



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

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

DECISION

FCP/152079

PRELIMINARY RECITALS

Pursuant to a petition filed September 16, 2013, under Wis. Admin. Code § DHS 10.55, to review a decision by the Western Wisconsin Cares-FCP in regard to Medical Assistance, a hearing was held on October 21, 2013, at La Crosse, Wisconsin.

The issue for determination is whether the family care agency erred in its decision to terminate acupuncture treatments for petitioner.

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: Susan Jandt

Western Wisconsin Cares-FCP
1407 St. Andrew's St., Ste. 100
La Crosse, WI 54603

ADMINISTRATIVE LAW JUDGE:

John P. Tedesco
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner is a resident of La Crosse County. He has been diagnosed with MS.
2. Petitioner is enrolled in the Family Care Program. Western Wisconsin Cares is the FC agency (CMO).
3. Petitioner has been receiving acupuncture treatment 4 times per month.

4. On June 6, 2013, the agency informed petitioner that it would reduce acupuncture treatments to 2 times per month for three months and then terminate acupuncture thereafter. The agency offered a physical therapy assessment and regular therapy, and pool therapy. Petitioner refused these alternatives.
5. Petitioner filed a timely appeal with DHA.

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 continued acupuncture services.

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 has benefitted from acupuncture therapy. But, the CMO has sought to move petitioner toward alternatives that are more cost-effective. The CMO has sought physical therapy alternatives and pool therapy. Petitioner has been resistant to such alternatives. I suspect this is because they are different than what he is doing and because he questions the efficacy. But, petitioner, based on the testimony at hearing, has been less than cooperative. His resistance to pool therapy is due to the chlorine in the pool. He says he does not want to do the physical therapy because he already exercises. If petitioner wishes to participate in the family care program, he must be willing to operate within the rules of that program. All beneficial therapies are not approved as a matter of course and the program is right to seek more cost-effective alternatives. Furthermore, there has been no evidence to suggest that treatments other than acupuncture will not be as effective or more effective. Petitioner did not provide any testimony of any medical professional that would lead to a conclusion that the acupuncture treatments cannot be substituted with some other treatment. This is simply a question of whether a public benefit program with limited means must provide the service that petitioner wants instead of one that is more cost-effective (even if the latter is not quite as effective). It does not need to do so.

CONCLUSIONS OF LAW

The CMO did not err in determining that the acupuncture treatments can be substituted with some more cost-effective alternative(s).

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 27th day of November, 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 November 27, 2013.

Western Wisconsin Cares-FCP
Office of Family Care Expansion