



FH
[REDACTED]

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

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

FCP/150360

PRELIMINARY RECITALS

Pursuant to a petition filed June 26, 2013, under Wis. Admin. Code §DHS 10.55, to review a decision by the Community Care Inc. in regard to Medical Assistance (MA), a hearing was held on September 26, 2013, at Waukesha, Wisconsin, by telephone.

The issues for determination are whether the Family Care Program (FCP) correctly denied petitioner's request for payment for a ramp to his backyard, a stair lift to his basement, and a bathroom remodel.

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: Connie Titter, FCP Supervisor
Community Care Inc.
205 Bishops Way
Brookfield, WI 53005

ADMINISTRATIVE LAW JUDGE:

Kelly Cochrane
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Waukesha County. He is 47 years old and diagnosed with multiple sclerosis (MS). He cannot walk, but can operate his power and manual wheelchairs and transfer in/out of them.

2. Petitioner enrolled in the FCP on April 15, 2013. On April 18, 2013 petitioner made several requests for services at his initial assessment. He requested the front ramp of his home be replaced, a second ramp added to the back of his home, a stair lift to his basement, and a bathroom remodel to accommodate a roll-in shower.
3. Petitioner generally uses his powered wheelchair (a/k/a POV) when he leaves his home. The front ramp of his home extends almost to the street and there are no private sidewalks in his neighborhood. He has Supportive Home Care (SHC) workers come into his home twice daily (7 hours total) to provide him assistance with his activities of daily living.
4. The FCP offered to provide a second egress on the front ramp so that he could access his backyard to the side and avoid driving into the street. Petitioner refused the second egress. The FCP replaced his front ramp without a second egress on or about June 5, 2013.
5. On May 9, 2013 the FCP issued notices of action to petitioner stating that it was denying the request for the bathroom remodel, the second ramp to the back of his home, and the stair lift to the basement
6. Petitioner appealed the denials to the Grievance and Appeals Committee, and the matters were heard on June 4, 2013. On June 10, 2013 the Grievance and Appeals Committee issued a letter to the petitioner stating that it was upholding those denials.

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.

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. However, 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, he may then request a hearing with the Division of Hearings and Appeals. That is what occurred here as the MCO Grievance and Appeal Committee upheld the denial of the second ramp added to the back of his home, a stair lift to his basement, and a bathroom remodel.

The issue in this case is whether the MCO acted appropriately in denying petitioner's requests. 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).

First, I will address the ramp to access the backyard. The FCP did accommodate petitioner's request for a new ramp at the front of his house, which is his main entrance/exit to and from his home. The physical layout of the home is such that the front ramp extends out toward the street. There are no sidewalks in his neighborhood, and therefore he must operate his power wheelchair on to the street when going outside of his

home and into the community. Despite the fact that it was described as a quiet street, the FCP offered to put in a second side egress on the front ramp so that petitioner could avoid operating his power wheelchair in the street when accessing his backyard, however, the petitioner refused that option because it would be unusable if someone were parked in his driveway, as a vehicle parked there would block his access. According to the petitioner the ramp to the backyard was requested so he could have easier access to his backyard. His testimony at hearing was that he has had several instances of incontinence because of the distance and time it takes for him to get back into his home when he is in his backyard. Petitioner testified that he would go to his backyard to access his shed there to do yard work. The FCP determined that access to his backyard was not medically necessary and that the cost of the proposed ramp was too high (offering a quote of \$7200 for the 36-foot ramp) to authorize the ramp. I must agree. Petitioner can still access his backyard from the front of his home. Petitioner's claims of incontinence were news to the FCP team at hearing and one would think that if those claims were as reliable as petitioner offered, that his access in the community would always be hampered by instances of incontinence – whether he is in his backyard or going about his neighborhood. Further, petitioner's Plan in effect at the time indicated that his informal supports included lawn care provided by his neighbors. There is also no evidence that the FCP is required in any way to fund the second ramp in case of fire. This is a private home not subject to the Americans with Disabilities Act (ADA). It is not uncommon that persons with disabilities assemble in an area of refuge to await the arrival of the fire fighters to get help with an evacuation from any building. Thus, while the ramp to the backyard may provide some convenience for petitioner, he has not rebutted the agency's determination that this ramp is not medically necessary and is not cost effective.

The second request involves the stair lift. Petitioner's request for this item was to allow him access to his basement. He indicated that he has his laundry and power tools in the basement. His testimony was that he would like to be able to access his basement to essentially inventory what is down there as he has not been down there in 4 years and he believed his supportive home care (SHC) workers had stolen money and/or power tools he had down there. This allegation of stealing was news to the FCP team at hearing and they offered to look into those allegations or work to get different SHC worker(s). Prior to that news, the FCP believed it was providing the SHC workers of petitioner's express choice. The FCP had denied the stair lift because there was no medical necessity for him to access his basement. He receives SHC twice daily and those workers do his laundry. Additionally, the FCP team was also concerned about his safety when transferring on to a stair lift. Petitioner's claims that he needed access to the basement in case of tornado were rebutted by the FCP's testimony that he has refuge in the hall in the middle of his home, and that there is no express requirement that basement access be provided for tornadoes when many private homes do not have basements at all. I must agree with the FCP's decision. There is no evidence that access to his basement would be cost effective when it is not medically necessary.

The final request involves a bathroom remodel. Specifically, petitioner requested that his current tub be removed and a roll-in shower installed. Currently his bathroom is small and has a standard tub. His SHC workers assist him in transferring from his manual wheelchair to and from his tub transfer bench. Approximately one year ago a SHC worker dropped him on the wheel of his wheelchair during such a transfer. The FCP team estimated the cost of the requested remodel at about \$5000 to meet ADA standards, and therefore looked to less costly alternatives that would preserve petitioner's independence to the greatest extent possible. The team came up with several options, the best being the Duraglide system (approximate cost \$2000). Petitioner did trial this option but did not like it because of the way it had to be positioned in the room/tub. The team felt that his safety with transfers would still be an issue with a roll-in shower if he were to attempt transferring from his wheelchair under wet conditions. A roll-in shower chair would not be something he could independently propel, and thus it would not provide further independence and would add to the cost. Further, the SHC agency's manager had indicated to the team that the SHC workers were able to assist with the transfers and there were no current concerns. In sum, the team determined that his current setup with SHC workers was meeting his needs for safety and independence in the tub and that this was the most cost effective method to meet those needs. Petitioner has not rebutted that information.

I conclude that the denials were appropriate based on the preponderance of the evidence.

CONCLUSIONS OF LAW

That the evidence is not sufficient to demonstrate that the requested backyard ramp, stair lift or bathroom remodel meet 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 17th day of October, 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 October 17, 2013.

Community Care Inc.
Office of Family Care Expansion