



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

In the Matter of

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

DECISION

FCP/██████████

PRELIMINARY RECITALS

Pursuant to a petition filed September 9, 2013, under Wis. Admin. Code § DHS 10.55, to review a decision by Continuum (CMO) in regard to Family Care (FC) benefits, a hearing was held on November 26, 2013, by telephone. Hearings set for October 10, October 24, and November 19, 2013, were rescheduled at the petitioner’s request. The hearing record was also held open for a submission.

The issue for determination is whether the CMO correctly denied a request, made in July 2013, for double her current travel voucher mileage.

There appeared at that time the following persons:

PARTIES IN INTEREST:

Petitioner:

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

Respondent:

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

By: Mary Esselman, supr.
Continuum
28526 US Hwy 14
Lone Rock, WI 53556

ADMINISTRATIVE LAW JUDGE:

Nancy J. Gagnon
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner is a resident of ██████████
2. The petitioner, age █████, has diagnoses of COPD, tobacco use, diabetes, obesity, incontinence, and recent history of hernia surgery. She owns her own vehicle and is able to drive. She resides in

the community, is not employed, and receives SSI. The petitioner has six living children, several of whom reside in the [REDACTED] area.

3. The petitioner is enrolled in the FC program and has had an individualized service plan (Plan) for some time. Prior to June 2013, the petitioner's Plan did not include mileage reimbursement for trips to medical appointments. The CMO believed that her medical travel needs were met by catching rides with her daughter. In late May, the petitioner's physician reported that the petitioner's in-home functioning had declined following a surgery and medication change. On June 11, 2013, the petitioner requested mileage, due to increased frequency of medical appointments. The CMO approved mileage reimbursement vouchers, at the level of 150 miles (one round trip) per week/600 miles monthly, to facilitate medical visits in [REDACTED] and Onalaska. *See*, Exhibit 1, Attachment 11.
4. On July 29, 2013, the petitioner asked the CMO to increase the amount of her mileage vouchers in her Plan. She asserted that she needed 2 visits weekly. Specifically, she reported that she was seeing her primary physician once weekly, and other providers once weekly. *See* Exhibit 1, Attachment 9, case note for 7/29/13. The CMO issued written notice of denial of the increase request to the petitioner on August 5, 2013.
5. Following the request denial, the petitioner filed a grievance request with the CMO, which was denied.
6. The petitioner's verified medical trips from June 11, 2013 forward (roundtrip mileage per Mapquest) were as follows:

June: 6/12 - pulmonologist - [REDACTED] - 144 miles

6/26 - Dr. [REDACTED] (primary) - Onalaska - 132 miles

6/27 - [REDACTED] (podiatry) - [REDACTED] - 90 miles

July: 7/3 - [REDACTED] (orthopedics) - [REDACTED] - 144 miles

7/9 - [REDACTED] (optometry) - [REDACTED] - 90 miles

7/17 - Dr. [REDACTED] - Onalaska - 132 miles

7/24 - Dr. [REDACTED] - Onalaska - 132 miles

7/25 - dermatologist - Onalaska - 132 miles

7/26 - [REDACTED] - Lake Tomah - 60 miles

August: 8/1 - Dr. [REDACTED] - Onalaska - 132 miles

8/1 - psychiatrist - [REDACTED] (same trip)

8/5 - Dr. [REDACTED] - Onalaska - 132 miles

8/23 - lab - [REDACTED] - 90 miles

September: 9/13 - Dr. [REDACTED] - Onalaska - 104 miles (petitioner moved closer)

9/18 - Internal Medicine - Onalaska - 104 miles

October: 10/2 - pulmonologist & orthopedics - [REDACTED] - 116 miles

10/9 - podiatrist - [REDACTED] - 62 miles

10/16 - podiatrist - [REDACTED] - 62 miles

10/23 - podiatrist - [REDACTED] - 62 miles

10/29 - audiology - Onalaska - 104 miles

10/30 - Dr. [REDACTED] - Onalaska - 104 miles

November: 11/4 - Internal Medicine - Onalaska - 104 miles

11/7 - Dr. [REDACTED] - [REDACTED] - 116 miles

11/22 – lab - [REDACTED] - 62 miles

11/27 – Dr. [REDACTED] - Onalaska - 104 miles

December: 12/11 – Dr. Krzesniak – [REDACTED] – 116 miles

12/16 – Dr. [REDACTED] - [REDACTED] - 116 miles

7. Post-hearing, the petitioner submitted documentation that suggests that she began visiting a chiropractor in Mauston in September 2013. The chiropractor is 32 miles roundtrip from the petitioner’s Camp Douglas address. The documentation indicates that she made seven visits in September, four visits in October, and five visits in November, for an average monthly mileage average of 171 miles.

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. A dis-satisfied FC client may file a grievance with his/her CMO under Wis. Admin. Code §DHS 10.53, request a state-level review by the Wisconsin Department of Health Services under § DHS 10.54, and/or request a fair hearing under § DHS 10.55.

The state code language on the scope of permissible services for the FC 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.

[emphasis added]

Wis. Admin. Code §DHS 10.41(2) (June, 2009). Transportation services are included in the list of covered services in the statutory note above. Having established that transportation can be a covered

service, the question that remains is, how much transportation reimbursement is essential to meeting the petitioner's needs?

Her current plan allows for payment for up to 600 miles monthly. I did not review her mileage usage for April and May, which was around the time of her surgery, as that was likely to be atypical. Her verified mileage totals thereafter were as follows:

June - 366 miles
 July - 690 miles
 August - 354 miles
 September - 208 miles
 October - 510 miles
 November - 386 miles
 December - 232 miles

Nonetheless, the petitioner asserts that she needs 1,200 miles reimbursed monthly.

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

HFS 1044 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 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.

...

(emphasis added)

Wis. Admin. Code §DHS 10.44(2)(f).

Although the petitioner argued for 1,200 miles monthly, her evidence did not support her argument. She submitted documentation of chiropractic appointments in September, October, and November that average 171 miles monthly. When this mileage is added to that listed above, she did not exceed 600 miles in October or November. Although it does pull her over for September, the June through December 2013 trend still shows that 600 miles monthly is adequate to meet the petitioner's needs.

CONCLUSIONS OF LAW

1. The Division of Hearings and Appeals has jurisdiction to review the CMO's decision to refuse to increase the amount of the transportation vouchers furnished to the petitioner.
2. The CMO correctly denied the petitioner's request to double her existing 600 miles per month travel reimbursement allotment.

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, 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 27th day of January, 2014

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



State of Wisconsin \DIVISION OF HEARINGS AND APPEALS

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The preceding decision was sent to the following parties on January 27, 2014.

Continuus
Office of Family Care Expansion
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