



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

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

DECISION

FCP/151444

PRELIMINARY RECITALS

Pursuant to a petition filed August 20, 2013, under Wis. Admin. Code § DHS 10.55, to review a decision by the Western Wisconsin Cares Family Care Program (FCP) in regard to Medical Assistance, a telephonic hearing was held on October 14, 2013, at La Crosse, Wisconsin. At the request of the parties, the record was held open for the submission of closing arguments to the Division of Hearings and Appeals (DHA). Both parties timely submitted their arguments to DHA which are received into the hearing record.

The issue for determination is whether the Family Care Program (FCP) correctly discontinued the petitioner's medical transportation and lodging to the ████████ in ████████ effective June 23, 2013 because it determined such continued services are not cost effective and appropriate when less expensive alternative, appropriate medical services are available in the greater La Crosse area which can provide medically necessary services for the petitioner.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

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

Respondent:

Department of Health Services
1 West Wilson Street, Room 651
Madison, Wisconsin 53703

By: Susan Jendt, quality management coordinator
Western Wisconsin Cares-Family Care Program
1407 St. Andrew's Street, Suite 100
La Crosse, WI 54603

ADMINISTRATIVE LAW JUDGE:

Gary M. Wolkstein
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner is a 61 year old resident of La Crosse County.
2. The petitioner is enrolled in the Western Wisconsin La Crosse Family Care Program (FCP).
3. The petitioner has received approval for reimbursement for medical transportation and lodging/meals to the [REDACTED] in [REDACTED], Minnesota for medical appointments with doctors at that medical facility.
4. The Western Wisconsin La Crosse Family Care Program (FCP) sent a June 6, 2013 Notice of Action to the petitioner stating that effective June 23, 2013 her Medical Transportation and lodging to [REDACTED] in [REDACTED] would discontinue because those services are no longer a cost effective way to support her medically necessary services.
5. That June 6, 2013 notice provided the following reasons for the discontinuance: a) the types of medical providers the member is seeing in [REDACTED] are available at two major medical facilities in La Crosse ([REDACTED]) that employ hundreds of primary care physicians and specialists in the greater La Crosse area); b) the FCP will approve transportation to local medical providers and will make all reasonable efforts to assist the petitioner during this transition period to her new medical providers; c) the Family Care Program may limit reimbursement for mileage to the nearest provider if the member has reasonable access to health care of adequate quality from the provider per medical transportation policy; and d) medical transportation (and resultant need for lodging) to [REDACTED] in [REDACTED] is not a cost effective way to provide medically necessary services to the petitioner.
6. The cost of a round trip to the [REDACTED] in [REDACTED] is about \$230 and with the additional cost of lodging and meals is about \$317 per trip. The cost for medical transportation to a local medical hospital or clinic is about \$24 per round trip.
7. It is the petitioner's preference and "choice" to see her "team" of medical providers at the [REDACTED] in [REDACTED]. Petitioner has not established with reliable evidence any medical need which requires her to see specialists at the [REDACTED] in [REDACTED].
8. The petitioner does have regular appointments with two local mental health providers: Dr. [REDACTED], psychiatrist (has treated petitioner for several years), and Ms. [REDACTED], LCSW, a mental health counselor.
9. The petitioner was unable to provide any document from any [REDACTED] provider to confirm any medical necessity that she continue receiving her medical services from [REDACTED] in [REDACTED].
10. Petitioner has not established with any reliable evidence or medical documentation her allegations of past abuse or neglect from healthcare personnel.
11. The petitioner has decided not to fill her necessary prescriptions with a local physician, but instead insists upon being sent to [REDACTED] in [REDACTED] to obtain those prescription renewals.

