



FH
[REDACTED]

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]
[REDACTED]
c/o [REDACTED]
[REDACTED]
[REDACTED]

DECISION

FCP/148430

PRELIMINARY RECITALS

Pursuant to a petition filed March 29, 2013, under Wis. Admin. Code § DHS 10.55, to review a decision by the Eau Claire County Department of Human Services in regard to Medical Assistance, a hearing was held on May 21, 2013, at Eau Claire, Wisconsin.

The issue for determination is whether the Southwest Family Care Alliance properly ended payments to the petitioner's CBRF without first providing written notice to him.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
c/o [REDACTED]
[REDACTED]
[REDACTED]

Respondent:

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

By: T. J. Adkins

Eau Claire County Department of Human Services
721 Oxford Avenue
PO Box 840
Eau Claire, WI 54702-0840

ADMINISTRATIVE LAW JUDGE:

Michael D. O'Brien
Division of Hearings and Appeals

FINDINGS OF FACT

1. The petitioner (CARES # [REDACTED]) is a resident of Eau Claire County.

2. The petitioner receives Family Care Medical Assistance benefits through the Southwest Family Care Alliance.
3. SFCA paid for the petitioner to stay at Our House Assisted Living, a CBRF, as part of his Family Care benefits package.
4. On January 16, 2013, the petitioner fell while bowling. He was taken first to the hospital and then, on January 25, 2013, to a nursing home. The nursing home stay has always been expected to be temporary.
5. SFCA alliance stopped paying for the petitioner's CBRF. It has never provided written notice of this decision to him or his family.
6. SFCA has provided no evidence that any other CBRF would meet the petitioner's needs consistent with his individual service plan after he leaves the nursing home.

DISCUSSION

The Family Care Program provides appropriate long-term care services for elderly or disabled adults. It is supervised by the Department of Health and Family Services, authorized by Wis. Stat. § 46.286, and comprehensively described in Chapter DHS 10 of the Wisconsin Administrative Code. The process contemplated for an applicant is to test functional eligibility, then financial eligibility, and if both standards are met, to certify eligibility. The applicant is then referred for enrollment in a Care Management Organization (CMO), which drafts a service plan that meets the following criteria:

(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. ...

Wis. Adm. Code § DHS 10.44(2)(f).

The petitioner receives Family Care benefits through the Southwest Family Care Alliance CMO. Although SFCA did not provide a copy of the petitioner's individual service plan before or during the hearing, that plan presumably included payment for his stay at Our House Assisted Living, a CBRF. Despite being 91 years old, he remained physically active. Our House met his needs because, among other things, it was near a bicycle path and had a bowling alley.

Family Care rules require CMOs to provide written notice at least 10 days before taking any adverse action against a recipient. Wis. Admin. Code, § DHS 10.52(3). Adverse actions include "every instance in which the CMO intends to reduce or terminate a service or deny payment for a service." Wis. Admin. Code, § DHS 10.52(3)(a)2. The notice must include the following:

1. The action the county agency, resource center or CMO intends to take, including how the action will affect any service that the client currently receives.
2. The reasons for the intended action.

3. Any laws that support the action.
4. The client's right to file a grievance or appeal with the resource center, county agency or CMO, to request a department review and to request a fair hearing.
5. How to file a grievance, or request a department review or a fair hearing.
- 5m. The circumstances under which expedited resolution of a grievance or appeal is available and how to request it.
6. That if the client files a grievance, he or she has a right to appear in person before the county agency, the resource center or CMO personnel assigned to resolve the grievance.
7. The circumstances under which an enrollee's current services provided through the family care benefit will be continued under s. DHS 10.56 pending the outcome of a grievance, department review or fair hearing.
8. The availability of independent advocacy services and other local organizations that might assist a client in a grievance, department review or fair hearing.
9. That the enrollee may obtain, free of charge, copies of client records relevant to the grievance, department review or fair hearing, and how to obtain the copies.

Wis. Admin. Code, § DHS 10.52(3)(b).

In addition, the CMO must provide recipients with “timely and adequate written notification of client rights, “including the right to a fair hearing in accordance with s. DHS 10.55, an offer of assistance in preparing a written grievance or fair hearing request and information about the availability of advocacy services to assist the client.” Wis. Admin. Code, § DHS 10.52(4). And CMOs “shall provide written notification of due process rights, within timelines established in department contracts, in each instance in which...[a] CMO reduces or discontinues a service or item received by an enrollee without the enrollee's consent.” Wis. Admin. Code, § DHS 10.52(4)(c).

