



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

In the Matter of

██████████ ██████████
████████████████████
██

DECISION

FCP/150604

PRELIMINARY RECITALS

Pursuant to a petition filed July 12, 2013, under Wis. Admin. Code § DHS 10.55, to review a decision by the Lakeland Care District in regard to Medical Assistance, a hearing was held on August 20, 2013, at ██████████, Wisconsin.

The issue for determination is whether the CMO erred in denying petitioner's request for a furniture shopping trip to Appleton.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

██████████ ██████████
████████████████████
██

Respondent:

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

By: Cheri Butkiewicz
Lakeland Care District
500 City Center
██████████, WI 54901

ADMINISTRATIVE LAW JUDGE:

John P. Tedesco
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner is a resident of Winnebago County.
2. Petitioner is a member of the Family Care Program.
3. Petitioner is a double, above-the-knee amputee.

4. On May 29, 2013, petitioner requested that the FC Program pay for a shopping trip to Appleton to shop for a sofa. The cost of such a trip is approximately \$500. At that time, petitioner had not yet visited all the local furniture dealers to determine whether the dealers carried suitable sofas.
5. At least one [REDACTED] dealer is able to transfer items between store locations to allow petitioner to view and test items not displayed in [REDACTED]. Petitioner has not taken advantage of this opportunity.
6. The CMO denied the request.
7. Petitioner appealed.

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); DHS booklet, Being a Full Partner in Family Care, page 9. 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 its denial of petitioner's request for a shopping trip, at a cost of \$500 to Appleton to look at and possibly purchase a sofa. As has been noted many times in the past, there are no standards written in the law or policy 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 to say 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 made the request for a shopping trip to Appleton before he had explored all local options for a sofa purchase. The CMO had made clear to petitioner that they expected all local options to be exhausted before they would consider a shopping trip to Appleton at a cost of approximately \$500. This position is quite reasonable. It became apparent at the hearing that petitioner had only, in the days before the hearing, actually visited some of the local furniture shops that could possibly have a suitable sofa. Petitioner conceded that he still had not been to the Furniture and

Appliance Mart at the time of the hearing. Thus, petitioner's eagerness to get up to Appleton seemed to be paramount to actually finding a new suitable sofa. He stated "when I started with Lakeland Care District getting up to Appleton was no problem."

The CMO has indicated that at least one of the local furniture shops, and possibly more than one, is willing to order any product petitioner would like to look at try out in their showroom. Petitioner expressed his disinterest in this course of action based on his concern for the cost and inconvenience for that particular dealer. I am less concerned with the cost to the dealer than with the cost-effectiveness of the requested shopping trip. Petitioner has many options available to him. And, even if those other options are exhausted and possibly found inadequate I am not convinced at all that the CMO or the FC Program is required to transport petitioner to another city to shop for furniture.

Petitioner also argued that the time taken for a local dealer to order in an item from another store would be prohibitive and just delay his obtaining the sofa he wants. But, I note that petitioner requested the trip to Appleton on May 29, 2013. Given that the hearing took place nearly three months after his request for the shopping trip, and that petitioner only visited some of his local [REDACTED] furniture dealers in the week before the hearing, the argument that he would prefer not to wait to get his sofa seems fallacious.

As the hearing progressed, it became apparent to me that both petitioner and his wife had motives for this trip that were other than purely practical. Petitioner stated that the CMO keeps petitioner as "a prisoner to [REDACTED]" and that his life is "extremely like jail within the boundaries of [REDACTED] with a parole officer." Petitioner's wife stated that the CMO "won't let him go to Appleton" and that "he has to get out of [REDACTED]." Petitioner's wife then explained that it was "ridiculous that [the CMO is] literally holding [REDACTED] hostage." Such hyperbole aside, this matter simply relates to whether a state public benefit program should be obligated to pay the \$500 cost for a furniture shopping trip for petitioner. I am not convinced that the CMO has any such obligation.

CONCLUSIONS OF LAW

The CMO did not err in determining that the petitioner's requested shopping trip to Appleton is not appropriate, cost-effective or medically necessary.

THEREFORE, it is

ORDERED

That this matter 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 Madison,
Wisconsin, this 16th day of September, 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 September 16, 2013.

Lakeland Care District
Office of Family Care Expansion