropriately sought a fair hearing for a further, *de novo* review of the denial decision.

I conclude that the Family Care Program (FCP) incorrectly denied the petitioner's request for purchase of a new power lift chair rather than repairing his wife's more than five year old lift chair. 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 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.

Wis. Admin. Code §DHS 10.41(2)

The general legal guidance that pertains to determining the type and quantity of daily care services that must be placed in an individualized service plan (ISP) is as follows:

DHS 10.44 Standards for performance by CMOs.

...

(2) CASE MANAGEMENT STANDARDS. The CMO shall provide case management services that meet all of the following standards:

...

(f) The CMO, in partnership with the enrollee, shall develop an individual service plan for each enrollee, with the full participation of the enrollee and any family members or other representatives that the enrollee wishes to participate. ... The service plan shall meet all of the following conditions:

1. **Reasonably and effectively** addresses all of the long-term care needs and utilizes all enrollee strengths and informal supports identified in the comprehensive assessment under par. (e)1.
2. *Reasonably and effectively addresses all of the enrollee’s long-term care outcomes* identified in the comprehensive assessment under par. (e)2 **and assists the enrollee to be as self-reliant and autonomous as possible and desired by the enrollee.**
3. *Is cost-effective compared to alternative services* or supports that could meet the same needs and achieve similar outcomes.

...

(Emphasis Added)

Wis. Admin. Code §DHS 10.44(2)(f).

During the July 17, 2013 hearing and in her written closing argument, the petitioner’s representative, Ombudsman [REDACTED], argued that the requested new power lift chair would increase the petitioner’s self-reliance and autonomy in his home and permit him to pursue his paperwork and hobbies. Ms. [REDACTED] also argued persuasively that it was not reasonable or appropriate to repair a lift chair which was older than the normal life expectancy of 5 years old when a new power lift chair appropriate to the petitioner’s needs could be purchased for the petitioner. She also asserted that a new lift chair was

consistent with stated goals of the Family Care Program as confirmed above in Wis. Admin. Code §DHS 10.44(2)(f).

During the hearing and in its response, the Family Care representatives argued that repair of the lift chair was a cost effective alternative to purchase. It further alleged that petitioner “abused” the lift chair because of burn marks from cigarettes and a “history” of rough treatment of the chair. While petitioner may be somewhat rough in his usage of the chair, Ms. ██████ responded credibly that “Mr. ██████ is challenged with vision issues and mobility issues related to his stroke, leg ulcerations, diabetes and lymphedema. In Mr. ██████’s situation, this must be considered normal wear and tear. It has reached the end of its reasonable useful lifetime . . .”

The remaining central issue in this case is whether repair of the lift chair is appropriate and cost effective for the petitioner. The normal life expectancy of a power lift chair is about 5 years. The lift chair in question is already more than five years old. This ALJ requested the Family Care program to provide an estimate of the cost to fully repair the lift chair. As explained in Finding of Fact #11 above, the total cost of that repair is unknown as the \$286.50 is only for the power pack and assessment. The total cost for parts and labor could approach the \$1,400 for a new power lift chair. The Family Care program has not met its burden of proof to establish that repair of the lift chair is “cost effective.”

While there may be some merit to the FCP’s argument that petitioner is rough in his treatment of the lift chairs. However, such rough treatment of his lift chairs does not justify not providing a new lift chair which reasonably and effectively addresses some of his long-term needs for independence, self-reliance and autonomy. Accordingly, based upon the entire hearing record, I conclude that the Family Care Program (FCP) incorrectly denied the petitioners’ request for payment for a new power lift chair as the repair of the current lift chair is not cost effective or appropriate given the age of his current lift chair.

CONCLUSIONS OF LAW

The Family Care Program incorrectly denied the petitioner’s request for a new power lift chair rather than repairing a five year old lift chair.

THEREFORE, it is

ORDERED

The matter is remanded to the Milwaukee Family Care Program to take the necessary administrative actions to approve a new power lift chair for the petitioner that effectively and appropriately meets the petitioner’s needs and outcomes within 10 days of the date 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 27th day of September, 2013

\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 September 27, 2013.

Milw Cty Dept Family Care - MCO
Office of Family Care Expansion
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