



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of



DECISION

FCP/148946

PRELIMINARY RECITALS

Pursuant to a petition filed April 22, 2013, under Wis. Admin. Code § DHS 10.55, to review a decision by the Southwest Family Care Alliance ["SFCA"] in regard to the Family Care Program ["FCP"], a Hearing was held via telephone on June 19, 2013. At petitioner's request a Hearing scheduled for May 23, 2013 was rescheduled. The Hearing for this matter was held at the same time as the Hearing for the following 2 closely related matters concerning the same petitioner: MGE-149488 & FOO-149489.

The issue for determination is whether it was correct to discontinue petitioner's FCP effective April 30, 2013.

There appeared at that time via telephone the following persons:

PARTIES IN INTEREST:

Petitioner:



Respondent:

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

By: Andrea Mountain, Controller, Southwest Family Care Alliance
Mari Wipperfurth, Member Rights Specialist, SFCA
Southwest Family Care Alliance
28526 U.S. Highway 14
Lone Rock, WI 53556

OTHER PERSONS PRESENT:

[Redacted], County Family Care Supervisor
[Redacted], ES Advisor, Crawford County Department of Human Services ["County"]
[Redacted], County ES Supervisor
[Redacted], Registered Nurse ["RN"], County Care Manager
[Redacted], County Social Worker, Care Manager Family Care Program ["FCP"]

ADMINISTRATIVE LAW JUDGE:
 Sean P. Maloney
 Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]; 68 years old) is a resident of Crawford County.
2. Petitioner was receiving FCP because of an administrative error that listed her as functionally eligible.
3. Petitioner's most recent *Long Term Care Functional Screen Report* (Referral Date: 05/08/2012) resulted in a finding that petitioner is independent with all Activities of Daily Living ["ADLs"] and with all Instrumental Activities of Daily Living ["IADLs"] except laundry/chores: "[Petitioner] is fairly independent with everything and only requires some help with cleaning the house from her husband. She is not at risk at this time."
4. SFCA discontinued petitioner's FCP effective April 30, 2013.

DISCUSSION

The Family Care Program ["FCP"] is available to eligible persons only through enrollment in a Care Management Organization ["CMO"] under contract with the Wisconsin Department of Health Services ["DHS"]. Wis. Admin. Code § DHS 10.41(1) (November 2009); See also, Wis. Stat. § 46.284 (2011-12); *Medicaid Eligibility Handbook* ["MEH"] 29.2. A person may be eligible for FCP, but yet not entitled to enroll in a CMO. Wis. Admin. Code § DHS 10.36(1) (November 2009). A person who is found eligible for FCP but who does not meet certain conditions is not entitled to FCP benefits. Wis. Stat. § 46.286(3) (2011-12); Wis. Admin. Code § DHS 10.36(3) (November 2009). Such persons may pay privately for CMO services. Wis. Admin. Code §§ DHS 10.36(3) & 10.37 (November 2009).

In order to receive FCP a person must be functionally eligible. A person is *functionally eligible* only if that person requires one of the following LOCs:

- (1) The nursing home level, if the person has a long-term or irreversible condition, expected to last at least 90 days or result in death within one year of the date of application, and requires ongoing care, assistance or supervision.
- (2) The non-nursing home level, if the person has a condition that is expected to last at least 90 days or result in death within 12 months after the date of application, and is at risk of losing his or her independence or functional capacity unless he or she receives assistance from others.

Wis. Stat. § 46.286(1)(a) (2011-2012); See also, Wis. Admin. Code § DHS 10.33(2) (November 2009); MEH 29.4.

Petitioner does not meet either one of the above LOCs. Therefore, it was correct to discontinue petitioner's FCP effective April 30, 2013.

CONCLUSIONS OF LAW

For the reasons discussed above, it was correct to discontinue petitioner's FCP effective April 30, 2013.

NOW, THEREFORE, it is

ORDERED

That the petition for review herein be and the same is hereby 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 26th day of June, 2013

\sSean P. Maloney
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 26, 2013.

Crawford County Department of Human Services
Office of Family Care Expansion