



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of



DECISION

FCP/150462

PRELIMINARY RECITALS

Pursuant to a petition filed July 03, 2013, under Wis. Admin. Code § DHS 10.55, to review a decision by the NorthernBridges in regard to Medical Assistance, a hearing was held on October 14, 2013, at Phillips, Wisconsin.

The issue for determination is whether SHC time should be increased from 22.25 hours per week.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:



Represented by:



Respondent:

Department of Health Services
1 West Wilson Street
Madison, Wisconsin 53703
By: Melanie Canik
NorthernBridges
896 4th Ave. S.
Park Falls, WI 54552

ADMINISTRATIVE LAW JUDGE:

John P. Tedesco
Division of Hearings and Appeals

FINDINGS OF FACT

- 1. Petitioner (CARES # [redacted]) is a resident of Price County.
2. Petitioner is enrolled in the Family Care Program (FCP).
3. Petitioner receives supportive home care (SHC) assistance. Her caregiver is her daughter.

4. Petitioner's home is located 10 minutes from shopping in town.
5. By Notice of Action dated May 13, 2013, Northern Bridges reduced petitioner SHC from 25 hours to 17.75 hours.
6. On June 20, 2013, the agency conducted an in-home assessment with petitioner's caregiver performing tasks. As a result, the SHC hours were increased to 19.5 hours.
7. On August 15, another in-home assessment was conducted with the RN-Case Manager performing the tasks. As a result the SHC hours were increased to 22.25 hours.
8. On or around September 11, 2013, the parties conferred on the remaining items/services in dispute and were unable to reach agreement. Petitioner maintains that 25 hours is the appropriate and necessary amount of SHC.

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. Whenever the local Family Care program decides that a person is ineligible for the program, or when the CMO discontinues an ongoing service in the service plan, the client is allowed to file a fair hearing request. Because a service reduction is sought here, the Petitioner appropriately sought a fair hearing for a further, de novo review of the CMO decision. Wis. Admin. Code §DHS 10.55(1). It is the agency's burden to prove by a preponderance of the evidence that the reduction in services and hours is appropriate.

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.

Note: The services that typically will be required to be available include adaptive aids; adult day care; assessment and case planning; case management; communication aids and interpreter services; counseling and therapeutic resources; daily living skills training; day services and treatment; home health services; home modification; home delivered and congregate meal services; nursing services; nursing home services, including care in an intermediate care facility for the mentally retarded or in an institution for mental diseases; personal care services; personal emergency response system services; prevocational services; protective payment and guardianship services; residential services in an RCAC, CBRF or AFH; respite care; durable medical equipment and specialized medical supplies; outpatient speech; physical and occupational therapy; supported employment; supportive home care; transportation services; mental health and alcohol or other drug abuse services; and community support program services.

Wis. Admin. Code §DHS 10.41(2).

Supportive home care is included in the list of covered services in the statutory note above. Having established that SHC hours can be a covered service, the issue is whether the agency has appropriately determined the SHC hours that are essential to meeting the Petitioner’s needs.

The skeletal legal guidance that pertains to determining the type and quantity of daily care services that must be placed in an individualized service plan (ISP) is as follows:

HFS 10.44 Standards for performance by CMOs.

...

(2) CASE MANAGEMENT STANDARDS. The CMO shall provide case management services that meet all of the following standards:

...

(f) The CMO, in partnership with the enrollee, shall develop an individual service plan for each enrollee, with the full participation of the enrollee and any family members or other representatives that the enrollee wishes to participate.

... The service plan shall meet all of the following conditions:

1. Reasonably and effectively addresses all of the long-term care needs and utilizes all enrollee strengths and informal supports identified in the comprehensive assessment under par. (e)1.
2. Reasonably and effectively addresses all of the enrollee’s long-term care outcomes identified in the comprehensive assessment under par. (e)2 and assists the enrollee to be as self-reliant and autonomous as possible and desired by the enrollee.
3. Is cost-effective compared to alternative services or supports that could meet the same needs and achieve similar outcomes.

...

Wis. Admin. Code §DHS 10.44(2)(f).

The only remaining dispute is with regard to four services/tasks: (1) Range-of-Motion exercises for right foot; (2) Dressing; (3) Voltaren cream and icing of legs; and, (4) travel time to town 2 times weekly. The agency contends that additional time for these tasks is not appropriate or necessary.

Range of Motion

The agency allows time for range of motion exercises for petitioner’s left lower extremity. The agency argues that there is no documentation supporting the need for ROM for the right foot. The agency explains that a physical therapy assessment and treatment plan and a physician’s order supports the need for ROM for the left foot. Petitioner did not present any testimony from any medical or therapy professional. The only documentation from a medical provider to support medical necessity for ROM of the right ankle from petitioner was from an April doctor visit that indicates a right foot pain and that petitioner has degenerative joint disease. Those documents do not establish medical necessity. When asked whether the documentation supports medical necessity for the right ankle, petitioner’s representative stated “well, it certainly does for the left.” But the left is not the issue and there is already ROM time allowed for the left. Petitioner argued that she has always done ROM for the right. But, whether she has done it in the past does not establish that ROM is necessary today either. The justification for this ROM increase of 70 minutes per week has not been established.

