



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

In the Matter of:

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

FCP/155052

PRELIMINARY RECITALS

Pursuant to a petition filed January 27, 2014, under Wis. Admin. Code § DHS 10.55, to review a decision by the Milwaukee County Department of Family Care ["County"] in regard to Medical Assistance ["MA"], a Hearing was held via telephone on March 11, 2014.

The issue for determination is whether petitioner's Adult Day Services ["ADS"], paid for by the MA Family Care Program ["FCP"], may be reduced from 3 days per week to 2 days per week.

There appeared at that time via telephone the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]

Respondent:

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

By: Rosaida Schrank, Quality Improvement ["QI"] Coordinator
Milwaukee County Department of Family Care - MCO
901 N 9th St
Milwaukee, WI 53233

OTHER PERSONS PRESENT:

[REDACTED], FCP Registered Nurse ["RN"]
[REDACTED], petitioner's brother & guardian
[REDACTED], owner of Prestigious Academy CBRF
[REDACTED], FCP Case Manager

ADMINISTRATIVE LAW JUDGE:

Sean P. Maloney
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (58 years old) is a resident of Milwaukee County.
2. Petitioner has diagnosis of brittle diabetes (currently well managed) and dementia (although she is very high functioning).
3. Petitioner lives in a Community Based Residential Facility ["CBRF"] where she has lived since 2005; the CBRF is paid by FCP to provide, among other things, activities; the CBRF can and will provide activities to meet petitioner's needs (including Bible study at the CBRF and other locations, church services at other locations, family visits, word searches, television, walking near the CBRF and at other locations, and visits with friends).
4. By a *Notice of Action* letter dated January 15, 2014 the County reduced petitioner's ADS, paid for by FCP in addition to what FCP already pays for petitioner's CBRF, from 3 days per week to 2 days per week; ADS provides petitioner with an activities and socialization outside of the CBRF.

DISCUSSION

FCP is available to eligible persons only through enrollment in a Care Management Organization ["CMO"] under contract with the Wisconsin Department of Health Services ["DHS"]. Wis. Admin. Code § DHS 10.41(1) (November 2009). A person may be eligible for FCP, but yet not entitled to enroll in a CMO. Wis. Admin. Code § DHS 10.36(1) (November 2009). A person who is found eligible for FCP but who does not meet certain conditions is not entitled to FCP benefits. Wis. Admin. Code § DHS 10.36(3) (November 2009). Such persons may pay privately for CMO services. Wis. Admin. Code §§ DHS 10.36(3) & 10.37 (November 2009).

In this case petitioner is eligible for FCP, is enrolled in a CMO, and is receiving FCP benefits. Petitioner appeals because her ADS was reduced from 3 days per week to 2 days per week.

A service plan for an FCP participant must 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)(f)3. (November 2009); See also, Wis. Admin. Code § DHS 10.44(2)(f)5.c. (November 2009). It is not cost-effective to provide petitioner with 3 days per week of ADS when the CBRF itself provides petitioner with activities and socialization both onsite and offsite. Therefore, petitioner's ADS may be reduced from 3 days per week to 2 days per week.

Petitioner testified that she enjoys going to ADS. The CBRF owner testified that petitioner is not as sharp or as happy since the ADS has been decreased. However, the fact remains that activities and socialization can be provided more cost-effectively by the CBRF. It is noted that petitioner will still be attending ADS 2 days per week.

CONCLUSIONS OF LAW

For the reasons discussed above, petitioner's ADS may be reduced from 3 days per week to 2 days per week.

NOW, THEREFORE, it is

ORDERED

That the petition for review herein be and the same is hereby DISMISSED.

REQUEST FOR A REHEARING

You may request a rehearing if you think this decision is based on a serious mistake in the facts or the law or if you have found new evidence that would change the decision. Your request must be **received within 20 days after the date of this decision**. Late requests cannot be granted.

Send your request for rehearing in writing to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400 **and** to those identified in this decision as "PARTIES IN INTEREST." Your rehearing request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and explain why you did not have it at your first hearing. If your request does not explain these things, it will be denied.

The process for requesting a rehearing may be found at Wis. Stat. § 227.49. A copy of the statutes may be found online or 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 filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Health Services, 1 West Wilson Street, Room 651, Madison, Wisconsin 53703, **and** on those identified in this decision as "PARTIES IN INTEREST" **no more than 30 days after the date of this decision** or 30 days after a denial of a timely rehearing (if you request one).

The process for Circuit Court Appeals may be found at Wis. Stat. §§ 227.52 and 227.53. A copy of the statutes may be found online or at your local library or courthouse.

Given under my hand at the City of Madison,
Wisconsin, this 7th day of April, 2014

\sSean P. Maloney
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 7, 2014.

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