



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

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In the Matter of

[REDACTED]  
c/o [REDACTED]  
[REDACTED]  
[REDACTED]

DECISION

FCP/150477

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**PRELIMINARY RECITALS**

Pursuant to a petition filed June 29, 2013, under Wis. Admin. Code § DHS 10.55, to review a decision by the Western Wisconsin Cares-FCP in regard to Family Care (FC) benefits, a hearing was held on August 27, 2013, by telephone.

The issue for determination is whether the FC CMO correctly reduced the petitioner’s Supportive Home Care (SHC) hours for community integration to 4 hours weekly.

There appeared at that time the following persons:

**PARTIES IN INTEREST:**

Petitioner:

[REDACTED]  
By: [REDACTED]  
[REDACTED]  
[REDACTED]

Respondent:

Department of Health Services  
1 West Wilson Street  
Madison, Wisconsin 53703  
By: Kelly Shoberg, social worker  
Western Wisconsin Cares-FCP  
LaCrosse, WI

**ADMINISTRATIVE LAW JUDGE:**

Nancy J. Gagnon  
Division of Hearings and Appeals

**FINDINGS OF FACT**

1. Petitioner (CARES # [REDACTED]) is a resident of La Crosse County.
2. The petitioner has an ongoing FC case. She had been receiving 8 hours of SHC weekly.

3. The petitioner's case underwent an annual review in the spring, 2013. On June 4, 2013, the FC Care Management Organization (CMO), issued a *Notice of Action* to the petitioner. The *Notice* advised that the petitioner's SHC hours would be reduced to 4 hours weekly, effective June 21, 2013. The CMO reduced the hours because (1) it was substituting a less expensive group setting activity for the petitioner in lieu of the community outings covered with SHC hours, and (2) the petitioner does not display the severe behaviors that warrant 8 hours of weekly service. The petitioner requested a local grievance review of this decision; the result of that review was to leave the reduction in place. The petitioner then filed the instant appeal.
4. The petitioner, age 56, is diagnosed with mild mental retardation, anxiety, and depression. She also has a gait disturbance, which precludes her from walking long distances. The petitioner resides with her sister and the sister's husband; they provide excellent support for the petitioner. The petitioner does not currently have severe behavioral issues, although she has had them in the past.
5. One of the community outings that the petitioner will likely lose at the 4 SHC hours service level is her long-standing practice of going out to have her fingernails professionally done. She looks forward to this outing for its social interaction and as being part of her routine.
6. The cost savings created by the proposed service change is \$165.33 monthly.

### 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). 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 reducing the petitioner's SHC hours from 8 to 4 hours weekly, and substituting a group setting activity to make up for the lost time. There are no standards written in the law on how to make such a determination. It comes down to the general criteria for determining authorization for services – medical appropriateness and necessity, cost effectiveness, statutory and rule limitations, and effectiveness of the service. See Wis. Adm. Code Ch. DHS § 107.02(3)(e). The CMO does have a written policy that limits SHC for persons without severe behavioral problems to 4 hours weekly, for accompaniment to community activities.

While it is correct 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 would prefer to have some of her community outings to continue to be with one-to-one support, including her regular trek to the nail salon, rather than in a group setting. She also will continue to go to a sheltered employment setting weekly, regardless of whether she has 4 hours or 8 hours of SHC time. The concern from the petitioner's family is that this change in routine will result in a decline in the petitioner's behavior, as the group setting may not be appropriately stimulating for the petitioner. The CMO insists that the group setting should be appropriate. I can see no strong argument against at least trying what the CMO proposes. If the petitioner's condition should deteriorate under the new regimen, the petitioner may ask the CMO to re-visit the ISP and add more SHC hours at that time.

### **CONCLUSIONS OF LAW**

The CMO did not err in determining that the petitioner's request for 8 hours of weekly SHC (up from 4 hours) is not appropriate, cost-effective or medically necessary.

**THEREFORE, it is**

**ORDERED**

That the petition 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 16th day of September, 2013

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\sNancy J. Gagnon  
Administrative Law Judge  
Division of Hearings and Appeals



**State of Wisconsin\DIVISION OF HEARINGS AND APPEALS**

Wayne J. Wiedenhoef, Acting Administrator  
Suite 201  
5005 University Avenue  
Madison, WI 53705-5400

Telephone: (608) 266-3096  
FAX: (608) 264-9885  
email: [DHAmail@wisconsin.gov](mailto:DHAmail@wisconsin.gov)  
Internet: <http://dha.state.wi.us>

The preceding decision was sent to the following parties on September 16, 2013.

Western Wisconsin Cares-FCP  
Office of Family Care Expansion