



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

In the Matter of

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

DECISION

FCP/150226

PRELIMINARY RECITALS

Pursuant to a petition filed June 20, 2013, under Wis. Admin. Code § DHS 10.55, to review a decision by Continuum in regard to Medical Assistance, a hearing was held on November 19, 2013, at Chippewa Falls, Wisconsin. Hearings scheduled for July 24, August 20, September 17, October 22, and October 25, 2013, were rescheduled at the petitioner's request.

The issue for determination is whether Continuum correctly seek to eliminate the eight hours of supportive home care provided to the petitioner each week.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

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

Petitioner's Representative:

Attorney Beth Ann Richlen
300 Third Street, Suite 210
P. O. Box 6100
Wausau, WI 54402-6100

Respondent:

Department of Health Services
1 West Wilson Street, Room 651
Madison, Wisconsin 53703
By: T.J. Adkins
Continuum
28526 US Hwy 14
Lone Rock, WI 53556

ADMINISTRATIVE LAW JUDGE:
Michael D. O'Brien
Division of Hearings and Appeals

FINDINGS OF FACT

1. The petitioner (CARES # [REDACTED]) is a resident of Chippewa County.

2. The petitioner receives Family Care medical assistance through her CMO, Continuus.
3. Continuus notified the petitioner on May 16, 2013, that it was ending her supportive home care.
4. The petitioner is a 28-year-old woman who meets the federal definition of a developmental disability because of mild mental retardation with “substantial functional limitations in capacity for independent living, learning and self direction.” *Long Term Care Functional Screen Report*. January 21, 2013, p.2. Mild mental retardation means that her IQ is between 55 and 70. *DSM IV*.
5. The petitioner gets easily overwhelmed and has little ability to remain focused on the task at hand. She requires a life coach to remind and train her to do activities such as cleaning her house and refrigerator. She has been receiving life coaching as part of her supportive home care for four hours a week. Her need for this service has not changed.
6. The petitioner requires help cleaning her apartment twice a week for two hours.

DISCUSSION

The Family Care Program provides appropriate long-term care services for elderly or disabled adults. It is supervised by the Department of Health and Family Services, authorized by Wis. Stat. § 46.286, and comprehensively described in Chapter DHS 10 of the Wisconsin Administrative Code. The process contemplated for an applicant is to test functional eligibility, then financial eligibility, and if both standards are met, to certify eligibility. The applicant is then referred for enrollment in a care management organization (CMO), which drafts a service plan that meets the following criteria:

(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 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.
4. Is agreed to by the enrollee, except as provided in [subd. 5.](#)
5. If the enrollee and the CMO do not agree on a service plan, provide a method for the enrollee to file a grievance under [s. DHS 10.53](#), request department review under [s. DHS 10.54](#), or request a fair hearing under [s. DHS 10.55](#). Pending the outcome of the grievance, review or fair hearing, the CMO shall offer its service plan for the enrollee, continue negotiating with the enrollee and document that the service plan meets all of the following conditions:
 - a. Meets the conditions specified under [subds. 1.](#) to [3.](#)
 - b. Would not have a significant, long-term negative impact on the enrollee's long-term care outcomes identified under [par. \(e\) 2.](#)
 - c. Balances the needs and outcomes identified by the comprehensive assessment with reasonable cost, immediate availability of services and ability of the CMO to develop alternative services and living arrangements.
 - d. Was developed after active negotiation between the CMO and the enrollee, during which the CMO offered to find or develop alternatives that would be more acceptable to both parties.

Wis. Admin. Code § DHS 10.44(2)(f).

