



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

In the Matter of

[REDACTED]
[REDACTED]
c/o [REDACTED] & [REDACTED]
[REDACTED]
[REDACTED]

DECISION

CWA/150322

PRELIMINARY RECITALS

Pursuant to a petition filed June 25, 2013, under Wis. Admin. Code § HA 3.03, to review a decision by the Kewaunee County Department of Social Services in regard to Medical Assistance, a hearing was held on August 06, 2013, at Kewaunee, Wisconsin.

The issue for determination is the county agency erred when it modified the day services schedule of petitioner.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
c/o [REDACTED] & [REDACTED]
[REDACTED]
[REDACTED]

Respondent:

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

By: Debra Hakari

Kewaunee County Department of Social Services
810 Lincoln Street
Kewaunee, WI 54216

ADMINISTRATIVE LAW JUDGE:

Peter McCombs (telephonically)
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a 58 year old resident of Kewaunee County, who has Downs Syndrome. Petitioner's sister, [REDACTED] [REDACTED], is her legal guardian.

2. The petitioner resides with her personal care worker, [REDACTED] [REDACTED], and two other disabled adults. Ms. [REDACTED] has worked with petitioner daily for two years.
3. On June 20, 2013, respondent wrote to petitioner notifying her that, effective July 3, 2013, petitioner's day services would be reduced from 5 days per week to 4 days per week.
4. On behalf of petitioner, Ms. [REDACTED] filed a request for fair hearing to contest the reduction in day services provided through the Community Integration Program (CIP 1B).

DISCUSSION

CIP 1B is one of several medical assistance waivers programs meant to enable elderly, disabled, and brain-injured people to live at home or in community integrated settings typical of the residential arrangements of those not disabled. The Department's *Medicaid (MA) Waivers Manual*, found online at <http://dhfs.wisconsin.gov/bdds/waivermanual/index.htm>, describes eligibility for and operation of the various waivers programs, including CIP 1B. Wisconsin statutes provide no specific authority for CIP 1B appeals. This is unlike the statute for the similar Community Options Program-Waiver, which states that a "person who is denied eligibility for services or whose services are reduced or terminated under this section may request a hearing from the department under s. 227.44, except that lack of adequate funding or a denial under sub. (6r) (a) may not serve as the basis for a request under this subsection." Recipients of all waivers matters, including CIP 1B have the right to appeal denials and reductions of services per policy. *See, Waivers Manual*, § 8.05.

Effective July 3, 2013, the program reduced petitioner's day services hours at [REDACTED] [REDACTED], a community rehabilitation program serving people with disabilities and special needs. Petitioner's day services were reduced from 5 days per week to 4 days per week. Petitioner argues that there was a financial reason for the reduction,¹ which the respondent denies. The petitioner has attended [REDACTED] [REDACTED] since 1976, and petitioner's relatives testified that she has had great success there.

The respondent now seeks to increase petitioner's active community participation; as such, respondent argues that the reduction in her day service programming will actually enhance petitioner's plan with more community involvement. Exhibit 2.

It is a well-established principle that a moving party generally has the burden of proof, especially in administrative proceedings. *State v. Hanson*, 295 N.W.2d 209, 98 Wis. 2d 80 (Wis. App. 1980). The court in *Hanson* stated that the policy behind this principle is to assign the burden to the party seeking to change a present state of affairs. The burden is on the respondent to explain and support its actions with respect to the decision to terminate.

The respondent presented documentation and testimony establishing a prima facie case for its reduction of petitioner's day services programming. Respondent testified that the determination to reduce the day services came about following a meeting held on May 21, 2013, wherein the respondent argued in favor of developing petitioner's "...community connections; sharing and belonging is as many ordinary places as possible." Exhibit 2. Petitioner's personal care worker also testified in favor of the change, stating that she believes that the change in schedule will be beneficial to petitioner.

Petitioner's guardian, while initially agreeing to the day services reduction, rescinded that agreement on or about May 30, 2013. She argued that she would prefer to retain petitioner's current schedule, as it is her opinion that the continuity will be more beneficial to petitioner. She also noted the high quality of

¹ See, Exhibit D.

services provided by [REDACTED] [REDACTED]. Petitioner's guardian further commented that she and her husband regularly go on outings with petitioner, which provides her with substantive community contacts.

This is a very close case. I find that, while petitioner has received quality care under her previous 5-day plan with [REDACTED] [REDACTED], the respondent has demonstrated the potential for greater community involvement under its revision/reduction of day service programming. Petitioner's guardian and her husband are to be commended for their care of petitioner and their desire to ensure that she receives appropriate day services programming. However, I also found the testimony of petitioner's personal care worker, who lives with and has worked with petitioner daily for two years, to be particularly compelling. She stated that it was her opinion that this proposed schedule change would be beneficial for petitioner. Based on the record before me, I am inclined to agree.

CONCLUSIONS OF LAW

The respondent properly reduced petitioner's day services programming from 5 days per week to 4 days per week in an effort to provide petitioner with greater community integration activity.

NOW, THEREFORE, it is ORDERED

That petitioner's appeal 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 18th day of September, 2013

\sPeter McCombs
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

Wayne J. Wiedenhoef, 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 September 18, 2013.

Kewaunee County Department of Social Services
Bureau of Long-Term Support
hakarid@kewauneeeco.org