



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

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In the Matter of

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

DECISION

FCP/154121

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**PRELIMINARY RECITALS**

Pursuant to a petition filed December 16, 2013, under Wis. Admin. Code § DHS 10.55, to review a decision by the Milwaukee County Department of Family Care - MCO in regard to Medical Assistance, a hearing was held on April 01, 2014, at Milwaukee, Wisconsin.

The issue for determination is whether the Milwaukee County Department of Family Care correctly reduced Petitioner's supportive home care hours from 770 minutes per week to 240 minutes per week.

There appeared at that time and place the following persons:

**PARTIES IN INTEREST:**

Petitioner:

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

Respondent:

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

By: Rosaida Schrank, Quality Insurance Coordinator  
Milw Cty Dept Family Care - MCO  
901 N. 9th St.  
Milwaukee, WI 53233

**ADMINISTRATIVE LAW JUDGE:**

Mayumi M. Ishii  
Division of Hearings and Appeals

**FINDINGS OF FACT**

1. Petitioner (CARES # [REDACTED]) is a resident of Milwaukee County.
2. Petitioner suffers from Alzheimer's Disease and lives with her daughter, who is also her Power of Attorney (POA) and her paid caregiver. (Exhibit 2; Exhibit 6, pgs. 19-28)

3. On October 17, 2013, an interdisciplinary team (IDT) from Anew, a Care Management Unit, conducted an in-home assessment of the Petitioner. (Exhibit 6, pgs. 19-28)
4. On October 22, 2013, the Milwaukee County Department of Family Care (the agency) sent the Petitioner a notice indicating that it was reducing her supportive home care hours from 20.75 hours per week to 8.50 hours per week. (Exhibit 6, pg. 3)
5. The IDT reduced time for sweeping the kitchen from 21 minutes per week (3 minutes per day, 7 days a week) to 9 minutes per week (3 minutes per day, 3 days a week), because the kitchen is a shared living space and Petitioner's daughter would need to clean the kitchen for herself. (Exhibit 6, pg. 8)
6. The IDT also reduced time for supervision from 770 minutes per week (110 minutes per day x 7 days a week) to zero. (Exhibit 6, pg. 9)
7. On an unspecified date, the Petitioner filed a grievance. On December 3, 2013, the agency sent Petitioner a notice indicating that it approved 12.5 hours per week of supportive home care hours. This was an increase of four hours to allow additional time for supervision. (Exhibit 1, pg. 2; Exhibit 7, pg. 8)
8. The Petitioner filed a request for fair hearing that was received by the Division of Hearings and Appeals on December 16, 2013. (Exhibit 1)

### DISCUSSION

The Family Care Program is a subprogram of Wisconsin's Medical Assistance (MA) program and is intended to allow families to arrange for long-term community-based health care and support services for older or impaired family members without resort to institutionalization, Wis. Stats. §46.286; Wis. Admin. Code §DHS 10.11. It is, in short, a long-term care benefit for the elderly, people with physical disabilities and those with developmental disabilities. Medicaid Eligibility Handbook (MEH), §29.1.

An individual, who meets the functional and financial requirements for Family Care, participates in Family Care by enrolling with a Care Management Organization (CMO), which, in turn, works with the participant and his/her family to develop an individualized plan of care. See Wis. Stats. §46.286(1) and Wis. Admin. Code §DHS 10.41. The CMO, in this case the Milwaukee County Department of Family Care (the agency), implements the plan by contracting with one or more service providers (i.e. Anew and [REDACTED]).

Wis. Admin. Code DHS 10.41(2) states that:

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, Stats., the long-term support community options program under s. 46.27, Stats., and specified 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.

Emphasis added

The aforementioned administrative code further notes that personal care and supportive home care services are among the services that typically will be required to be available. *Id.*

It is a well-established principle that a moving party generally has the burden of proof, especially in administrative proceedings. *State v. Hanson*, 295 N.W.2d 209, 98 Wis. 2d 80 (Wis. App. 1980). In a case involving the reduction of services, the agency bears the burden to prove it correctly reduced the services.