CMOs must “comply with all applicable statutes, all of the standards in this subchapter and all requirements of its contract with the department.” Wis. Admin. Code, § 10.44(1). Continuus’s contract with the Department requires it to provide supportive home care where those services are needed. Supportive Home Care consist of:

- a. Hands-on assistance with activities of daily living such as dressing/undressing, bathing, feeding, toileting, assistance with ambulation (including the use of a walker, cane, etc.), care of hair and care of teeth or dentures. This can also include preparation and cleaning of areas used during personal care activities such as the bathroom and kitchen.
- b. Observation of the participant to assure safety, oversight direction of the participant to complete activities of daily living, instrumental activities of daily living, or companionship for the participant (excluding hands-on care).
- c. Routine housecleaning and housekeeping activities performed for a participant consisting of tasks that take place on a daily, weekly or other regular basis, including: washing dishes, laundry, dusting, vacuuming, meal preparation and shopping for food and similar activities that do not involve hands-on care of the participant.
- d. Intermittent major household tasks that must be performed seasonally or in response to some natural or other periodic event. They include: outdoor activities such as yard work and snow shoveling; indoor activities such as window washing, cleaning of attics and basements, cleaning of carpets, rugs and drapery, and refrigerator/freezer defrosting; and the necessary cleaning of vehicles, wheelchairs and other adaptive equipment and home modifications such as ramps.

Contract for Family Care Program Between Continuus and Department of Health Services. p.284.

Continuus has been providing the petitioner with eight hours of supportive home care per week. This care includes help cleaning her house twice a week for two hours and four hours of life coaching to train her to do this and other basic activities. She is physically weak, but her main deficit is a developmental disability that according to her most recent Long Term Care Functional Screen Report prepared by Continuus meets the federal definition of a developmental disability. That report adds that she has mild mental retardation with “substantial functional limitations in her capacity for independent living, learning and self direction.” Mild mental retardation signifies that her IQ is between 55 and 70, which means that she falls at least two standard deviations below the norm for intelligence.

Continuus’s own screening tool report indicates that the petitioner requires supportive home care to maintain her apartment. Nevertheless, the CMO contends that she no longer needs this care because her supportive home care workers told them that she can do much of her cleaning herself. None of these workers testified, and if they had I doubt that any of them has the expertise to determine how the petitioner’s mental limitations affect her ability to work. Continuus also contends that the sheltered workshop praised her work and that she and her mother indicated that she could clean her house. Continuus submitted a stack of documents that when printed on budget paper was almost two inches thick. It did not provide references that indicated on what page the evidence supporting its claims could be found. My review of notes pertaining to her activities at the sheltered workshop stated that she wished to work and would need coaching if she did. I found no evidence that anyone at the workshop believed she could currently work without any guidance and supervision for two hours, the time it would take to clean her apartment. Whatever merit this portion of the notes does have is undermined by the fact that it is double hearsay because Continuus’s workers paraphrased statements it attributed to the workshop’s employees’ and no one from there testified. The petitioner and her mother’s testimony did not support the assertion that they believed that the petitioner could clean her own apartment. While she is physically able to do housework that does not involve significant lifting, her mother testified that she was like a 10-year-old and lacked the attention span needed to perform these tasks. The petitioner agreed with this assessment. Her mother’s testimony is consistent with the petitioner’s diagnosis and my observation of

her at the hearing. Several times, one Continuum's workers stated that it is a compliment to the petitioner that they are ending her services because it demonstrates their belief in her abilities. However complimentary Continuum's action was—the petitioner and her mother did not appear to be flattered—it would eliminate a service that Continuum's own screening report states the petitioner needs and increase Continuum's profits. Because the petitioner has been receiving supportive home care, Continuum has the burden of proving that she no longer needs it. I find no credible evidence that she no longer requires four hours a week of supportive to keep her apartment clean. This does not mean that she cannot learn these skills, but to do so will take a large amount of effort and training. As a result, she continues to require four hours a week of the life coaching that falls under oversight direction as a subcategory of supportive home care. (I note that Continuum did not present any evidence that this service was no longer necessary.)

CONCLUSIONS OF LAW

The petitioner requires eight hours a week of supportive home care to meet her medically necessary needs.

THEREFORE, it is

ORDERED

That this matter is remanded to Continuum with instructions to continue providing eight hours of supportive home care per week. Continuum shall certify to the Division of Hearings and Appeals within 10 days that it has taken this action.

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 10th day of January, 2014

\sMichael D. O'Brien
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 January 10, 2014.

Continuus
Office of Family Care Expansion
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