



FH
[REDACTED]

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

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

FCP/149973

PRELIMINARY RECITALS

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

The issue for determination is whether the Family Care Program (FCP) correctly denied petitioner's request for payment for a lift chair.

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: Lindsay Unteutsch, Family Care Nurse, Life Navigators
Milwaukee County Department of 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 51-year-old resident of Milwaukee County who is eligible for FCP.
2. Petitioner is diagnosed with a number of conditions including asthma, chronic pain, depression, diabetes, hypertension, and obesity.

3. Petitioner lives along in an independent apartment. He has 8 hours weekly of supportive home care (SHC) and 2 hours weekly of personal care (PC) for bathing assistance. He also receives some in-home supports from family members.
4. Petitioner uses a cane for ambulating in the home and is independent in all activities of daily living (ADLs) except for bathing.
5. In December 2012 petitioner had his FCP review at which time he reported falling several times in the months prior. The FCP team recommended he have an occupational therapy (OT) evaluation for fall prevention and to see if he required durable medical equipment (DME). The OT evaluation recommended DME (lift chair, reacher, long handled shoe horns, and elastic shoe laces) and physical therapy (PT) to reduce his risk of falling, decrease pain, improve balance, improve function, and to increase strength.
6. The FCP Team determined that it would wait to see if a lift chair was necessary after petitioner completed his PT. Petitioner's PT began in January 2013.
7. The FCP Team completed a Resource Allocation Decision (RAD) on February 21, 2013 to assess the need for the lift chair. The RAD determined that because petitioner's PT showed that petitioner was transferring independently from sit to stand and that his strength increased, it would be more cost effective to monitor member than to purchase a lift chair at that time. The cost of a lift chair was estimated to be approximately \$804.
8. On April 16, 2013, petitioner formally requested FCP coverage of the cost for a lift chair.
9. On April 17, 2013 the FCP denied coverage of the lift chair because petitioner did not need it in light of the PT and recommendations from same.

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.

The Managed Care Organization (MCO) must develop an Individual Service Plan (ISP) in partnership with the client. Wis. Admin. Code, §DHS 10.44(2)(f). The ISP must reasonably and effectively address all of the client's long-term needs and outcomes to assist the client to be as self-reliant and autonomous as possible, but nevertheless must be cost effective. While the client has input, the MCO does not have to provide all services the client desires if there are less expensive alternatives to achieve the same results. Wis. Admin. Code, §DHS 10.44(1)(f); DHS booklet, Being a Full Partner in Family Care, page 9. ISPs must be reviewed periodically. Admin. Code, §DHS 10.44(j)(5).

Wis. Stat., §46.287(2)(a)1 provides that a person may request a fair hearing to contest a list of negative actions under the FCP program directly to the Division of Hearings and Appeals. Failure to approve a requested new service is not in the list. In addition, the participant can file a grievance with the MCO over any decision, omission, or action of the MCO. The grievance committee shall review and attempt to resolve the dispute. If the dispute is not resolved to the participant's satisfaction, she may then request a hearing with the Division of Hearings and Appeals. If the person chooses to not grieve a decision or omission and appeals directly, the decision must be reviewed by the Department's MCO monitoring unit. Wis. Stat., §46.287(2)(b).

Petitioner's appeal letter states that a grievance was requested but that he had not appeared before the Grievance Committee. Nevertheless, it appears that the MCO reviewed the request after the appeal was filed and attempted to resolve it. The Team discussed having attempted to contact petitioner regarding the matter, but that they were unable to reach him by phone. The matter was not resolved. I thus will review the case although it is not clear that the statutory procedure was followed.

The issue in this case is whether the MCO acted appropriately in denying petitioner's request for the lift chair. There are no standards written in the law or policy on how to make such a determination. Rather, it comes down to the general criteria for determining authorization for services – medical appropriateness and necessity, cost effectiveness, statutory and rule limitations, and effectiveness of the service. See Wis. Admin. Code, §DHS 107.02(3)(e).

I conclude that the denial was appropriate. Petitioner disputed the PT's findings, despite the numerous reports for same and the direct testimony of the FCP Nurse who spoke to the physical therapist. He also mentioned a prescription for a lift chair, however the agency had never received such information nor could petitioner present proof of it at hearing. Even if there was a prescription, the FCP Team would still use the same criteria of medical appropriateness and necessity, cost effectiveness, statutory and rule limitations, and effectiveness of the service. Further, petitioner's own testimony was that he transfers independently from his bed with the use of a cane or pushing himself up with his arms, the same way he does in his chair. He testified that 'it would be nice' to have a lift chair given his chronic pain. The FCP Team agreed that a *new* chair would be appropriate for petitioner given the age and state of his current chair, and were working with him on options to do so, but that the new chair would not need to be a lift chair. The FCP Team also conceded at hearing that they were also willing to work with petitioner regarding finding a new physical therapist for him, but that they needed for him to make himself available to them.

In the end, the primary purpose of a lift chair is to assist a person with getting into and out of a chair, and since petitioner requires no assistance to transfer, there is no medical need for the chair and it is not cost effective.

CONCLUSIONS OF LAW

That the evidence is not sufficient to demonstrate that the requested lift chair meets the standards necessary for approval for payment by the Family Care Program.

THEREFORE, it is

ORDERED

That the petition for review herein 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 Milwaukee,
Wisconsin, this 23rd day of August, 2013

\sKelly Cochrane
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 23, 2013.

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