Dressing

With regard to dressing, the petitioner argues that 5 minutes of additional time per day is needed. Presently petitioner gets 35 minutes per day for bathing which includes dressing and undressing and 5 minutes for lotion and powder. She also receives an additional 15 minutes of dressing time. Petitioner chooses to dress in the morning without bathing. And, later in the day she undresses and takes a bath. Then she dresses again. Petitioner argues that this requires more time than is typical as there are two episodes of dressing, one of which is related to the bath and another that is not. I understand that it is petitioner's preference to dress on two separate occasions through her day. But, this preference is not medically necessary or cost-effective, both of which are considerations in determining appropriate SHC time. While this may be petitioner's practice and preference, that does not mean that a supplemental medical assistance program is required to provide for all practices and preferences.

Voltaren cream

Petitioner maintains that she requires 5 additional minutes per day for her caregiver to apply Voltaren cream for joint pain. Petitioner claims this is a medical necessity and that time for this task has not been included in the currently allotted time. The agency explains that the administration order for the cream indicate application as needed and up to four times per day. The agency argues that petitioner is currently allotted 5 minutes four times per day and that this should be sufficient as this is only an as needed medication. Upon my review of the August 15, 2013 In Home Assessment Tool for ADL's (ex. #7) it is clear that the Voltaren cream is a task that is specifically and separately allotted. Petitioner gets 15 minutes for dressing/braces/stockings 7x per week, 35 minutes for bathing/lotions/powders (I note that the testimony in the record indicates that the default of 30 minutes for this task was increased to 35 minutes to include the general lotions and powder). And, there is a separate 5 minutes allowed 28 times per week with the specific notation that this is for the "Diclofenac gel and ice application." Based on this record it appears to me that the Voltaren cream application is specifically accounted for in the IHAT and by the agency's current time allotment. Furthermore, as an as needed medication allowed up to 4x per day, one would presume that the medication is not medically necessary every day at that maximum allowed frequency. But, petitioner states that it is and that that is what the daughter-caregiver actually does every day. Again, just because that is how the task has always been completed does not mean it is necessary and appropriate. There was no professional unbiased witness who testified that the maximum frequency is required. That said, it does appear that the agency has already allotted for the maximum frequency. No additional time has been justified.

Travel time for caregiver

Petitioner argues that she should receive an additional 25 minutes per week of travel time for the caregiver to complete tasks outside of the home. Specifically, petitioner wants 5 additional minutes added to the currently allowed trip(s), and another 20 minutes for one additional weekly trip. The agency explains that the current allotment of time allows for 45 minutes per week for the task of grocery shopping and an additional 15 minutes per week for the task of running errands. An additional 20 minutes is allotted for additional travel time due to petitioner's specific location of residence. The agency stated that it has timed the travel to town from petitioner's home at approximately 15 minutes. The agency explained that it allowed the additional 20 minutes of travel time at the specific request of petitioner although such an allowance is atypical. The agency also noted that petitioner still drives her own vehicle and does some of her own grocery shopping.

At the time of the hearing, the agency representative argued that the timing of the trip from petitioner's home to town is 15 minutes round trip. The representative was questioned on this and after consultation with the other agency workers at her side affirmed that the travel time is 15 minutes round trip. This is

contrary to what is written in the agency's written summary argument (see ex. #5). It is also contrary to what is indicated as travel time from petitioner's home address to the nearest grocery store (Copp's) on a commonly used Internet map site. Google Maps indicates a 7.3 mile one-way trip taking 15 minutes. Petitioner specifically argued that a round trip is actually 20 minutes in both her testimony and in her hearing summary (ex. #6). Given that Google Maps supports the greater time asserted by petitioner, and the uncertainty exhibited by the agency on this specific issue, I will find that the caregiver's trip is 20 minutes round trip.

I fully understand the agency's position that travel time to town (compared with actual time shopping) is not typically permitted. But, if the agency elects to allow it, whether it is at the specific request of the member or otherwise, the agency needs to justify the amount it allots. Here, they have not allotted enough travel time. I do not believe that multiple trips to town need to be accounted for. The caregiver can, and should, plan efficiently and cost-effectively to make one trip for the various purposes. But, it certainly appears that the agency is incorrect about the time to town. Petitioner's position is that the trip is 20 minutes of round trip travel time. An additional 5 minutes per week is appropriate.

CONCLUSIONS OF LAW

The agency did not provide enough travel time for the caregiver's one trip to town per week for shopping and errands.

THEREFORE, it is

ORDERED

That this matter is remanded to the agency with instructions to allot an additional 5 minutes of SHC time per week to allow for the 20 minutes of round trip travel time for one trip to town per week for petitioner's caregiver. This action must be completed within 10 days.

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 14th day of November, 2013

\sJohn P. Tedesco
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 November 14, 2013.

Northernbridges
Office of Family Care Expansion