



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of:

[Redacted case name]

DECISION

FCP/155061

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 paid MA Family Care Program ["FCP"] Supportive Home Care ["SHC"] hours and Attendant Care ["AC"] hours may be reduced from 35 hours per week to 17.5 hours per week.

There appeared at that time via telephone the following persons:

PARTIES IN INTEREST:

Petitioner:

[Redacted petitioner name]

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], Healthcare Worker Nurse
[Redacted], Lead Supervisor
[Redacted], Case Manager
[Redacted], FCP Ombudsman

ADMINISTRATIVE LAW JUDGE:
 Sean P. Maloney
 Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (71 years old; CARES # [REDACTED]) is a resident of Milwaukee County, Wisconsin.
2. Petitioner has diagnosis of spinal stenosis, anemia, anxiety disorder, arthritis, diabetes, hypertension, chronic pain, CVA, and lupus; she takes numerous medications.
3. Petitioner lives in the second floor of a duplex which she owns; her meals are home delivered; she is able to ambulate up and down the stairs independently (15 stairs), but must be careful; she prefers to use a cane; she has adaptive equipment in her home including shower chair, raised toilet seat, and a few mobility devices; she owns her own vehicle and is reported to drive.
4. Petitioner needs both hips replaced due to chronic pain; on February 12, 2013 she had her left hip replaced; post-surgery her SCH and AC hours were temporarily increased to 24 hours per day for the healing process; in March 2013 her SCH and AC hours were decreased to 35 hours per week; petitioner has healed and no longer needs as much assistance as she did post-surgery for toileting, stand-by, shopping, or supervision.
5. In November 2013 the County completed a detailed reassessment of petitioner's needs; this detailed assessment, and supporting documentation, show that 17.5 hours per week of paid SHC and AC is adequate to meet petitioner's needs.
6. By a *Notice of Action* letter dated December 10, 2013 the County reduced petitioner's paid SHC and AC hours from 35 hours per week to 17.5 hours per week effective December 25, 2013.

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 SHC and AC were reduced from 35 hours per week to 17.5 hours per week.

This matter must be decided by the preponderance of the credible evidence. Wis. Admin. Code § HA 3.09(4) (September 2001). The preponderance of the credible evidence in the record of this matter is that 17.5 hours per week of paid SHC and AC are adequate to meet petitioner's needs. Petitioner has presented little, if any evidence, to dispute the County's November 2013 detailed reassessment and documentation. In fact, claims only to need SCH and AC hours per week "in the 20's". Petitioner is concerned because she will be having hip replacement surgery on her right hip and may need more SCH and AC hours at that time. As the County affirmed, a reassessment for SCH and AC hours will be done when petitioner has hip replacement surgery for her right hip.

CONCLUSIONS OF LAW

For the reasons discussed above, petitioner's paid FCP SHC and AC hours may be reduced from 35 hours per week to 17.5 hours 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