



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[Redacted]
c/o [Redacted]
[Redacted]
[Redacted]

DECISION

FCP/150895

PRELIMINARY RECITALS

Pursuant to a petition filed July 22, 2013, under Wis. Admin. Code, §DHS 10.55, to review a decision by Community Care Inc. in regard to the Family Care Program (FCP), a hearing was held on September 17, 2013, by telephone.

The issue for determination is whether the FCP agency correctly denied a request for petitioner to receive prevocational services.

PARTIES IN INTEREST:

Petitioner:

[Redacted]
c/o [Redacted]
[Redacted]
[Redacted]

Respondent:

Department of Health Services
1 West Wilson Street
Madison, Wisconsin 53703
By: Ashley Webb
Community Care Inc.
205 Bishops Way
Brookfield, WI 53005

ADMINISTRATIVE LAW JUDGE:

Brian C. Schneider
Division of Hearings and Appeals

FINDINGS OF FACT

- 1. Petitioner (CARES # [Redacted]) is a 29-year-old resident of Outagamie County.
2. Petitioner is of Hmong heritage and speaks both Hmong and English. He is developmentally disabled with mental retardation and mental health issues. He has a court-appointed guardian through [Redacted], but he is able to communicate and express opinions.

3. Petitioner receives services under FCP. He formerly received prevocational services at three different service locations, but the services ended in March, 2011 after the petitioner received three "strikes" for at his then current work location. While doing the prevocational activities petitioner had substantial attendance problems and other miscellaneous issues.
4. In April, 2011 petitioner's guardian requested additional prevocational services but the FCP managed care organization (MCO) denied them, concluding that petitioner had work skills already and that his issues were not related to lack of work skills.
5. Since then petitioner has worked with the [REDACTED] ([REDACTED]). He continued to have attendance issues and was not hired at either of his [REDACTED] job placements. He currently works as a volunteer at an [REDACTED] food store in which the owner is flexible concerning petitioner's attendance issues. By all accounts petitioner is able to do the work assigned to him when he is present.
6. In June, 2013, petitioner's guardian requested that petitioner be allowed to return to prevocational services. On June 21, 2013, the MCO issued a notice denying the request.

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 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. ISPs must be reviewed periodically. Admin. 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 FCP, among other things, directly to the Division of Hearings and Appeals. In addition, 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, she may then request a hearing with the Division of Hearings and Appeals. If the person chooses to not grieve a decision or omission and appeals directly, the decision must be reviewed by the Department's MCO monitoring unit. Wis. Stat., §46.287(2)(b). Apparently the monitoring unit upheld the denial of the prevocational services.

Prevocational services are defined in Appendix A to the OFCE Memo 10-04, dated June 3, 2010, as approved by the federal Centers for Medicare and Medicaid Services (CMS); the memo is marked as Exhibit 3 in the record:

Prevocational services involve the provision of learning and work experiences where a member can develop general, non-job-task-specific strengths and skills that contribute to employability in paid employment in integrated, community settings. Services are expected to occur over a defined period of time as determined by the member and his/her care planning team in the ongoing member-centered planning process. Services are expected to specifically involve strategies that enhance a participant's employability in

integrated, community settings. Competitive employment or supported employment are considered successful outcomes of prevocational services.

In this case petitioner was involved in prevocational services in 2010 and 2011. After that ended he went to [REDACTED] for more job skill training. By all accounts work skills are not petitioner's problem with employment; attendance and persistence (i.e. petitioner would take overly long breaks or leave the work floor at unscheduled times) while at the job site are the problems. Even at his current volunteer position petitioner still experiences those problems, but the store owner is understanding and accepts them.

It is clear to me that the MCO representatives did not deny the request out-of-hand but gave it substantial consideration. In the end they decided that petitioner is beyond prevocational activities at this point, that he has job skills but lacks the mental approach to use them. Petitioner's representatives have not suggested viable alternative to the services already in place. It appears that they want to MCO to search out and find a perfect work opportunity for petitioner accounting for his disabilities and Hmong heritage, but they were unable to come up with anything themselves, which suggests that the ideal services for petitioner simply are unavailable. In the end, I conclude that the denial was correct. Petitioner already has had a course of prevocational services and two years of [REDACTED] assistance; I cannot find that additional prevocational services would be a cost effective use of FCP funding.

CONCLUSIONS OF LAW

The MCO's denial of a request for prevocational services was reasonable given petitioner's past history of work skill development through both FCP and [REDACTED], and the MCO team's conclusion that petitioner would not benefit from additional prevocational services.

THEREFORE, it is

ORDERED

That the petition for review herein be and the same 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 27th day of September, 2013

\sBrian C. Schneider
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 27, 2013.

Community Care Inc.
Office of Family Care Expansion