



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

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In the Matter of

[REDACTED]  
[REDACTED]  
[REDACTED]

DECISION

FCP/149065

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**PRELIMINARY RECITALS**

Pursuant to a petition filed April 29, 2013, under Wis. Admin. Code § DHS 10.55, to review a decision by the Wisconsin Department of Health Services' agent in regard to (Medicaid-based) Family Care Program (FCP) benefits, a hearing was held on June 12, 2013, at Milwaukee, Wisconsin. The hearing record was held open for 7 days with the petitioner's consent.

The issue for determination is whether the FC agency correctly denied the petitioner's request for an occupational therapy (OT) evaluation and OT services.

There appeared at that time the following persons:

**PARTIES IN INTEREST:**

Petitioner:

[REDACTED]  
[REDACTED]  
[REDACTED]

Respondent:

Department of Health Services  
1 West Wilson Street  
Madison, Wisconsin 53703  
By: Christine Kerkman, RN  
Community Care Inc.  
205 Bishops Way  
Brookfield, WI 53005

**ADMINISTRATIVE LAW JUDGE:**

Nancy J. Gagnon  
Division of Hearings and Appeals

**FINDINGS OF FACT**

1. Petitioner (CARES # [REDACTED]) is a resident of Milwaukee County.
2. The petitioner, age 59, was diagnosed as of March 2010 with chronic inflammatory demyelinating polyneuropathy. This is a progressive disease that resembles Guillain-Barre, and

in which the person's ability to have functional motor control severely declines, but with time can improve. When the petitioner enrolled in FC in 2010, she was totally dependent in her activities of daily living (ADLs) at a nursing home. She was provided physical and occupational therapies, and improved to needing minimal assistance for all ADLs. Her level of functional ability has been constant since early 2012.

3. On December 3, 2012, the petitioner's diagnosis was changed to alcoholic peripheral neuropathy. This is a permanently debilitating disease causing degeneration of the peripheral nerves. The symptoms include ataxia, which is an impaired ability to coordinate movement. The new diagnosis negatively changed her prognosis; she no longer has a prognosis for any improvement in her coordination.
4. In March 2012, the petitioner moved from a community based residential facility (CBRF) to her private family home. At that time, the FC program requested a rehabilitation specialist assessment regarding this transition. The resulting recommendation was that the petitioner should receive physical therapy and OT for a set time to help with her transition to her home setting. Those therapies were provided, and ended in June 2012. The discharge reports stated that the petitioner was at her maximum functional ability level. The petitioner's goals of being independent with ADLs were not met at the completion of therapy, and the therapists opined that such goals were unrealistic. A home exercise program was prescribed and developed. In September 2012, the petitioner returned to residence at a CBRF.
5. The petitioner, like any FC recipient, has an individualized service plan (Plan). Her current Plan does not include OT services. On April 8, 2013, the petitioner requested an OT evaluation and OT services. The CMO denied this request on April 17, 2013. *See*, Exhibit 2. The petitioner then filed this appeal.
6. The petitioner requested the OT services with a goal of becoming independent in her ADLs. Upon receiving the April 2013 OT request, the CMO reviewed the petitioner's functional status with CBRF staff. Staff reported that the petitioner's functional abilities were unchanged from her September 2012 admission. Specifically, she feeds herself after her food is cut up, she assists with dressing (balance issues require assistance), she assists with bathing, toilets with supervision, and needs assistance with transfers. Writing is difficult due to severe tremors due to the alcoholic neuropathy diagnosis; the rehabilitation specialist had previously concluded that she would need help with typing for the rest of her life.
7. The petitioner's functional abilities will not improve with additional OT at this time.

### 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. A dis-satisfied FC client may file a grievance with his CMO under Wis. Admin. Code §DHS 10.53, request a state-level review by the Wisconsin Department of Health Services under § DHS 10.54, and/or request a fair hearing under § DHS 10.55.

The state code language on the scope of permissible services for the FC reads as follows:

**DHS 10.41 Family care services. ...**

(2) SERVICES. Services provided under the family care benefit shall be determined through individual assessment of enrollee needs and values and detailed in an individual service plan unique to each enrollee. As appropriate to its target population and as specified in the department's contract, each CMO shall have available at least the

services and support items covered under the home and community-based waivers under 42 USC 1396n(c) and ss.46.275, 46.277 and 46.278, Stat., the long-term support services and support items under the state's plan for medical assistance. In addition, a CMO may provide other services that substitute for or augment the specified services if these services are cost-effective and meet the needs of enrollees as identified through the individual assessment and service plan.

**Note: The services that typically will be required to be available include adaptive aids; adult day care; assessment and case planning; case management; communication aids and interpreter services; counseling and therapeutic resources; daily living skills training; day services and treatment; home health services; home modification; home delivered and congregate meal services; nursing services; nursing home services, including care in an intermediate care facility for the mentally retarded or in an institution for mental diseases; personal care services; personal emergency response system services; prevocational services; protective payment and guardianship services; residential services in an RCAC, CBRF or AFH; respite care; durable medical equipment and specialized medical supplies; outpatient speech; *physical and occupational therapy*; supported employment; *supportive home care*; transportation services; mental health and alcohol or other drug abuse services; and community support program services.**

*[emphasis added]*

Wis. Admin. Code §DHS 10.41(2) (June, 2009). Occupational therapy is specifically included in the list of covered services in the statutory note above.

Given that OT is a covered service, the next question is whether the petitioner requires OT to meet her needs. The burden of proof for the increase rests with the petitioner, and she has not met it. The petitioner offered insufficient documentation from a medical provider to support her position. She offered no evidence to contradict the CMO's position that her diagnosis makes improvement in ADL possible via OT services. I note that reputable reference sources state that nerve damage from alcoholic peripheral neuropathy is permanent. *See*, the National Institutes of Health website, at <http://www.ncbi.nlm.nih.gov/pubmedhealth/PMH0001733/>. Adding OT services is not a cost-effective solution here, as the petitioner is not expected to improve. Thus, the denial is upheld.

### CONCLUSIONS OF LAW

1. The CMO correctly denied the petitioner's request for an OT evaluation and OT services to improve her performance of ADLs.

**THEREFORE, it is**

**ORDERED**

That the petition 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 10th day of July, 2013

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\sNancy J. Gagnon  
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 10, 2013.

Community Care Inc.  
Office of Family Care Expansion