



FH
[REDACTED]

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

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

FCP/152494

PRELIMINARY RECITALS

Pursuant to a petition filed October 01, 2013, under Wis. Admin. Code § DHS 10.55, to review a decision by the Milwaukee County Department of Family Care in regard to Medical Assistance, a hearing was held on November 20, 2013, at Milwaukee, Wisconsin.

The issue for determination is whether the respondent correctly reduced the petitioner's personal care worker (PCW) hours.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]

Respondent:

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

By: Megan Klackner
Milw Cty Dept Family Care - MCO
901 N 9th St
Milwaukee, WI 53233

ADMINISTRATIVE LAW JUDGE:

Peter McCombs (telephonically)
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Milwaukee County.
2. The petitioner has been found eligible for participation in the Wisconsin Family Care Program (FCP).
3. The petitioner resides in his own home with his son. Petitioner's daughter lives next door.

4. The petitioner has diagnoses of CHF, Alzheimer's disease, arthritis, CAD, diabetes, diabetic peripheral neuropathy, HTN, and GERD. Exhibit 3-1.
4. Prior to August, 2013, the petitioner's service plan authorized 35 personal care hours weekly.
5. The CMO re-determined the amount of personal care time needed by the petitioner when his case was reviewed in August, 2013. The CMO tabulated the amount of personal care time needed as 26 hours.
6. The petitioner filed a local grievance, which found that the proper personal care time should be 28 hours.

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. Whenever the local Family Care program decides that a person is ineligible for the program, or when the CMO discontinues an ongoing service in the service plan, the client is allowed to file a fair hearing request. Because a service reduction is sought here, the petitioner appropriately sought a fair hearing for a further, *de novo* review of the CMO decision. Wis. Admin. Code §DHS 10.55(1).

The state code language on the scope of permissible services for the Family Care Program reads as follows:

DHS 10.41 Family care services. ...

(2) SERVICES. Services provided under the family care benefit shall be determined through individual assessment of enrollee needs and values and detailed in an individual service plan unique to each enrollee. As appropriate to its target population and as specified in the department's contract, each CMO shall have available at least the services and support items covered under the home and community-based waivers under 42 USC 1396n(c) and ss.46.275, 46.277 and 46.278, Stat., the long-term support services and support items under the state's plan for medical assistance. In addition, a CMO may provide other services that substitute for or augment the specified services if these services are cost-effective and meet the needs of enrollees as identified through the individual assessment and service plan.

Note: The services that typically will be required to be available include adaptive aids; adult day care; assessment and case planning; case management; communication aids and interpreter services; counseling and therapeutic resources; daily living skills training; day services and treatment; home health services; home modification; home delivered and congregate meal services; nursing services; nursing home services, including care in an intermediate care facility for the mentally retarded or in an institution for mental diseases; personal care services; personal emergency response system services; prevocational services; protective payment and guardianship services; residential services in an RCAC, CBRF or AFH; respite care; durable medical equipment and specialized medical supplies; outpatient speech; physical and occupational therapy; supported employment; supportive home care; transportation services; mental health and alcohol or other drug abuse services; and community support program services.

Wis. Admin. Code §DHS 10.41(2) (June, 2009).

The petitioner disagrees with the CMO's proffered service plan because it reduces his total care hours by 7 hours weekly, allegedly making it a challenge to live in his home.

The legal guidance that pertains to determining the type and quantity of daily care services that must be placed in an individualized service plan (ISP) is as follows:

DHS 10.44 Standards for performance by CMOs.

...

(2) CASE MANAGEMENT STANDARDS. The CMO shall provide case management services that meet all of the following standards:

...

(f) The CMO, in partnership with the enrollee, shall develop an individual service plan for each enrollee, with the full participation of the enrollee and any family members or other representatives that the enrollee wishes to participate. The CMO shall provide support, as needed, to enable the enrollee, family members or other representatives to make informed service plan decisions, and for the enrollee to participate as a full partner in the entire assessment and individual service plan development process. The service plan shall meet all of the following conditions:

1. Reasonably and effectively addresses all of the long-term care needs and utilizes all enrollee strengths and informal supports identified in the comprehensive assessment under par. (e) 1.
2. Reasonably and effectively addresses all of the enrollee's long-term care outcomes identified in the comprehensive assessment under par. (e) 2. and assists the enrollee to be as self-reliant and autonomous as possible and desired by the enrollee.
3. Is cost-effective compared to alternative services or supports that could meet the same needs and achieve similar outcomes.

...

Wis. Admin. Code §DHS 10.44(2)(f).

The CMO *originally* assigned the following amounts of time for the following PCW tasks: bathing – 1 hour daily, toileting/incontinence care – 2 hours daily, Ambulation (repositioning in bed) – 240 minutes weekly. These times amounted to 35 hours weekly. Following a review in October, 2013, the CMO decided to reduce the personal care hours. Time reductions were made in the above areas, to wit: time related to bathing was reduced by 15 minutes per day pursuant to the worker’s indication of the amount of time required; time related to toileting was reduced by 1 hour 20 minutes per day based upon review of actual time spent on the task; and repositioning in bed was reduced from 3-4 times per day to 3 times per day based upon caregiver’s information regarding the number of times member was actually repositioned. Exhibit 3.

At hearing, petitioner and his daughter testified that petitioner needs additional time. They argued that the 7 hour reduction would cause hardship. Unfortunately, the petitioner was unable to establish any specific error in the respondent’s determination. While the respondent had provided very specific explanations for each reduction, the petitioner presented less specific testimony, indicating that petitioner “needs more time,” and “needs help day and night.” There was no specific refutation of the respondent’s explanations provided by the petitioner. Based on the record before me, I am unable to conclude that the respondent erred in reducing petitioner’s weekly personal care hours from 35 to 28.

CONCLUSIONS OF LAW

The respondent correctly reduced petitioner’s personal care worker hours from 35 to 28.

THEREFORE, it is

ORDERED

That petitioner's appeal 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 18th day of December, 2013

\sPeter McCombs
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

Brian Hayes, 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 December 18, 2013.

Milw Cty Dept Family Care - MCO
Office of Family Care Expansion