



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

FCP/150517

PRELIMINARY RECITALS

Pursuant to a petition filed July 5, 2013, under Wis. Admin. Code § DHS 10.55, to review a decision by the Western Wisconsin Cares-FCP in regard to Family Care (FC) benefits (a Medicaid-related program), a hearing was held on August 27, 2013, by telephone.

The issue for determination is whether the FC CMO correctly sought to reduce the petitioner's Supportive Home Care (SHC) hours from 17 to 12.5 hours weekly

There appeared at that time the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]

Respondent:

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

By: Lindsay Sebben, care manager
Western Wisconsin Cares-FCP

ADMINISTRATIVE LAW JUDGE:

Nancy J. Gagnon
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of La Crosse County.
2. The petitioner has an ongoing FC case. He had been receiving 17 hours of SHC weekly.
3. The petitioner's case underwent an annual review in 2013. On June 11, 2013, the FC Care Management Organization (CMO), issued a *Notice of Action* to the petitioner. The *Notice* advised that the petitioner's SHC hours would be reduced to 12.5 hours weekly, effective June

- 28, 2013. The CMO reduced the hours because (1) it was substituting a less expensive volunteer organization effort as activity for the petitioner in lieu of the community outings covered with SHC hours, and (2) the use of free volunteer services is more cost-effective than paying for SHC hours. The CMO also indicated that the removed hours were not being used for a purposes related to the petitioner's health and safety. The petitioner requested a local grievance review of this decision; the result of that review was to leave the reduction in place. The petitioner then filed the instant appeal, and aid has been continued at the prior level pending appeal.
4. The petitioner, age 61, is diagnosed with anxiety, depression, cerebral palsy with spastic diplegia, learning disabilities, developmental disability, asthma, hypothyroidism, diverticulosis, osteoporosis, GERD, vertigo, hypertension, vitamin D deficiency, and hypogonadotropic hypogonadism. He has difficulty verbalizing his needs, will irrationally refuse to leave his residence, misses scheduled treatment appointments unless strongly encouraged to attend by a trusted person, and engages in self-abusive behavior, such as picking at his skin. When even mildly stressed, the petitioner will also excessively telephone caregivers and other acquaintances, prompting some acquaintances to threaten to call the police if he does not desist. The petitioner resides alone.
 5. The petitioner has a long history of reclusive and inappropriate behaviors. The SHC hours provided to him in the past have markedly improved those behaviors. The petitioner, who alternatively distrusts most strangers but will believe harmful strangers, relies heavily on his known SHC caregivers. The pendency of this hearing has increased this fragile petitioner's anxiety (even with his prior level of support) such that he has resumed picking at his skin, and has increased his level of daily calls to coordinator Julie Holzwarth from once daily to 6-7 calls daily.
 6. The retained weekly SHC hours are meant for housekeeping (1.4 hour), medication reminders (7 hours), grocery shopping (1 hour), assistance with financial and other paperwork (.8), transportation and follow-up with medical appointments (2 hours), and assistance with general errands (7.5 minutes). The to-be-discontinued 4.5 weekly SHC hours were characterized as being for "community integration."
 7. The cost savings created by the proposed service change is \$96.66 weekly (4.5 hours x \$21.48, per RAD in the CMO Exhibit).

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 CMO must develop an Individual Service Plan (ISP) in partnership with the client. Wis. Adm. 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 CMO 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). ISPs must be reviewed periodically. Adm. Code, §DHS 10.44(j)(5).

Wis. Stat., §46.287(2)(a)1 provides that a person may request a fair hearing to contest the reduction of services under the FCP program, among other things, directly to the Division of Hearings and Appeals. In addition, the participant can file a grievance with the CMO over any decision, omission, or action of the CMO. 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.

The issue in this case is whether the CMO erred in reducing the petitioner's SHC hours from 17 to 12.5 hours weekly, and substituting a volunteer organization that serves the disabled and elderly, to make up for the lost time. There are no standards written in the law on how to make such a determination. 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. Adm. Code Ch. DHS § 107.02(3)(e).

While it is correct that the standard under Wis. Admin. Code § DHS 10.44(2)(f)3 specifically includes that the ISP should assist the enrollee to be as self-reliant and autonomous “as possible and desired” by the enrollee, it is also the long-standing position of the Department, as affirmed in many fair hearing decisions, that the Family Care participant does not have “unfettered choice” in deciding what supports Family Care provides that will serve him or her, what living arrangements will be provided by Family Care, and exactly how the care plan is to be configured.

In this case, the record reflects that petitioner desperately wants his community outings (multiple times weekly) to continue with known SHC workers rather than with unpredictable volunteers. The concern from the petitioner's non-relative caregivers is that this change *already has*, and will continue to result in a decline in the petitioner's behavior. Their concern is soundly based on documented, quantified instances of past harmful behavior. For example, per the petitioner's physician, the petitioner missed 48% of his scheduled medical appointments from 1997 – 2008. During that timeframe, he did not have a SHC worker accompanying him to appointments. For the last year, when he did have such accompaniment, he missed 8% of his medical appointments. Two local taxi companies refuse to serve the petitioner because of his history of scheduling, and then canceling, rides in the past. The petitioner's current anxiety level has jumped on the mere threat of service reduction. This is evidenced by his increased picking at his skin, leaving sores, and his extreme increase in daily calls to his coordinator. He expressed a concern that participation in this hearing could result in his going to jail. The petitioner has also stopped going to his exercise classes during the pendency of this hearing; it was observed that he now has increased difficulty donning his shoes and socks due to decreased flexibility. Finally, the CMO asserts that a church-based volunteer organization, Causeway, could pick up the slack of the reduced SHC services. The petitioner presented a *LaCrosse Tribune* article from August 2013 in which the organization indicated that it was straining under the demand for its services. I also note that a volunteer service might not be able to send the same person on a regular basis, which would be a hard adjustment for the petitioner.

Under the particular facts of this case, the proposed reduction in SHC hours is detrimental to the petitioner's physical and mental health. Therefore, I will order restoration of the reduced hours to the service plan.

CONCLUSIONS OF LAW

The petitioner's request for ongoing 17 hours of weekly SHC is appropriate, cost-effective and medically necessary.

THEREFORE, it is

ORDERED

That the petition is remanded to Western Wisconsin Cares with directions to promptly modify the petitioner's service plan to continue to provide 17 hours weekly of SHC (effective June 28, 2013) through

the time of his next review. The CMO shall report the accomplishment of this plan change to the Division of Hearings and Appeals within 10 days of the date of this Decision.

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 3rd day of October, 2013

\sNancy J. Gagnon
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 4, 2013.

Western Wisconsin Cares-FCP
Office of Family Care Expansion