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[REDACTED]

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

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In the Matter of

[REDACTED]  
[REDACTED]  
[REDACTED]

DECISION

FCP/149189

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**PRELIMINARY RECITALS**

Pursuant to a petition filed May 06, 2013, under Wis. Admin. Code § DHS 10.55, to review a decision by the Western Wisconsin Cares-FCP in regard to Medical Assistance, a telephonic hearing was held on June 24, 2013, at La Crosse, Wisconsin. At the request of the parties, the record was held open until July 20, 2013 for the submission of evidence and written closing arguments to the Division of Hearings and Appeals (DHA). Both parties timely submitted their evidence and closing argument evidence to DHA which are received into the hearing record.

The issue for determination is whether the Family Care Program (FCP) correctly denied the petitioner's prior authorization (PA) request for an increase in his personal care and supportive home care hours from 48 to 76.5 per week.

There appeared at that time and place the following persons:

**PARTIES IN INTEREST:**

Petitioner:

[REDACTED]  
[REDACTED]  
[REDACTED]

Respondent:

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

By: Alice Benson, manager  
Western Wisconsin Cares-FCP  
1407 Saint Andrew Street, Suite 100  
La Crosse, WI 54603-2378

**ADMINISTRATIVE LAW JUDGE:**

Gary M. Wolkstein  
Division of Hearings and Appeals

**FINDINGS OF FACT**

1. Petitioner (CARES # [REDACTED]) is a 25 year old resident of La Crosse County who is enrolled in the Family Care Program (FCP). He resides independently in a private apartment.
2. The petitioner is diagnosed with cerebral palsy (CP), muscle weakness, PTSD, bone collapse, leg spasms, depression, and anxiety. His anxiety issues have become worse since he began living independently.
3. Petitioner needs supervision and assistance with some of his activities of daily living (ADL) and IADL tasks. The Family Care Interdisciplinary Team (IDT) staff completed a supportive home care (SHC) and personal care worker (PCW) assessment with the petitioner, and determined that basically he needed 48 hours per week of SHC/PCW hours per week.
4. Petitioner was residing in a residence with his mother. His mother did not provide any direct care of petitioner, but did assist with shopping, some meals, and was in the apartment for companionship. During November, 2012, petitioner moved into his own two bedroom apartment, with increased loneliness and anxiety, due to his living independently for the first time.
5. Petitioner works part-time at the YMCA about 10-15 hours per week. He is independent in getting around the community on his own, and riding the city buses. He is capable of arranging for his transportation, medical needs, self-directed supports for his SHC/PCW workers, arranging their schedules, and managing his own money.
6. During February, 2013, petitioner met with his Family Care team to review his needs and his required SHC/PCW hours.
7. On or about March 6, 2013, petitioner requested an increase in his SHC/PCW hours from 48 hours to 66.5 hours per week of SHC/PCW plus 10 hours of "companionship care (total of 76.5 hours per week or 11 hours per day). In addition, petitioner requested 5 hours per month for shopping.
8. Based upon the Resource Allocation Decision (RAD) process, the La Cross County Family Care Program conducted Median Task Guide for Supportive Services assessments of the petitioner's ADLs and IADLs on or about March 6, 2013. Those assessments determined that petitioner required about 43 hours of SHC/PCW per week with an additional 5 hours per month for shopping.
9. The Family Care program determined that it was not cost effective or appropriate that petitioner's SHC/PCW workers provide "companionship" regarding his anxiety, but instead his anxiety issues should be addressed by mental health counselors at Aurora Mental Health at lower cost and to effectively assist petitioner to become more independent in his handling his anxiety/depression issues. The Family Program denied petitioner's request for SHC or PCW services for "companionship" to provide a person with whom to talk.
10. The Western Wisconsin La Cross County Family Care program sent a March 8, 2013 Notice of Action to the petitioner stating that his requested increase to 76.5 hours per week of FCP-paid Supportive Home Care (SHC) hours was denied, but that his SHC hours at 48 hours per week continued to be approved (with an additional 5 hours per month for shopping). That notice also explained that petitioner's request for 10 hours of SHC for going out into the community was denied because petitioner was capable of going out into the community independently.
11. The Family Care Program representative stipulated that petitioner was already authorized for referral to mental health services through Aurora Mental Health to provide appropriate professional counseling (not simply companionship) to help petitioner address his anxiety issues and independent living coping skills.

12. During the June 24, 2013 hearing, petitioner was unable to refute with any convincing evidence the reasons for the calculation of his SHC hours set forth in the above Findings of Fact.
13. While the record was held open, petitioner submitted his July 8, 2013 closing argument in which in part he stipulated that an increase from 48 to 56 hours per week was sufficient to meet his SHC/PCW needs (instead of the requested increase to 76.5 hours).

### DISCUSSION

The Family Care program, which is supervised by the Department of Health Services (DHS), is designed to provide appropriate long-term care services for elderly or disabled adults. Whenever the local Family Care program decides that a person is ineligible for the program, or when the CMO discontinues an ongoing service in the service plan, the client is allowed to file a fair hearing request. Because a service increase denial is sought here, the petitioner appropriately sought a fair hearing for a further, *de novo* review of the CMO decision. Wis. Admin. Code §DHS 10.55(1).

