



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

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

FCP/152004

PRELIMINARY RECITALS

Pursuant to a petition filed September 12, 2013, under Wis. Admin. Code § DHS 10.55, to review a decision by the Continuum¹ in regard to Medical Assistance [“MA”], a Hearing was held via telephone on November 13, 2013.

The issue for determination is whether, under the MA Family Care Program [“FCP”], Continuum must pay for hand controls for petitioner’s vehicle.

There appeared at that time via telephone the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]

Petitioner's Representative:

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

Respondent:

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

By: Rosetta Kohout, Supervisor, Continuum
Shannon Radel, Supervisor, Continuum
Continuum
28526 US Hwy 14 East
Lone Rock, WI 53556

OTHER PERSONS PRESENT:

Lisa [REDACTED], Registered Nurse [“RN”], Case Manager, Continuum
[REDACTED], Advocate, [REDACTED] [REDACTED] [REDACTED] [“ILR”]
[REDACTED], Care manager, Continuum

¹ Continuum was formerly known as Southwest Family Care Alliance [“SWFCA”] and is the Care Management Organization [“CMO”] in this matter.

Mari Wipperfurth, Member Rights Specialist, Continuous

ADMINISTRATIVE LAW JUDGE:
Sean P. Maloney
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]; 57 years old) is a resident of Richland County.
2. Petitioner has suffered multiple CerebroVascular Accidents (“CVAs”; i.e., strokes) and has residual rigidity and spasticity.
3. On June 27, 2013 petitioner requested that Continuous pay for hand controls for his accessible van at a cost of \$1,100.00.
4. By a *Notice of Action* dated July 8, 2013 Continuous denied petitioner request that it pay for hand controls for his accessible van.
5. Petitioner currently has the following options for transportation: taxi, informal supports, Vocational Area Rehabilitation Center [“VARC”] van, ADRC (volunteer drivers), and Richland County Public Transportation bus; petitioner also has a power wheelchair that he drives short distances.
6. Petitioner’s goal is to obtain a driver’s license and be able to drive himself in his own adaptive vehicle.
7. Petitioner currently has a driver’s learning permit; on June 17, 2013 he took a driving road test (using a rented vehicle with hand controls) to obtain a license but the test was terminated prior to its conclusion due to “disqualifying actions” (petitioner reports that during the road test his right arm was “jerky” and “tightened up” and this effected his ability to control the vehicle).
8. The only medial documentation that is part of the record of this matter is a letter dated May 15, 2013 on *Richland Medical Center, Ltd.* stationary which appears to be from a Medical Doctor [“MD”] which, in its entirety, states: “[Petitioner] has been examined on 05/15/13 and has adequate control of his hands to operate hand controlled vehicle.”

DISCUSSION

FCP is available to eligible persons only through enrollment in a Care Management Organization [“CMO”] under contract with the Wisconsin Department of Health Services [“DHS”]. Wis. Admin. Code § DHS 10.41(1) (November 2009). A person may be eligible for FCP, but yet not entitled to enroll in a CMO. Wis. Admin. Code § DHS 10.36(1) (November 2009). A person who is found eligible for FCP but who does not meet certain conditions is not entitled to FCP benefits. Wis. Admin. Code § DHS 10.36(3) (November 2009). Such persons may pay privately for CMO services. Wis. Admin. Code §§ DHS 10.36(3) & 10.37 (November 2009).

In this case petitioner is eligible for FCP, is enrolled in a CMO, and is receiving FCP benefits. Petitioner appeals because Continuous denied his request that it pay for hand controls for his vehicle.

Services provided under FCP must be determined through individual assessment of enrollee needs and detailed in an individual service plan unique to each enrollee; services must be cost-effective. Wis. Admin. Code § DHS 10.41(2) (November 2009). The service plan must reasonably and effectively address all of long-term care needs and utilize all enrollee strengths and informal supports. Wis. Admin.

Code § DHS 10.44(2)(f)1. (November 2009). However, the role of a CMO, such as Continuus, must include an initial assessment sufficient to provide information necessary to identify safety issues. Wis. Admin. Code § DHS 10.44(2)(d)1. (November 2009). The CMO must comprehensively assess and identify safety issues. Wis. Admin. Code § DHS 10.44(2)(e)1.g. (November 2009).

In this case safety issues have not yet been sufficiently and comprehensively assessed. Therefore, Continuus was correct to deny payment for hand controls for petitioner's vehicle.

The only medical documentation that is part of the record of this matter is a letter dated May 15, 2013 on *Richland Medical Center, Ltd.* stationary which appears to be from a Medical Doctor ["MD"] which, in its entirety, states: "[Petitioner] has been examined on 05/15/13 and has adequate control of his hands to operate hand controlled vehicle." First, this is not consistent with the fact that petitioner's June 17th road test was terminated prior to its conclusion due to "disqualifying actions" and that petitioner reported that during the road test his right arm was "jerky" and "tightened up" and this affected his ability to control the vehicle. Second, the nature and extent of petitioner's May 15, 2013 exam is not detailed. What is required is a complete and comprehensive medical examination of petitioner relevant to all aspects of his ability to drive -- not merely his ability (or lack thereof) to operate had controls. Third, the signature on the May 15, 2013 letter is not legible and the letter itself doe not identify who signed it or who conducted the examination.

CONCLUSIONS OF LAW

For the reasons discussed above, Continuus, under FCP, is not required to pay for hand controls for petitioner's vehicle.

NOW, 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 26th day of November, 2013

\sSean P. Maloney
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 26, 2013.

Continuus

Office of Family Care Expansion

██████████@ilresources.org