



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[Redacted]
[Redacted]
c/o [Redacted]
[Redacted]
[Redacted]

DECISION

CWA/149109

PRELIMINARY RECITALS

Pursuant to a petition filed April 26, 2013, under Wis. Admin. Code § HA 3.03, to review a decision by the Brown County Human Services ["County"] in regard to Medical Assistance ["MA"], a Hearing was held via telephone on July 11, 2013. At petitioner's request a Hearing scheduled for June 18, 2013 was rescheduled. This matter is closely related to the following matter concerning a different petitioner residing at the same [Redacted] [Redacted] [Redacted] ["Redacted"] as petitioner: DHA Case No. CWA/149108 (Wis. Div. Hearings & Appeals July 22, 2013) (DHS).

The issue for determination is whether petitioner's [Redacted] [Redacted] [Redacted] ["Redacted"] is responsible for making payment for respite services for MA waivers Community Integration [Redacted] ["CIP"] residents.

There appeared at that time via telephone the following persons:

PARTIES IN INTEREST:

Petitioner:

[Redacted] [Redacted] (not present at July 11, 2013 Hearing).
c/o [Redacted]
[Redacted]
[Redacted]

Represented by:

[Redacted] [Redacted], petitioner's guardian
[Redacted]
[Redacted]

Respondent:

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

By: Mary Hansen, Supervisor, CIP [Redacted]
Brown County Human Services
Economic Support-2nd Floor
111 N. Jefferson St.
Green Bay, WI 54301

Brown County followed its own written policy when it determined that petitioner's respite care must be paid for by her [REDACTED]. However, petitioner receives benefits from CIP. Pursuant to its agreement with the federal government, the State of Wisconsin Department of Health Services ["DHS"] has now assumed sole authority in all CIP policy and program operations. Sole authority means that county agencies may not set local policy, determine waiver program priorities, or enact and enforce local terms in the agency-service provider relationship. Waivers Manual § 1.02. In particular, local waiver agencies may not execute additional or supplemental agreements that impose any additional policies, conditions, or requirements on waiver service providers beyond those established by DHS. DHS is solely responsible for waiver service provider agreement content, policies, and requirements. Waivers Manual 4.02.C.

According to DHS written policy respite is an allowed CIP service. Further, DHS policy has no provision whereby an [REDACTED] is responsible for making payment for respite care services. Waivers Manual, §4.09 [Chapter IV (pages 15 & 134-140; see also, pages 26-30). Brown County policy is not consistent with this DHS policy and, therefore, cannot be followed. DHS policy must be followed. Accordingly, petitioner's [REDACTED] is not responsible for making payment for respite services for CIP residents.

CONCLUSIONS OF LAW

For the reasons discussed above, petitioner's [REDACTED] is not responsible for making payment for respite services for CIP residents.

THEREFORE, it is

ORDERED

that this matter be REMANDED to County, that the County not make petitioner's [REDACTED] responsible for making payment for respite services for CIP residents and that, within 10 days of the date of this *Decision*, the County issue respite care benefits for any respite care which petitioner has already received, which have not already been issued, and for which petitioner is otherwise eligible, retroactive to April 30, 2013.

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 19th day of August, 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 August 19, 2013.

Brown County Human Services
Bureau of Long-Term Support