



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

██████ ██████
c/o ██████ ██████
██████████████████
██████████████████

DECISION

FCP/148662

PRELIMINARY RECITALS

Pursuant to a petition filed April 9, 2013, under Wis. Admin. Code § DHS 10.55, to review a decision by the SFCA in regard to Medical Assistance, a hearing was held on May 21, 2013, at Eau Claire, Wisconsin.

The issue for determination is whether the petitioner's CMO must pay to transport her to her church if her nursing home already provides non-denominational services.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

██████ ██████
c/o ██████ ██████
██████████████████
██████████████████

Respondent:

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

By: T.J. Adkins

Southwest Family Care Alliance
28526 US Hwy 14
Lone Rock, WI 53556

ADMINISTRATIVE LAW JUDGE:

Michael D. O'Brien
Division of Hearings and Appeals

FINDINGS OF FACT

1. The petitioner is a resident of Eau Claire County.
2. The petitioner receives Family Care Medical Assistance through Southwest Family Care Alliance.

3. SFCA has been providing the petitioner with transportation to her church, Cornerstone, each Sunday at a cost of \$6 per round trip.
4. The petitioner has been attending Cornerstone church for 48 years. It offers “Bible-based” services led by a male minister on Sunday. Her nursing home offers a non-denominational Christian service led by a woman on Sunday and a man on Wednesday.
5. There is no reasonable alternative way for the petitioner to attend the church of her choice other than by SFCA funding her transportation to it.

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:

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 lives in a nursing home. For the last 48 years, she has attended church services at Cornerstone, which her daughter describes as a “bible-based” church whose services are on Sunday and led by a male minister. SFCA and its predecessor, Community Health Partnership, have been providing transportation for her to attend this church each week at a cost of \$6 per round trip. SFCA seeks to end this transportation. It contends that her needs can be met more cost-effectively by attending services at the nursing home. It argues that by attending services there she will “meet others that share her interests.” It further argues that she could “maintain relationships with visits and telephone conversations.” Finally, it states that she could arrange alternate transportation to the church.

The needs and supports identified in Wis. Adm. Code § DHS 10.44(2)(e)1 that SFCA must consider include the following:

- d. Autonomy and self-determination.
 - i. Community integration.
 - k. Personal values.
 - n. Religious affiliations

The long-term outcomes supports identified in Wis. Adm. Code § DHS 10.44(2)(e)2 that SFCA must consider must be consistent with the petitioner's values and preferences in the following areas, among others:

- c. Self-determination of daily routine, services, activities and living situation.
- f. Independence.
- g. Social roles and ties to family, friends and community.
- j. Spiritual needs and desired participation in religious activities.

Not one of these needs or supports can be met as well by the services at the petitioner's nursing home as by the church she has been going to. SFCA's position implies that there is no real difference between various Christian sects, but the often hostile, centuries-old arguments that continue to this day among many of the believers belies this assertion. The evidence suggests that the petitioner belongs to a patriarchal, conservative, fundamentalist church whose interpretation of the Bible provides a permanent, unchanging answer to the world's questions. Although little testimony was offered about nursing home's services, it appears that they offer a little more flexible view of the world, and take into account changes in society and knowledge that have occurred over the last few centuries. This is not to say that the petitioner's beliefs are better or truer than those promoted in the nursing home's services. But the Family Care rules are not meant to judge the relative merits of any particular religion; rather they are meant to allow one to continue to practice her religion in a way consistent with her beliefs.

As for community integration and social ties to the petitioner's friends and community, SFCA's arguments that she will "meet others that share her interests" at the nursing home's services and can maintain relationships with members of her church through visits and telephone conversations are condescending and self-serving. The petitioner has plenty of opportunities to meet others at the nursing home who share her interests without attending services there, if she desires. But it is unrealistic to expect church members to visit her, except perhaps sporadically, and telephone calls are not the same as face-to-face contact. Although going to church is a religious event, for most it is also a weekly social occasion to renew long-time acquaintances and make new ones. These acquaintances will approach you and reminisce or ask how you or your family are doing, which is comforting to an aging person in a wheelchair. Some of this social contact can occur in the nursing home, but usually acquaintanceships there do not run as long or as deep as in one's church.

No discussion is needed to support the proposition that allowing the petitioner attend the church of her choice contributes to her autonomy and self-determination.

The petitioner must still establish that the transportation she seeks is cost-effective. At the hearing, the testimony established that she has no reasonable alternative way to get to her church. She requires transportation that can carry a wheelchair. Her daughter has a van that can do this, but she attends a different church with her own family at a time that overlaps her mother's service. The members of the petitioner's church are mostly old persons who cannot provide adequate transportation to her. The church itself has no means to transport her.

The requirement that the service be cost-effective also means that it is necessary to balance the cost of providing the transportation against the value of the service to the petitioner. Attending one's own church provides benefits, but if it would be difficult to justify transportation costs if they were \$1,000 per month. The cost of transporting the petitioner is only \$6 per week. I understand that SFCA must watch its expenses to maintain its profits, but there are other ways of saving \$24 to \$30 per month than disrupting a religious and social activity that has been important to the petitioner for nearly a half a century. These alternatives include sending only one or two persons to a hearing rather than four, as SFCA did. I understand that different workers have different knowledge, but I remember no testimony at this hearing that could not have been provided by one properly prepared worker.

SFCA's final objection is that because Wis. Admin. Code, § 107.09(2)(a)2, requires nursing homes to cover routine services, including religious services, as part of their rate, the Family Care program should not have to cover them. I have no jurisdiction over the nursing home in this matter and therefore cannot order it to provide any particular service. In addition, the nursing home section cited by SFCA refers to "routine services." Providing a place to worship within the nursing home is a routine service; providing transportation outside of the nursing home is not. But while this administrative code provision limits what religious services nursing homes must provide, it does not limit what religious services a CMO must provide because the provision simply does not apply them. The Family Care Program has its own set of rules. Those rules require it to cover more than just routine services, which is why the CMO must develop a service plan specifically tailored to each person it serves. What the petitioner seeks is not routine, but rather a service to meet a need specific to her. A decision allowing her the transportation to her church does not mean that every Family Care participant is entitled to this service. Rather it means that the CMO must balance each recipient's needs against the cost of providing those needs and take into consideration what services and supports that recipient already has. In this matter, the balancing equation includes the relatively low cost of the transportation, the lack of alternative transportation, the significant differences between the worship services the petitioner has attended and those offered by her nursing home, the length of time she has been going to those services, and the social opportunities offered by those services. The result of the balancing equation is that SFCA must pay for her transportation to her church.

CONCLUSIONS OF LAW

Providing transportation so that the petitioner can attend her church is a cost-effective and reasonable and effective way to address her needs and outcomes.

THEREFORE, it is

ORDERED

That this matter is remanded to SFCA with instructions that within 10 days of the date of this decision it reinstate funding for transportation so that the petitioner can attend Cornerstone's church services each Sunday.

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 13th day of June, 2013

\sMichael D. O'Brien
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 13, 2013.

SFCA
Office of Family Care Expansion