FH
[redacted]

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[redacted]

DECISION

FCP/152368

PRELIMINARY RECITALS

Pursuant to a petition filed September 26, 2013, under Wis. Admin. Code § DHS 10.55, to review a decision by the iCare in regard to Medical Assistance, a hearing was held on December 12, 2013, at Milwaukee, Wisconsin.

The issue for determination is whether Petitioner's supportive home care and personal care worker hours have been correctly determined by the Family Care agency.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:
Petitioner:

[redacted]

Respondent:

Department of Health Services
1 West Wilson Street, Room 651
Madison, Wisconsin 53703
By: Elizabeth Bartlett, Esq.
iCare
1555 N. Rivercenter Drive
Suite 206
Milwaukee, WI 53212

ADMINISTRATIVE LAW JUDGE:
David D. Fleming
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [redacted]) is a resident of Milwaukee County. She has been a recipient of FCP services. She has been with iCare since late 2012 but services have been limited to informal supports with Petitioner's discontinuance of medication management in early 2013.

2. In early August 2013 Petitioner broke her ankle and had it surgically repaired. She was assessed for personal care and supportive home services on August 12, 2013 upon discharge from the hospital and again on September 26, 2013. The agency concluded that Petitioner required 3.5 hours per day (rounded) of PCW (1.75 hours/day) and SHC (11.25 hours/week) in the August assessment. The agency concluded that Petitioner required 3.5 hours per day (rounded) of PCW (1.5 hours/day) and SHC (12.5 hours/week) in the September assessment. For the September assessment this consisted of:

   30 minutes per day for bathing

   30 minutes per day for dressing

   20 minutes per day for donning and doffing an ankle brace

   35 minutes per week for oral hygiene/denture care

   740 minutes per week for various supportive home cares

   60 minutes per week for shopping and

   60 minutes a month for pharmacy trips. See Exhibit # B-9.

   It is the services determined in the September assessment that are still provided for Petitioner.

3. Petitioner filed this appeal on September 26, 2013 contending that she needs at least six hours of assistance per day though she would like 8 hours of help per day.

4. In addition to her ankle injury Petitioner also has diagnosis that includes bi polar disorder, depression, lumbago and osteoarthritis. Petitioner lives in the community in a duplex with her son.

5. Petitioner is scheduled for another assessment by the Family Care agency in January 2014.

DISCUSSION

The Family Care Program, which is supervised by the Department of Health and Family Services, is designed to provide appropriate long-term care services for elderly or disabled adults. *Medicaid Eligibility Handbook (MEH), §29.1.* It is authorized under Wisconsin Statutes, *§46.286*, and is described comprehensively in the *Wisconsin Administrative Code at Chapter DHS 10*. The program is operated and administered in each county by a Care Management Organization (CMO), which in this case is Community Care, Inc. Though Family Care enrollees are full partners in the assessment of needs and strengths and in the development of care plans those plans are subject to the general requirements and limitations outlined for the program, including the requirement that a service be 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)(e) & (f).* Medical assistance and its subprograms are meant to provide only basic and necessary health care.

In the Family Care Program (FCP), a case management organization (CMO) must develop an Individual Service Plan (ISP) in partnership with the client. *Wis. Admin. 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(2)(f); DHS booklet, Being a Full Partner in Family Care, page 9.* Supportive home care and personal care services are included as covered services for family care. *Wis. Admin. Code §DHS 10.41(2) and Standard Contract at Addendum XII; http://www.dhs.wisconsin.gov/mltc/2013/2013Contract.htm.*

The Family Care agency involved here, iCare, completed assessments of Petitioner's capabilities as to her personal cares and supportive home tasks on 2 occasions - August 12 and September 26, 2013. The two assessments yielded only slight differences in the times allocated. Regardless, there is no way to go back in time to provide services; this decision can only determine whether the services that have been provided since the September 2013 assessment are appropriate.

The agency notes that Petitioner was not getting any services beyond informal supports prior to her ankle injury. Further, Petitioner has been released by her physician for weight bearing on the ankle since early October 2013. Physical therapy has been prescribed for Petitioner for her ankle but she only attended a few sessions.

Petitioner's primary complaint was that she does not think that the agency provided her with enough time for services after the ankle injury. She is not, however, able to provide detail as to how the allocated time is insufficient beyond the rather vague description that it is not enough. As examples, an hour per week is allocated for laundry and an hour per week for grocery shopping but Petitioner thinks these times are not adequate but without any detail as to why they are inadequate except that those tasks took her longer than allocated when she did them for herself.

In the end there is simply not sufficient evidence to disturb the agency allocations of time for assistance with personal cares and supportive home cares for Petitioner.

CONCLUSIONS OF LAW

That the evidence demonstrates that iCare has correctly determined the amount for personal care and supportive home care appropriate for Petitioner.

THEREFORE, it is **ORDERED**

That this appeal 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 Milwaukee,
Wisconsin, this 10th day of January, 2014

_____

\sDavid D. Fleming
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 January 10, 2014.

iCare
Office of Family Care Expansion