DISCUSSION

The petitioner receives Family Care Medical Assistance benefits through Western Wisconsin Cares Family Care Program. These benefits include medical transportation. The petitioner has received approval for medical transportation and lodging/meals to the [REDACTED] in [REDACTED], Minnesota to consult with doctors at that medical facility. The Western Wisconsin La Crosse Family Care Program sent a June 6, 2013 Notice of Action to the petitioner stating that effective June 23, 2013 her Medical

Transportation and lodging to ██████████ in ██████████ would discontinue because those services had been determined to be no longer a cost effective way to support her medically necessary services.

Family Care Medical Assistance is a health-service delivery system authorized by a medical assistance waiver under 42 USC 1315 and is designed to increase the ability of the frail elderly and those under 65 with disabilities to live where they want, participate in community life, and make decisions regarding their own care. Family Care recipients are placed under the roof of a single private provider, called a care maintenance organization (CMO), that receives a uniform fee, called a capitation rate, for each person it serves. The CMO is responsible for ensuring that the person receives all the Medicaid and Medicare services available to her. The theory behind the program is that it will save money by providing recipients with only the services they need rather than requiring that they enroll in several programs whose services may overlap.

Each CMO signs a contract with the State of Wisconsin that sets forth exactly what services it must render. Western Wisconsin Cares Family Care Program's contract requires it to provide services to physically and developmentally disabled adults and frail elders who are financially eligible for medical assistance and "[f]unctionally eligible as determined via the Long-term Care Functional Screen..." *Contract Between Department of Health and Family Services and Community Health Partnership, Inc..* Once a person is found eligible for the Family Care Program, Wisconsin law requires the CMO to assess her needs and create an individual service plan that meets those needs and values. This plan must provide services and support at least equal to those she would receive under the Wisconsin Medical Assistance Program and the various MA Waivers program. It can provide additional services that substitute for and augment these services **if they are cost effective and meet her needs.** Wis. Admin. Code, § DHS 10.41(2).

Western Wisconsin Cares Family Care Program's contract calls for it to provide medical transportation as described in Wis. Admin. Code, § DHS 107.23. *Contact*, p.280. Medical assistance reimburses medical travel for eligible recipients, but the program requires prior authorization for "[a]ll SMV transportation to receive MA-covered services." Wis. Admin. Code § DHS 107.23(2)(f). The Family Care program offers some flexibility concerning prior authorization requests for medical transportation.

To receive reimbursement for transportation, the petitioner must meet the generic criteria required to receive any service provided by medical assistance. These include the medical necessity of the service, the **appropriateness** of the service, **the cost of the service, the extent to which less expensive alternative services are available, and whether the service is an effective and appropriate use of available services.** Wis. Adm. Code § DHS 107.02(3)(e)1.,2.,3.,6. and 7. "Medically necessary" means a medical assistance service under ch. DHS 107 that is:

- (a) Required to prevent, identify or treat a recipient's illness, injury or disability; and
- (b) Meets the following standards:
 1. Is consistent with the recipient's symptoms or with prevention, diagnosis or treatment of the recipient's illness, injury or disability;
 2. Is provided consistent with standards of acceptable quality of care applicable to the type of service, the type of provider, and the setting in which the service is provided;
 3. Is appropriate with regard to generally accepted standards of medical practice;
 4. Is not medically contraindicated with regard to the recipient's diagnoses, the recipient's symptoms or other medically necessary services being provided to the recipient;
 5. Is of proven medical value or usefulness and, consistent with s. HFS 107.035, is not experimental in nature;
 6. Is not duplicative with respect to other services being provided to the recipient;
 7. Is not solely for the convenience of the recipient, the recipient's family, or a provider;

8. With respect to prior authorization of a service and to other prospective coverage determinations made by the department, **is cost-effective compared to an alternative medically necessary service which is reasonably accessible to the recipient;** and
9. Is the most appropriate supply or level of service that can safely and effectively be provided to the recipient.

(Emphasis added).

Wis. Adm. Code, § DHS 101.03(96m).