I conclude that the denial of petitioner's requested increase in his FC-paid SHC/PCW hours was accurate and appropriate, given the evidence in the hearing record. 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).

Supportive home care is included in the list of covered services in the statutory note above. The Department's 2010 CMO contracts (especially, p. 253 on SHC) may be viewed at <http://dhs.wi.gov/lcure/StateFedReqs/FC-RC-CMO-Contracts.htm>. Having established that SHC hours can be a covered service, the question that remains is, how many SHC hours are essential to meeting the petitioner's needs?

The skeletal legal guidance that pertains to determining the type and quantity of daily care services that must be placed in an individualized service plan (ISP) is as follows:

**DHS 10.44 Standards for performance by CMOs.**

...

(2) CASE MANAGEMENT STANDARDS. The CMO shall provide case management services that meet all of the following standards:

...

(f) The CMO, in partnership with the enrollee, shall develop an individual service plan for each enrollee, with the full participation of the enrollee and any family members or other representatives that the enrollee wishes to participate. ... The service plan shall meet all of the following conditions:

1. *Reasonably and effectively addresses all of the long-term care needs and utilizes all enrollee strengths and informal supports identified in the comprehensive assessment under par. (e)1.*
2. *Reasonably and effectively addresses all of the enrollee's long-term care outcomes identified in the comprehensive assessment under par. (e)2 and assists the enrollee to be as self-reliant and autonomous as possible and desired by the enrollee.*

**3. Is cost-effective compared to alternative services or supports that could meet the same needs and achieve similar outcomes.**

...

*(Emphasis added)*

Wis. Admin. Code §DHS 10.44(2)(f).

In this case, the central issue is whether the CMO correctly denied the petitioner's prior authorization (PA) request for an increase in his personal care and supportive home care hours from 48 to 76.5 per week, due to other "cost-effective" and appropriate services for petitioner to achieve similar outcomes with the inclusion of mental health services through Aurora. See above Findings of Facts. The county agency met its burden of proof to establish a prima facie case that it correctly determined petitioner's SHC/PCW hours to be 48 hours per week.

During the June 24, 2013 hearing, this Administrative Law Judge (ALJ) provided opportunities for the petitioner to offer specific testimony to refute the Department's Median Task Guide assessments which determined petitioner's SHC/PCW hours to be about 43-48 hours per week as of March 6, 2013. The petitioner was unable to provide any specific testimony or evidence to refute the Median Task Guide assessments and calculations that petitioner needed only the approved 48 hours per week. Instead, petitioner appeared agitated and explained repeatedly that he needed the "companionship" (talk therapy) from his SHC/PCW workers (who were also his friends) to help calm him especially during periods of anxiety and loneliness. He further explained that because he is no longer residing with mother, he has no immediate support group and needs someone with whom to talk. The FCP representatives, Ms. Alice Benson and Ms. Jennifer Arihood-Hanabarger did not dispute the petitioner's need for assistance with his

anxiety and stress management, but argued convincingly that such anxiety issues could be more effective, appropriately, and cost-effectively provided by health care professionals. See Findings of Fact #9 and #11 above. In addition, they argued persuasively that petitioner's request for 10 hours of SHC for traveling into the community was correctly denied because petitioner was capable of going out into the community independently.

The petitioner has not met his burden of persuasion to refute that the Family Care correctly denied his request for increased SHC/PCW hours as of March 6, 2013. The petitioner was upset that his requested increase was not approved, but he nevertheless has the burden of persuasion to establish specific, credible and reliable testimony or evidence to refute that the Family Care Program's assessment of petitioner's 48 hours of approved SHC/PCW hours per week was incorrect. While petitioner alleged there were safety issues that FC was not addressing in his approved 48 hours, he was unable to establish with specific evidence any such issues, given that the FC program has already authorized him that appropriate mental health services would be promptly provided for him. Moreover, as indicated above, the petitioner stipulated in his written closing argument that an increase from 48 to 56 hours per week of SHC/PCW was sufficient to meet his needs.

However, in reviewing the hearing record, petitioner has not met his burden that he needed more than the approved 48 hours per week, given the approval of appropriate and prompt mental health services for petitioner through Aurora. Accordingly, based upon the above, I conclude that the Family Care Program correctly denied the petitioner's prior authorization (PA) request for an increase in his personal care and supportive home care hours from 48 to 76.5 per week.

### **CONCLUSIONS OF LAW**

The Family Care (FC) Program correctly denied the petitioner's prior authorization (PA) request for an increase in his personal care and supportive home care hours from 48 to 76.5 per week, given that the FC program has already authorized him that appropriate mental health services would be promptly provided for him through Aurora Mental Health.

**THEREFORE, it is**

**ORDERED**

The matter is remanded to the Family Care Program to take the necessary administrative action to arrange appropriate mental health services for the petitioner through Aurora Mental Health within 10 days of the date of this Decision. In all other respects, 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 August, 2013

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\sGary M. Wolkstein  
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 26, 2013.

Western Wisconsin Cares-FCP  
Office of Family Care Expansion