FH
[redacted]

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[redacted]
c/o [redacted]
[redacted]
[redacted]

DECISION

CWA/149108

PRELIMINARY RECITALS

Pursuant to a petition filed April 26, 2013, under Wis. Stat., § 46.27(7m), to review a decision by Brown County Human Services in regard to the Community Integration Program 1B (CIP-1B), a hearing was held on July 3, 2013, by telephone.

The issue for determination is whether the Brown County CIP-1B agency can offer respite services to an adult family home resident.

PARTIES IN INTEREST:
Petitioner:

[redacted]
c/o [redacted]
[redacted]
[redacted]

Respondent:

Department of Health Services
1 West Wilson Street
Madison, Wisconsin 53703
By: Rachel Monfils, S.W.
Brown County Human Services
111 N. Jefferson St.
Green Bay, WI 54301

ADMINISTRATIVE LAW JUDGE:
Brian C. Schneider
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [redacted]) is a resident of Brown County.

2. Petitioner is disabled and has resided in the two-bed [redacted] adult family home for a number of years. Until September, 2012 the [redacted] home was located in Wood County. There petitioner was eligible for Family Care Program (FCP) services through Community Care of Central Wisconsin

(CCCW). The home was paid a monthly FCP rate, and in addition petitioner was allowed a number of hours per month respite services.

3. In September, 2012 the [redacted] home moved to Brown County, and petitioner moved with the caregivers. An application for services was filed. Brown County does not have FCP; instead it still offers Community Options Waiver services for disabled individuals in the community. CIP-1B is one of the waiver programs. The Brown County CIP monthly rate for an adult family home is less than the Wood County FCP rate

4. Initially petitioner was given respite services in Brown County to mirror the services she received in Wood County. The respite was up to three days per month in a setting outside the [redacted] home.

5. In 2013 a supervisor in the county agency notified petitioner's case manager that respite services are not an allowable service for an adult family home in Brown County. Accordingly on April 15, 2013 the agency sent petitioner a notice informing her that respite services would end effective May 1, 2013, and petitioner filed this appeal to contest the termination of the respite care.

6. Under Brown County policy an adult family home cannot receive respite care funded by a separate source because respite care is considered in its monthly rate. Any respite care provided for a resident is the responsibility of the adult family home provider.

DISCUSSION

As a first point, this case initially was captioned COP-149108 because it was determined erroneously that petitioner was eligible for Community Options Program services. That program is a state-funded program distinct from the MA Waiver programs that are funded by both state and federal funds. While working on this decision I noticed that petitioner is eligible under CIP-1B, which is a waiver program. This office codes Waiver program cases differently than COP cases, and thus the caption now has been changed to CWA-149108.

There are four MA Waiver programs in Wisconsin that use Medical Assistance funds to facilitate community placement for disabled persons who otherwise would be institutionalized. They are CIP-1A, CIP-1B, CIP II, and Community Options Program-W (COP-W). The policies for the programs are set forth in the department's MA Waivers Manual. The manual is found on the internet at www.dhs.wisconsin.gov/ltc_cop/waivermanual/index.htm. Specifically CIP-II and COP-W are for elderly and disabled individuals; the other two are for developmentally disabled individuals. Petitioner is eligible in Brown County under CIP-1B.

The Waiver programs are gradually being replaced in Wisconsin by alternative programs including FCP. Currently FCP exists in a limited number of counties, but it will be expanded statewide within the next several years. When petitioner resided with the [redacted] household in Wood County she was under FCP, but Brown County does not yet have FCP. While similar, FCP and the waiver programs have differences in funding and services.

Adult Family Home is an allowable service under the MA Waiver Programs. MA Waivers Manual, Chapter IV, page 26. Respite Care also is an allowable service under the Waiver Programs. MA Waivers Manual, Chapter IV, page 134. There are limitations but none that would apply to petitioner's situation. Importantly, there is no limitation on Respite Care specific to a CIP recipient residing in an adult family home. There also is no provision allowing a local agency to limit Waiver services available to an adult family home resident.

The Brown County policy, found in the county's Adult Family Home Provider Manual, is as follows:

> Adult Family Home providers will be responsible for all aspects of respite coordination; this includes but is not limited to background checks, scheduling, selecting and training respite providers, negotiating payment, applicable tax laws, and making payment for services rendered. The Adult Family Home provider also assumes full responsibility for the activities and actions of the respite-care provider….
>
> Payment and Billing Procedures: The Adult Family Home provider is responsible for negotiating and arranging payment with the respite provider(s). The Adult Family Home provider is also responsible for compliance with applicable tax laws governing the provision of respite care. The Department is not involved in securing, evaluating, scheduling or paying respite-care providers. This is the function of the Adult Family Home provider.

The issue is whether the county agency, in its Adult Family Home policy, can supersede the State MA Waiver policy. Under the MA Waiver policy a CIP-1B recipient can receive respite care services AND adult family home services. I can find no authority allowing the county agency to limit services available to the Wavier recipient. In essence, the county Adult Family Home policy essentially eliminates a service that can be paid separately from the Adult Family Home rate by the CIP-1B program. I find that the county policy cannot supersede the state Waiver policy in that manner.

I therefore will order the county agency to restore petitioner's respite care services as a separate service on her CIP-1B service plan.

CONCLUSIONS OF LAW

The Brown County policy requiring adult family homes to provide respite care using adult family home funding is invalid as it pertains to MA Waiver recipients because MA Waiver policy allows for respite care to be funded separately from adult family home funding.

THEREFORE, it is **ORDERED**

That the matter be remanded to the county with instructions to restore petitioner's respite care funding as a service separate from his adult family home funding on her Individual Service Plan.

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 22nd day of July, 2013

_____

\sBrian C. Schneider
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 22, 2013.

Brown County Human Services
Bureau of Long-Term Support