On January 16, 2013, the petitioner fell while bowling, which led to a stay in the hospital followed by a temporary stay in a nursing home. SFCA stopped paying for Our House as of January 31, 2013, without providing any written notice to him or his family. It claims that it did not need to because its written policy held that it would not pay for two residences at the same time on the ground that the services would duplicate each other and because once the petitioner was out of the nursing home it would find a substitute CBRF if Our House was not available. It cited no statute, administrative code provision, or Medicaid policy to support its position, relying instead entirely on its own written policy. (The petitioner's daughter and an outside charity have made at least some of the payments to maintain the petitioner's bed in Our House.)

Perhaps the payment for a CBRF would have duplicated payment for a nursing home and perhaps another CBRF would have met the petitioner's needs as well as Our House does. But the relevant question is not whether SFCA was ultimately justified in stopping payment to Our House but whether that was an adverse action. If it was an adverse action, then SFCA could not end the payments before providing written notice to the petitioner. As indicated earlier, payment for Our House was presumably provided for in the petitioner's service plan. Because it was in his service plan, when SFCA ended the payment it both terminated a service or denied payment for a service, and thus explicitly took an adverse action, as that term is defined in Wis. Admin. Code, § DHS 10.52(3)(a)2.

Even if one overlooks the lack of a written notice of the decision to end payments to Our House, the various conversations SFCA's representatives had with the petitioner's relatives did not properly notify them of the action because SFCA never provided any laws that supported its action, as required by Wis. Admin. Code, § DHS 10.52(3)(b)3. Instead, SFCA relied solely upon its own policy and an apparent belief that telling the petitioner, in effect, that “this is the way we do things” was sufficient justification for its action.

The failure to provide notice to the petitioner harmed him because it deprived him of an opportunity to challenge SFCA's action. Medical assistance law does require agencies to consider duplication and cost when determining whether a service is justified. But those are not the only relevant factors. Under Wis. Admin. Code, § DHS 101.03(96m), when determining whether a service is medically necessary, the agency must also consider whether it is consistent with treatment of the recipient's disability; whether its quality is acceptable considering the type of service and provider and the setting, whether it is appropriate with regard to generally accepted standards of medical practice, and whether it is of proven medical value or usefulness. Furthermore, when determining what services are necessary, Wis. Admin. Code, § DHS 10.52(3)(b), requires SFCA to consider not only the cost effectiveness of the service but also whether it reasonably and effectively addresses all of the petitioner's long-term care needs and outcomes and assists him to be as self-reliant and autonomous as he desires and is possible.

It is not idle speculation to presume that removing 91-year-old man from familiar surroundings can be detrimental to his health—especially when that man retains a sound mind and some vigor. Our House not only addresses the petitioner's long-term care needs and outcomes by allowing him to see familiar people but also contributes to his self-reliance and autonomy by allowing him to ride his bicycle and bowl. Balancing what value to place on these factors against the cost of the cost of maintaining his space in Our House while he recovered from his fall are issues he has a right to have considered at a fair hearing. They cannot be disposed of by the provider's unilateral assertion that it has acted properly. SFCA's failure to notify the petitioner in writing of his right to appeal its decision to end funding for Our House—an omission compounded by the inability of its three representatives at the hearing to discuss how his needs would be met or to cite a single law supporting its position—denied him his right to challenge its action. I find, therefore, that it improperly ended those benefits and will order it to reinstate them retroactively.

It is expected that Our House will refund any payments made to it by other sources during the time SFCA did not make those payments. The petitioner's daughter should provide a copy of this decision to Our House.

CONCLUSIONS OF LAW

Southwest Family Care Alliance improperly ended payments to the petitioner's CBRF because it did not inform him of his appeal rights before doing so.

THEREFORE, it is

ORDERED

That this matter is remanded to the county agency and SFCA with instructions that within 10 days of the date of this decision it pay Our House for the cost of the petitioner's residence there retroactive to February 1, 2013. This payment shall be contingent upon Our House agreeing to refund any payments made to it during the time SFCA has not been making those payments.

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

\sMichael D. O'Brien
Administrative Law Judge
Division of Hearings and Appeals



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The preceding decision was sent to the following parties on June 6, 2013.

Eau Claire County Department of Human Services
Office of Family Care Expansion