



FH
[REDACTED]

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

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

FCP/149822

PRELIMINARY RECITALS

Pursuant to a petition filed June 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 hearing was held on July 08, 2013, at La Crosse, Wisconsin.

The issue for determination is whether the FC agency erred in terminating 3 weekly SHC hours for house cleaning and grocery shopping.

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: Susan Jandt

Western Wisconsin Cares-FCP
1407 St. Andrews St., #100
La Crosse, WI 54603

ADMINISTRATIVE LAW JUDGE:

John P. Tedesco
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of La Crosse County.
2. Petitioner is a member of the Family Care Program. She is enrolled under the non-nursing home level of care.

3. The agency (Western Wisconsin Cares) had previously allowed supportive home care hours to be used for petitioner's house cleaning and grocery shopping.
4. The agency realized it was not permitted under the provider contract to allow SHC hours for such tasks. The agency terminated the three hours per week 2 hours for house cleaning and 1 hour for grocery shopping).
5. On May 14, 2013, the agency issued notice to petitioner indicating that it would terminate SHC hours because petitioner's boyfriend can clean her house.
6. Petitioner filed an appeal.

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. It is authorized in the Wisconsin Statutes, §46.286, and is described comprehensively in the Wisconsin Administrative Code, Chapter DHS 10.

Wis. Adm. Code, §DHS 10.33(2) provides that an FCP applicant must have a functional capacity level of comprehensive or intermediate; I note here that Wis. Stat., § 46.286, uses the terms "nursing home" and "non-nursing home" levels just as the agency in this case. If the person meets the comprehensive (nursing home) level, she is eligible for full services through a care management organization (CMO), including Medical Assistance (MA). Wis. Adm. Code, § DHS 10.36(1)(a). If the person meets the intermediate (non-nursing home) level, he is eligible for full services only if he is in need of adult protective services, he is financially eligible for MA, or she is grandfathered as described in § DHS 10.33(3). Wis. Adm. Code, § DHS 10.36(1)(b). **A person eligible under the non-nursing home level is eligible for less FCP services.**

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 reduction 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).

The agency argues that SHC is not permitted for a member in the non-nursing home level of care, which applies to petitioner. It conceded that it had previously provided such services to petitioner in error. The services allowed under this limited service plan are set forth in the contract between the state and the agency at Sections VII (B), and Addendum XII (B). The benefit package associate with the non-nursing home level of care does include such things as case management, AODA treatment, durable medical equipment, and mental health care are all covered services. But, house cleaning and grocery shopping do not appear to be included in the limited services of the non-nursing home level of care.

CONCLUSIONS OF LAW

The agency did not err in terminating the SHC hours for grocery shopping and house cleaning because petitioner is in the non-nursing home level of care.

THEREFORE, it is

ORDERED

That this appeal 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 5th day of August, 2013

\sJohn P. Tedesco
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 5, 2013.

Western Wisconsin Cares-FCP
Office of Family Care Expansion