



FH
[REDACTED]

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

FCP/148777

PRELIMINARY RECITALS

Pursuant to a petition filed April 17, 2013, under Wis. Admin. Code § DHS 10.55, to review a decision by the NorthernBridges in regard to Medical Assistance, a hearing was held on May 22, 2013, at Shell Lake, Wisconsin.

The issue for determination is the NorthernBridges correctly seeks to end the delivery of meals to the petitioner's home.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]

Petitioner's Representative:

Attorney Thomas O. Mulligan
902 River St
P O Box 457
Spooner, WI 54801-0457

Respondent:

Department of Health Services
1 West Wilson Street
Madison, Wisconsin 53703
By: Nancy Tischbein
NorthernBridges
Hayward, WI

ADMINISTRATIVE LAW JUDGE:

Michael D. O'Brien
Division of Hearings and Appeals

FINDINGS OF FACT

1. The petitioner (CARES # [REDACTED]) is a resident of Washburn County.
2. The petitioner receives Family Care Medical Assistance through NorthernBridges.
3. NorthernBridges seeks to end the delivery of meals to the petitioner's home.

4. The petitioner is diagnosed with progressive multiple sclerosis.
5. The petitioner's weight has fallen from 130 to 123 pounds since meals have not been delivered to her house. She is five feet tall.
6. The petitioner can prepare simple meals that along with Boost supplement will provide her with adequate calories and nutrition.
7. The petitioner receives Boost supplement through NorthernBridges.

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.
4. Is agreed to by the enrollee, except as provided in [subd. 5.](#)
5. If the enrollee and the CMO do not agree on a service plan, provide a method for the enrollee to file a grievance under [s. DHS 10.53](#), request department review under [s. DHS 10.54](#), or request a fair hearing under [s. DHS 10.55](#). Pending the outcome of the grievance, review or fair hearing, the CMO shall offer its service plan for the enrollee, continue negotiating with the enrollee and document that the service plan meets all of the following conditions:
 - a. Meets the conditions specified under [subs. 1. to 3.](#)
 - b. Would not have a significant, long-term negative impact on the enrollee's long-term care outcomes identified under [par. \(e\) 2.](#)
 - c. Balances the needs and outcomes identified by the comprehensive assessment with reasonable cost, immediate availability of services and ability of the CMO to develop alternative services and living arrangements.
 - d. Was developed after active negotiation between the CMO and the enrollee, during which the CMO offered to find or develop alternatives that would be more acceptable to both parties.

Wis. Admin. Code § DHS 10.44(2)(f).

CMOs must “comply with all applicable statutes, all of the standards in this subchapter and all requirements of its contract with the department.” Wis. Admin. Code, § 10.44(1).

The petitioner, who is diagnosed with multiple sclerosis, has received home-delivered meals through NorthernBridges as part of her Family Care Medical Assistance package. NorthernBridges seeks to end

this benefit because it contends that she can make her own basic meals, that additional nutrition can be provided more cost-effectively through Boost, a nutrition supplement. The petitioner contends that she cannot afford to make nutritious meals, that it is difficult for her to do so, and that she is prone to excessive weight loss.

I find that NorthernBridges acted properly because none of the petitioner's reasons for continuing meals withstand scrutiny. First, home-delivered meals are not meant to save the recipient money; that is what the FoodShare program is for. I understand that FoodShare benefits can be inadequate, but home using home-delivered meals as a means to supplement income is not cost effective. Second, there is no evidence that the weight she has lost threatens her health. She is five feet tall and her weight has declined from 130 to 123 pounds. At 130 pounds she was in the lower end of being considered overweight; at 123 pounds, she is considered in the higher end of normal weight. http://www.cdc.gov/healthyweight/assessing/bmi/adult_bmi/english_bmi_calculator/bmi_calculator.html. Finally, I have no doubt that her multiple sclerosis impairs her ability to perform everyday chores, including cooking, which is why I did not uphold NorthernBridges' decision to reduce her supportive home care hours. *See DHA Decision No. 148776*. However, she knows how to cook nutritious meals. I find it noteworthy that she has six dogs in her house that she cares for. If she can care these dogs, she can make a salad, open can of soup, make sandwiches, and reheat food in the microwave. As the agency points out, if this does not provide adequate calories, she can supplement it with Boost, which NorthernBridges pays for. Northern Bridges acted properly.

CONCLUSIONS OF LAW

NorthernBridges correctly seeks to end delivery of meals to the petitioner's house.

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 2nd day of July, 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 July 2, 2013.

Northernbridges
Office of Family Care Expansion
thomasomulligan@gmail.com