



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

FCP/155079

PRELIMINARY RECITALS

Pursuant to a petition filed January 27, 2014, under Wis. Admin. Code § DHS 10.55, to review a decision by the Western Wisconsin Cares-FCP in regard to Medical Assistance, a hearing was held on March 03, 2014, at Sparta, Wisconsin.

The issue for determination is whether the FC agency erred in terminating the supportive home care service.

There appeared at that time and place 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: Christine Wainwright
Western Wisconsin Cares-FCP
777 S. Black River St.
Sparta, WI 54656

ADMINISTRATIVE LAW JUDGE:

John P. Tedesco
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Monroe County.
2. Petitioner is a member of the family care program (FCP) in the non-nursing home level of care.
3. Petitioner had been receiving supportive home care services since 2011 approved by the FC agency.

4. Supportive home care is not a service that is included within his benefit package at the non-nursing home level of care.
5. The agency terminated the service by notice dated 12/9/2013.
6. Petitioner appealed.

DISCUSSION

The Family Care Program is a health-service delivery system authorized by Wis. Stat. § 46.286 and comprehensively described in Wis. Admin. Code, Chapter DHS 10. It is designed to increase the ability of the frail elderly and those under 65 with disabilities to live where they want, participate in community life, and make decisions regarding their own care. It places a recipient under the roof of a single private provider that receives a uniform fee, called a capitation rate, for each person it serves. The provider is responsible for ensuring that the person receives all the Medicaid and Medicare services available to him. The theory behind the program is that it will save money by providing recipients with only the services they need rather than requiring that they enroll in several programs whose services may overlap. Each CMO signs a contract with the State of Wisconsin that sets forth exactly what services it must provide.

Eligibility for the Family Care Program depends upon a person's ability to function independently falling below a certain level. This is referred to as the person's functional capacity level. Those eligible for the program must have a functional capacity level that is either "comprehensive" or "intermediate" or, in the words of the statute, "nursing home" or "non-nursing home." Wis. Admin. Code, § DHS 10.33(2); Wis. Stat. § 46.286.(1)(a). Those meeting the comprehensive level are eligible for full services, including medical assistance, through a CMO. Wis. Admin. Code, § DHS 10.36(1)(a). The petitioner has been receiving full benefits as part of the Wisconsin Partnership Program. Those who meet the intermediate care level are eligible for full services only if they require adult protective services, are financially eligible for medical assistance, or are grandfathered in under Wis. Admin. Code, § DHS 10.33(3). Wis. Admin. Code, § DHS 10.36(1)(b). A person eligible under the non-nursing home level is eligible for reduced Family Care services.

In this case, the agency was granting supportive home care since 2011 through [REDACTED]'s [REDACTED]. At hearing, the agency explained that it was terminating the service through that provider and would provide some support through other means on a more cost-effective basis. Petitioner argued that he has a history with [REDACTED]'s [REDACTED] and continuity of the service is more practical and possibly more cost-effective.

But, critically, the supportive home care service is not one that is even provided for under petitioner's level of care. Petitioner does not dispute this. If the agency paid for this for several years that is fine. But, the agency was not required to do so as I understand it. In that sense, petitioner is lucky to have received such support since 2011 as the agency could have terminated this service much sooner, or never even offered it at all. I can only apply the existing law and rules and order an agency to take actions that are required under those authorities. I cannot order the agency to continue to provide a service that they were not required to provide in the first place.

CONCLUSIONS OF LAW

The agency did not err in terminating a service that is not in petitioner's non-nursing home level of care benefit package.

THEREFORE, it is

ORDERED

That this matter is 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 14th day of April, 2014

\sJohn P. Tedesco
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 14, 2014.

Western Wisconsin Cares-FCP
Office of Family Care Expansion