



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

FCP/150032

PRELIMINARY RECITALS

Pursuant to a petition filed June 17, 2013, under Wis. Admin. Code § DHS 10.55, to review a decision by the Lakeland Care District ["Lakeland"] in regard to Medical Assistance ["MA"], a Hearing was held via telephone on July 10, 2013.

The issue for determination is whether petitioner's Supportive Home Care ["SHC"] hours may be reduced from 73.5 hours per week to 56 hours per week.

There appeared at that time via telephone the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]

Petitioner's Representative:

[REDACTED]
[REDACTED]
[REDACTED]

Respondent:

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

By: Kathy Burghardt, Care Manager Supervisor, Lakeland
Laura Lewis, Care Manager, Lakeland
Julie Ulrich, Registered Nurse ["RN"], Lakeland
Lakeland Care District
N6654 Rolling Meadows Drive
Fond du Lac, WI 54937

OTHER PERSONS PRESENT:

[REDACTED], Elderly Benefits Specialist, Winnebago County
[REDACTED], petitioner's brother

ADMINISTRATIVE LAW JUDGE:
 Sean P. Maloney
 Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (68 years old) is a resident of Winnebago County.
2. Petitioner lived with her mother for many years until her mother passed away; she now lives alone. Exhibits #8 & #9; and Attachments A, B, E & F.
3. Petitioner is a quadriplegic as the result of a motor vehicle accident in 1965 when she was 20 years old; she is paralyzed from the chest down and has only limited use of her hands; she can feed herself, hydrate herself, self-propel her manual wheelchair, and use the telephone but is unable to transfer, walk, toilet, or turn herself at night; she needs total assistance with bathing, dressing, toileting, transferring, and transportation; she cannot position herself properly in bed to prevent pressure sores even with the use of adaptive equipment; she requires a caregiver nearby at night for personal safety in case of an emergency. Exhibits #3, #4, #5, #6, #7, #8 & #9; and Attachments A, B, E & F.
4. Petitioner's desired FCP outcome is to stay in her own home for privacy, independence, and the ability to have a dog. Exhibit #9 & Attachments A, B & E.
5. The County sent petitioner a *Notice of Action* letter dated May 8, 2013 notifying her that effective May 23, 2013 her SCH hours would be reduced from 73.5 hours per week to 56 hours per week. Attachment C.
6. Lakeland reduced petitioner's SCH hours because it determined that petitioner needs only 56 hours per week to support her FCP outcome because petitioner's night time SCH hours could be reduced and petitioner could be left alone during at least some overnight hours (use of all SCH hours only during night time would put petitioner at significant risk for skin breakdown, pressure areas, and other medical concerns). Exhibit #3 and Attachments C & F.
7. In the absence of a caregiver nearby the response time to a call for assistance from petitioner (for such things as repositioning or bowel incontinence) would be approximately 2 hours; it is not known what the emergency response time would be (for such things as sickness, choking, fire, tornado, etc.)

DISCUSSION

FCP is available to eligible persons only through enrollment in a Care Management Organization ["CMO"] under contract with the Wisconsin Department of Health Services ["DHS"]. Wis. Admin. Code § DHS 10.41(1) (November 2009). A person may be eligible for FCP, but yet not entitled to enroll in a CMO. Wis. Admin. Code § DHS 10.36(1) (November 2009). A person who is found eligible for FCP but who does not meet certain conditions is not entitled to FCP benefits. Wis. Admin. Code § DHS 10.36(3) (November 2009). Such persons may pay privately for CMO services. Wis. Admin. Code §§ DHS 10.36(3) & 10.37 (November 2009).

In this case petitioner is eligible for FCP, is enrolled in a CMO (Lakeland), and is receiving FCP benefits. Petitioner appeals because she was notified that her SCH hours would be reduced.

This matter must be decided by the preponderance of the credible evidence. Wis. Admin. Code § HA 3.09(4) (September 2001). It must be concluded, based on the preponderance of the evidence in the record of this matter as reflected in the above *Findings of Fact*, that petitioner's SCH hours may not be reduced. The current hours are justified by petitioner's needs and are necessary for petitioner to meet her desired FCP outcome (which is to live in her own home).

Lakeland has failed to identify how petitioner's safety in her home can be assured with a reduced number of SCH hours that would result in petitioner being left alone for at least some overnight hours. Lakeland has made several suggestions: *Night Owl* monitoring device; bed rail/trapeze, larger urine drainage bag; informal supports. However, given petitioner's needs and the response times involved none of those could assure petitioner's safety.

CONCLUSIONS OF LAW

For the reasons discussed above, petitioner's SHC hours may not be reduced from 73.5 hours per week to 56 hours per week.

NOW, THEREFORE, it is

ORDERED

That this matter be REMANDED to the County, that the County not reduce petitioner's SCH hours from 73.5 hours per week to 56 hours per week.

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 15th 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 15, 2013.

Lakeland Care District
Office of Family Care Expansion
[REDACTED].[REDACTED]@gwaar.org
jjaworski@co.winnebago.wi.us