



STATE OF WISCONSIN  
Division of Hearings and Appeals

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In the Matter of

██████ ██████  
c/o ██████ ██████

DECISION

FCP/154400

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**PRELIMINARY RECITALS**

Pursuant to a petition filed December 21, 2013, under Wis. Admin. Code, §DHS 10.55, to review a decision by the Lakeland Care District in regard to Family Care Program (FCP) services, a hearing was held on February 18, 2014, by telephone.

The issue for determination is whether the agency correctly denied coverage of two items from petitioner's support plan.

**PARTIES IN INTEREST:**

Petitioner:

██████ ██████  
c/o ██████ ██████  
████████████████████  
████████████████████

Respondent:

Department of Health Services  
1 West Wilson Street, Room 651  
Madison, Wisconsin 53703  
By: Karen Koelbl  
Lakeland Care District  
500 City Center  
Oshkosh, WI 54901

**ADMINISTRATIVE LAW JUDGE:**

Brian C. Schneider  
Division of Hearings and Appeals

**FINDINGS OF FACT**

1. Petitioner is a 23-year-old resident of Winnebago County.
2. Petitioner has mental retardation, and he is legally blind. He lives in an adult family home and receives assistance through the FCP. Lakeland Care District (LCD) is his managed care organization (MCO).

3. Until the middle of 2013 petitioner purchased electric razor heads and haircuts on his own, but the MCO allowed the costs as remedial expense deductions, thus reducing petitioner's cost of care under the FCP. However, in June, 2013, LCD informed petitioner that because of a clarification by the Department of Health Services, those items no longer could be budgeted as remedial items.
4. After being told of the change, petitioner requested that the items be included in his Individual Service Plan (ISP) as adaptive aids funded by the program. On October 9, 2013 LCD notified petitioner by letter that the request was denied. Petitioner filed a grievance with the MCO, but the grievance committee upheld the denial (the committee reversed the denial of a third item that therefore is not at issue in this appeal).
5. Petitioner uses an electric razor. He has to change the razor heads with some frequency because he drops the razor and breaks them.
6. Petitioner typically gets his hair cut twice monthly to a short, buzz-cut style. He developed a fungal infection on his head because he did rinse shampoo thoroughly. He refused a dermatologist's recommendation for treating the infection.

### 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 MCO must develop an 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 MCO 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); DHS booklet, Being a Full Partner in Family Care, page 9. ISPs must be reviewed periodically. Admin. 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 MCO over any decision, omission, or action of the MCO. 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 MCO acted appropriately in denying petitioner's request for the razor heads and the haircuts. As has been noted many times in the past, there are no standards written in the law or policy 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. Admin. Code, §DHS 107.02(3)(e).

The grievance committee upheld the denial of the razor heads because staff could assist petitioner in shaving and maintaining the heads. Unspoken is the consideration that petitioner could be more careful. An electric razor head should last a minimum of one year based on normal usage. At the cost of \$25 per head, it is unreasonable to go through a dozen razor heads per year. Shaving with an electric razor is not a unique activity for petitioner; almost every man must shave. I have no problem upholding the denial of an item that

is not unique to petitioner's disability or necessary for his independence. While it is true that petitioner wants to be as independent as possible, if he cannot shave without regularly breaking his shaver, then at some point assistance is necessary.

The haircut issue is a point of major contention. LCD staff maintains that petitioner could solve the infection problem by using medicated shampoo that he refuses to use or by accepting caregiver assistance. In addition he refused to follow through with a doctor's recommendation. Petitioner's mother emphasizes again that he cannot help that he is unable to rinse thoroughly and that putting limits on him impedes his independence. Short hair, she says, is the best way to address the problems. It is reported, however, that petitioner's mother is the one who insists that he get his hair cut twice monthly, and if so, then isn't she impeding his independence as well? Furthermore, LCD staff report that petitioner's hair has always been short, so short hair alone is not the answer to his skin problem.

It is evident to me that short hair is a personal choice (either by petitioner or his mother) and that it has nothing to do with resolving his skin infection. Again, forcing a care agency to pay for a task that is not unique to petitioner's impairment is not reasonable unless there are no alternatives. Frequent haircuts is not necessary to assist petitioner's condition or to enhance his independence.

### **CONCLUSIONS OF LAW**

The MCO's denial of FCP coverage of electric razor heads and haircuts was reasonable because both are personal grooming tasks that are not unique to petitioner, and problems relating to the grooming issues can be addressed in more cost effective ways.

**THEREFORE, it is**

**ORDERED**

That the petition for review herein be and the same is hereby 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 26th day of February, 2014

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\sBrian C. Schneider  
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 February 26, 2014.

Lakeland Care District  
Office of Family Care Expansion