



FH  
[REDACTED]

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

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In the Matter of

[REDACTED]  
[REDACTED]  
[REDACTED]

DECISION

FCP/148842

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**PRELIMINARY RECITALS**

Pursuant to a petition filed April 19, 2013, under Wis. Admin. Code § DHS 10.55, to review a decision by the Milw Cty Dept Family Care - MCO in regard to Medical Assistance, a hearing was held on June 19, 2013, at Milwaukee, Wisconsin. Both parties were offered the opportunity to submit written arguments following hearing. Both parties filed such arguments.

The issue for determination is whether the Family Care agency erred in its denial of the requested 12 hours per day of in-home care hours.

There appeared at that time and place the following persons:

**PARTIES IN INTEREST:**

Petitioner:

[REDACTED]  
[REDACTED]  
[REDACTED]

Petitioner's Representative:

Attorney April Hartman  
230 W Wells Street RM 800  
Milwaukee, WI 53203

Respondent:

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

By: Rosetta Schrenk

Milw Cty Dept Family Care - MCO  
901 N 9th St  
Milwaukee, WI 53233

**ADMINISTRATIVE LAW JUDGE:**

John P. Tedesco  
Division of Hearings and Appeals

**FINDINGS OF FACT**

1. Petitioner (CARES # [REDACTED]) is a resident of Milwaukee County.

2. Petitioner has diagnoses including COPD, environmental sensitivity, morbid obesity, anxiety and depression.
3. Petitioner is legally blind and bedridden and requires assistance with activities of daily living including meal preparation, bathing, toileting, dressing, and transferring.
4. Petitioner has some limited needs for skilled nursing tasks related to medications.
5. Petitioner requested at least 12 hours of care in her home every day.
6. The agency visited petitioner's home on April 4, 2013 to assess petitioner's needs.
7. The agency followed-up subsequently with at least one re-assessment in her home.
8. The agency is presently approving and providing 65.25 hours of in-home care per week which is roughly 9.3 hours per day. Caregivers are present in her home 3 times per day and 7 days per week.
9. In addition to these care hours, petitioner receives daily skilled nursing visits in her home at a level of up to one hour per day as needed and appropriate.
10. The agency denied the requested 12 hours by Notice of Decision dated April 12, 2013.
11. Petitioner filed a timely appeal.

### 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. It is authorized in the Wisconsin Statutes, §46.286, and is described comprehensively in the Wisconsin Administrative Code, Chapter DHS 10.

The CMO must develop an Individual Service Plan (ISP) in partnership with the client. Wis. Admin. Code, § DHS 10.44(2)(f). The ISP must reasonably and effectively address all of the client's long-term needs and outcomes to assist the client to be as self-reliant and autonomous as possible, but nevertheless must be cost effective. While the client has input, the CMO does not have to provide all services the client desires if there are less expensive alternatives to achieve the same results. Wis. Admin. Code, § DHS 10.44(1)(f); DHS booklet, Being a Full Partner in Family Care, page 9. ISPs must be reviewed periodically. Admin. Code, § DHS 10.44(j)(5).

Supportive home care and personal care services are included in the list of covered services in the statutory note above. Having established that SHC and PCW hours can be a covered service, the question that remains is, how many SHC and PCW hours are essential to meeting the petitioner's needs?

The agency arrived at the present number of hours by conducting assessments using specific instruments designed for that purpose and typically used in cases such as this (see Personal Care Screening Tool and ADL Assessment in ex. #5). The agency then increased the amount of hours determined necessary through those tools due to petitioner's anxiety and additional behavioral needs and characteristics not reflected in the tools.

Petitioner argues that the additional time sought is needed because petitioner is unable to accomplish some tasks that may be needed during the day. For example, due to environmental sensitivity she may need a window closed, or she may need a person present to ensure that she is safe in the event a household repair person needs access. Petitioner describes that in such circumstances, if such a visitor is wearing cologne or other scented product, petitioner could suffer a reaction that would require assistance. Petitioner also notes that she is legally blind and often loses things in her home and could need a person there to help her when that happens.

I have reviewed the entire record and the hearing testimony with care. It is essential to understand that the FC Program cannot provide every care that a person may want, but is limited to necessary cares. I understand that petitioner may want someone present to find her glasses, close a window, or open the door for a repair person. But, there are cost effective alternatives for all these such as an eyeglass leash, a remote-controlled fan or air conditioner, and scheduling repairs when it is known that a worker will be present in the home. I am not convinced that a person needs to be present in petitioner's home as requested to provide "reassurance to reduce her anxiety" and supervision just in case petitioner might have a need to find something or open/close a window. On this record, I am not persuaded that any additional time must be allocated for tasks that are not hands-on care as is argued by petitioner.

Petitioner argues that organization time is necessary on a daily basis. It seems perfectly reasonable to me that one good spring cleaning type effort could resolve the clutter issue stated by petitioner. It would then be simply a matter of putting things away where they belong and maintaining organization. The agency has already endorsed this one-time cleaning and such an effort would likely be approved if requested. Petitioner's case rested on petitioner's testimony and the assertions of her current caregiver. There was no independent assessment of another agency to rebut the present allocation. It is as likely, or more so, that the current allocation is adequate to provide for a neat home but that the present caregiver is simply inadequate. I have no basis to judge whether the present caregiver is messy herself or may simply not be completing tasks efficiently.

Petitioner argues that hours should be provided for times when a medical provider may visit. Petitioner argues that if a provider is present then a worker may be needed if there is a sensitivity reaction to "usher the provider out [and] air out the room." Obviously, such visits are occasional is stated by petitioner on p.5 of her June 27 letter (ex. #6). In such cases, it would behoove petitioner to schedule those visits for times when a worker will be present. But, I don't understand how it is medically necessary to provide hours for times when a provider *might* visit and *might* trigger a chemical sensitivity reaction. It is not cost-effective to have a person who simply waits around in the event something might happen or some need for reassurance might arise.

I note that petitioner's case rests primarily on her testimony. I fully understand that she would like additional care hours. But, it is petitioner burden to establish the need for the additional benefits and that the present level of service is inadequate and cannot be met through other means, and that the sought benefits are cost-effective.

Petitioner's arguments seek an ideal that is usually not possible in a public benefit medical assistance program. Based on the totality of this record, petitioner has failed to meet her burden of establishing that there is an actual need for the additional hours requested.

### **CONCLUSIONS OF LAW**

The agency did not err in its denial of the additional in-home hours sought by petitioner.

**THEREFORE, it is**

**ORDERED**

That this 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 29th day of August, 2013

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\sJohn P. Tedesco  
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 August 29, 2013.

Milw Cty Dept Family Care - MCO  
Office of Family Care Expansion  
[agh@legalaction.org](mailto:agh@legalaction.org)