In the case at hand, the Petitioner's daughter/POA filed an appeal, because she disagrees with the agency's determination that 4 hours (240 minutes) per week is sufficient time to supervise the Petitioner. Petitioner's daughter/POA argued that Petitioner's condition is a degenerative and will only worsen over time. Petitioner's daughter/POA further argued that Petitioner needs constant supervision because she tries to wander away from home, tries to prop the front door open and has not wanted to go to her adult day program, as of late.

Judy Hohlen, an RN Case Manager from Anew, a Care Management Unit contracted by the agency, testified that she was present when the IDT went to the Petitioner's home to conduct an in-home assessment and that at that time, Petitioner's daughter reported that Petitioner is no longer wandering. Ms. Hohlen further testified that she observed the Petitioner ambulating and that her ability to walk has deteriorated and that she needed to support herself on the walls, in order to walk down the hall from her bedroom. Mr. Holen testified that based upon what Petitioner's daughter reported and based upon the Petitioner's decreased mobility, the decision was made to eliminate time for supervision to prevent wandering.

Rosaida Schrank, Quality Assurance Coordinator from Milwaukee County Family Care, indicated that she was not a member of the grievance committee that subsequently allowed 4 hours per week for supervision to prevent wandering. However, Ms. Schrank testified that she believed the committee allowed the 4 hours of supervision, based upon the statements made to them, by Petitioner's daughter and grandson, that the Petitioner does still attempt to wander sporadically. (See also Exhibit 7, pg. 8; Exhibit 1 pg. 2)

Petitioner's decreased mobility does not seem to be in dispute. Petitioner's daughter submitted a letter from the assistant director of Petitioner's Adult Day Services program, that indicates that Petitioner, "requires stand by assistance at all times when ambulating with a walker. She is unsteady and does not have good judgment when using her walker, especially with sitting down and getting up safely." (Exhibit 4)

Petitioner's grandson testified that while the Petitioner does have decreased mobility, she can move at a quick pace, when the inclination to wander strikes. However, the Petitioner's grandson also testified that he installed a door alarm, which the family does not always use, because it bothers the neighbors.

Decreased mobility is not the same as being immobile. As such, decreased mobility, alone, would not necessarily warrant the complete elimination of time for supervision, but it does justify a decrease in time needed for supervision that is used to prevent wandering. It is reasonable to conclude that because the Petitioner cannot get up and walk very easily, the likelihood of the Petitioner leaving the apartment unattended is less.

The decrease in time for supervision to prevent wandering from 770 minutes per week to 240 minutes is also warranted, because the alarm on the Petitioner's door is a more cost-effective means of preventing the Petitioner from leaving the apartment unattended, than paying a caregiver to constantly supervise the Petitioner, and cost-effectiveness must be a consideration when deciding whether to approve Medicaid funding for a service. *See* Wis. Admin. Code § DHS 107.02(3)(b)

The Petitioner's son testified that the family does not like to use the alarm, because it bothers the neighbors. However, Medicaid cannot pay for supervision time, just because it is more convenient for the Petitioner's neighbors and family. *See* Wis. Adm. Code. §DHS 101.03(96m)

Petitioner's daughter testified that the Petitioner requires more supervision now, because the Petitioner has stated that she does not want to go to her adult day services program. However, this is not supported by the letter from the Adult Day Services Program, which indicates that the Petitioner, "attends the Adult Day Center Monday through Friday and despite her decline, she remains active in all the activities and socialization."

Based upon the foregoing, it is found that the agency correctly reduced Petitioner's time for supervision from 770 minutes per week to 240 minutes per week.

Petitioner's daughter should note that if Petitioner is routinely rejecting adult day services, this should be documented with Petitioner's new CMU, [REDACTED] to determine whether additional supportive home care services need to be provided to the Petitioner. The Petitioner's daughter also expressed concerns about her own failing memory and whether she was able to continue as her mother's POA and caregiver. These concerns should also be addressed with [REDACTED] to determine whether respite services are warranted.

### **CONCLUSIONS OF LAW**

The Milwaukee County Department of Family Care correctly reduced the Petitioner's time for supervision to prevent wandering from 770 minutes per week to 240 minutes per week.

**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 Milwaukee,  
Wisconsin, this 18th day of April, 2014.

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\sMayumi M. Ishii  
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 April 18, 2014.

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