During the October 14, 2013 hearing and in her closing argument, the petitioner insisted that she has been the victim of past abuse, neglect or misdiagnosis by medical personnel in the two La Crosse hospitals. She explains that she has not been treated with “respect” by some local medical personnel, but has a “team” that does treat her with respect and provides quality care for her at ██████████ in ██████████. Ms. ██████████ explained in her written closing argument that she is very upset that some of the local providers have treated her disrespectfully like a “mental patient” and not like a regular patient.

Both mental health counselor, ██████████ ██████████, and psychiatrist, Dr. ██████████, submitted letters to DHA on behalf of the petitioner. Both providers were sympathetic and generally supportive of petitioner’s request for continued services at ██████████ in ██████████. However, neither provider indicated that such services at ██████████ were medically necessary, but only that petitioner “choose” that facility and that petitioner had a very strong preference for continued medical services only at ██████████ in ██████████. However, law and policy above makes clear that the Family Care Program does have the discretion to make medical transportation decision based upon in part the cost of the service, the extent to which less expensive alternative services are available, and whether the service is an effective and appropriate use of available services. Wis. Adm. Code § DHS 107.02(3)

The Family Care Program also responded during the hearing and in its closing argument that petitioner’s allegations of abuse or neglect by personnel at both local healthcare facilities are not documented in any medical records, but rather are “self-reported.” They also alleged that petitioner told FCP personnel that the alleged abuse/neglect was from the 1970’s or 1980’s. In any case, the FCP stipulated during the hearing and in its closing argument (by Amanda Neumann, CSW) that to help petitioner with the transition to local medical providers it would: a) provide an advocate to attend appointments until ██████████ is comfortable with her care in La Crosse, WI. That advocate can provide support during appointments to ensure providers are not abusing her and treat her in a professional manner; and b) ██████████’s team in ██████████ could recommend local providers of the same quality, level of care, and qualifications; and assist with doctor to doctor exchange of medical information about the petitioner. That stipulation makes sense and could help the petitioner with her transition.

It is understandable that petitioner may want to continue to see her “team of doctors” at ██████████. However, petitioner has not established with any reliable testimony or evidence the medical necessity of such high medical transportation and lodging expenses, when appropriate medical care can be provided through physicians in greater La Crosse area (including Onalaska, Holmen and La Crosse). See Finding of Fact #5 above. The hearing record is uncontested that the medical transportation to ██████████ in ██████████ is not cost effective when other appropriate alternatives are available. See Finding of Fact #6 above.

To receive reimbursement for transportation, the petitioner must meet the generic criteria required to receive any service provided by medical assistance. These include the medical necessity of the service, the appropriateness of the service, **the cost of the service, the extent to which less expensive alternative services are available, and whether the service is an effective and appropriate use of available services.** Wis. Adm. Code § DHS 107.02(3)(e)8. However, the Family Care Program should provide the services to petitioner to which they stipulated: a) to provide an advocate to attend appointments until

██████ is comfortable with her care in La Crosse, WI. That advocate should provide support during appointments to ensure providers are not abusing her and treat her in a professional manner; and b) ██████'s team in ██████ could recommend local providers of the same quality, level of care, and qualifications; and assist with doctor to doctor exchange of medical information. Accordingly, based upon the above, I conclude that the Family Care Program (FCP) correctly discontinued the petitioner's medical transportation and lodging to the ██████ in ██████ effective June 23, 2013 because it determined such continued services are not cost effective and appropriate when less expensive alternative, appropriate medical services are available in the greater La Crosse area which can provide medically necessary services for the petitioner.

CONCLUSIONS OF LAW

The Family Care Program (FCP) correctly discontinued the petitioner's medical transportation and lodging to the ██████ in ██████ effective June 23, 2013 because it determined such continued services are not cost effective and appropriate when less expensive alternative, appropriate medical services are available in the greater La Crosse area which can provide medically necessary services for the petitioner.

THEREFORE, it is

ORDERED

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, Room 651, 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 December, 2013

\sGary M. Wolkstein
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 December 16, 2013.

Western Wisconsin Cares-FCP
Office of Family Care Expansion