FH
[redacted]

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[redacted]

DECISION

FCP/149874

PRELIMINARY RECITALS

Pursuant to a petition filed June 06, 2013, under Wis. Admin. Code §DHS 10.55, to review a decision by the Milw Cty Dept Family Care - MCO in regard to Medical Assistance (MA), a hearing was held on August 13, 2013, at Milwaukee, Wisconsin.

The issue for determination is whether the MCO correctly determined petitioner's supportive home care (SHC)/personal care (PC) hours effective April 25, 2013.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:
Petitioner:

[redacted]

Respondent:

Department of Health Services
1 West Wilson Street
Madison, Wisconsin 53703
By: Rosaida Schrenk, QI Coordinator
Milw Cty Dept Family Care - MCO
901 N 9th St
Milwaukee, WI 53233

ADMINISTRATIVE LAW JUDGE:
Kelly Cochrane
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [redacted]) is a resident of Milwaukee County and a member of the Family Care Program (FCP).

2. She is 67 years old and lives at home alone. She is diagnosed with right side hemiparesis, diabetes mellitus, arthritis, asthma, cerebral vascular accident, chronic pain, gastro esophageal reflux disease, sleep apnea and hypertension.

3. On March 6, 2013 the Family Care Interdisciplinary Team (IDT) completed an annual review of petitioner's case. Petitioner's FCP Care Manager met with petitioner and reviewed her SHC/PC assessment.

4. On March 19, 2013 petitioner met with her Registered Nurse from the IDT to again review the details of the SHC/PC assessment.

5. On March 21, 2013 the petitioner met with her FCP Care Manager and confirmed the information she had provided during her assessment meetings about her needs regarding bathing, oral care, and application of makeup.

6. On April 10, 2013 a Notice of Action letter was issued to petitioner regarding the determination that her personal care hours were being reduced from 16.5 to 14 hours weekly.

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. The Care Management Organization (CMO) is required to issue notice to clients regarding eligibility, entitlement and cost sharing requirements as required under §DHS 10.31 (6) (b), Wis. Adm. Code §DHS 10.52. Further, according to the rule, clients shall be given written notice of any intended adverse action at least 10 days prior to the date of the intended action by the CMO in every instance in which the CMO intends to reduce or terminate a service or deny payment for a service. As described in Finding #6 above, the notice was issued and petitioner appealed therefrom. I must note here that the Notice of Action references a reduction in PC hours, however, the assessment references SHC. I therefore am referencing both services herein.

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.

Wis. Admin. Code §DHS 10.41(2). SHC and PC services are included in the list of covered services in the statutory note above. The question that remains is, how many SHC hours are essential to meeting the petitioner's needs?

The agency has developed an assessment tool to allow case managers to consistently determine the number of hours required by each recipient. The assessment tool allots a specific amount of time in each area the recipient requires help, which the reviewer can then adjust to account for variables missing from the screening tool's calculations. The reviewer in this case, after meeting with petitioner and assessing

her capabilities, used the tool to determine that 14 hours per week were warranted. See Exhibit 4. This was a change from the previously allotted 16.4 hours. The change came as a result of meeting with and assessing petitioner on three separate occasions in March and the information given by the petitioner in those assessments. Essentially, the agency argues that she reported that she was providing her own oral cares (dentures), applying her own makeup, and needed 60 minutes to bathe. This was confirmed with petitioner during three separate meetings.

The information provided at the three separate assessments showed that petitioner was performing as she reported. The information provided at hearing by petitioner and her husband now suggests that the information was incorrectly entered or that petitioner never had the discussions as reported by the IDT. The problem with the petitioner's information at hearing was that it did not credibly address that the information was somehow wrong. The petitioner and her husband did not have the same facts about the makeup (what she uses and applies), the IDT clearly was not made aware of any application of creams or incontinence, and there was no information to show why petitioner could not perform her oral cares for her dentures.

This information should be presented to the IDT through another assessment so that the IDT can truly understand and evaluate what services petitioner needs – whether it be additional SHC or incontinence products or something else. I must find that the preponderance of the evidence supports the agency's findings. The agency can only make determinations on the information it is receiving. Petitioner can always request a new assessment. The agency may want to consider recording such assessments given the allegations about what is being discussed and entered as accurate information at the time of the assessments.

Based on the preponderance of the evidence, I conclude that the result of the SHC/PC determination is justified and I do not find reason to increase the hours beyond the 14 hours now approved. This is not to diminish the services petitioner needs and receives, however, I cannot find that the agency made an incorrect determination based on the information provided to it at the time of the assessment.

I add, assuming petitioner finds this decision unfair, that it is the long-standing position of the Division of Hearings & Appeals that the Division's hearing examiners lack the authority to render a decision on equitable arguments. See, Wisconsin Socialist Workers 1976 Campaign Committee v. McCann, 433 F.Supp. 540, 545 (E.D. Wis.1977). This office must limit its review to the law as set forth in statutes, federal regulations, and administrative code provisions.

CONCLUSIONS OF LAW

The MCO correctly determined petitioner's supportive home care (SHC)/personal care (PC) hours effective April 25, 2013.

THEREFORE, it is **ORDERED**

That the petition for review herein be 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 Milwaukee,
Wisconsin, this 29th day of August, 2013

_____

\sKelly Cochrane
Administrative Law Judge
Division of Hearings and Appeals

State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

Wayne J. Wiedenhoeft, Acting Administrator
Suite 201
5005 University Avenue
Madison, WI 53705-5400

Telephone: (608) 266-3096
FAX: (608) 264-9885
email: DHAmail@wisconsin.gov
Internet: http://dha.state.wi.us

The preceding decision was sent to the following parties on August 29, 2013.

Milw Cty Dept Family Care - MCO
Office of Family Care Expansion