



FH
[REDACTED]

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

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

FCP/155731

PRELIMINARY RECITALS

Pursuant to a petition filed February 26, 2014, under Wis. Admin. Code § DHS 10.55, to review a decision by the Continuous MCO in regard to Family Care (FC) benefits, a hearing was held on May 14, 2014, by telephone.

The issue for determination is whether the MCO correctly denied FC-paid SHC services for the petitioner.

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: Kelly Hermanson, supr.
Continuous
28526 US Hwy 14
Lone Rock, WI 53556

ADMINISTRATIVE LAW JUDGE:

Nancy J. Gagnon
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Green County.
2. The petitioner has been a recipient of FC benefits for at least one year. To remain eligible for FC, the recipient must periodically undergo functional screening to determine whether she continues to have functional care needs at the requisite level. The petitioner underwent such a functional

screening in January 2014. As a result of the 2014 functional screening, the FC program determined that the petitioner was no longer functionally eligible for the program. On February 14, 2014, the FC agency issued notice to the petitioner advising her that she was no longer eligible for “nursing home level” FC benefits due to her failure to satisfy the nursing home related functional eligibility requirements of the program, effective February 28, 2014. The petitioner timely appealed. This Judge’s decision on that topic (program eligibility) sustained the agency’s decision to end eligibility. *See* DHA Decision No. FCP/155744 (Wis. Div. of Hearings & Appeals May 31, 2014).

3. The petitioner, age 29, has diagnoses of fibromyalgia, depression, anxiety, Ehler-Danlos Syndrome type III, chronic low back pain with L5-S1 degenerative disk disease, and a history of surgery for an arachnoid cyst. She lives in a residence with her two children, ages 5 and 7.
4. *ADLs*. The petitioner is ambulatory without an assistive device in her home and is independent in bathing, eating, toileting, and transferring.
5. *Instrumental ADLs*. The petitioner desires physical assistance with laundry and household chores. She is able to do all of the following independently: take medication, prepare simple meals, manage money, use her telephone, and drive a car. Although she is able to do the laundry and chores for herself and her children, she must take frequent breaks due to pain. The petitioner is not employed. She does not require overnight supervision, and no documentation from a medical provider of a diagnosis of a cognitive deficit has been submitted into this record. The petitioner is fully communicative, is not physically resistive to care, does not wander, has not demonstrated self-injurious behavior, is not violent towards others, and does not engage in substance abuse.
6. On February 14, 2014, the FC agency issued a *Notice of Action* to the petitioner. The *Notice* advised that, her request for FC-paid supportive home care time was denied. The basis for denial was that an interview/observations made by FC personnel in January, 2014, led the agency to conclude that care needs had been previously overstated, and that the petitioner could perform SHC tasks for herself, albeit slowly due to the need for breaks. The petitioner timely appealed from the *Notice*.

DISCUSSION

The Family Care program is supervised by the Wisconsin Department of Health Services, and is designed to provide appropriate long-term care services for elderly or disabled adults. It is authorized at Wis. Stat. § 46.286, and is further described at Wis. Admin. Code, ch. DHS 10.

The CMO must develop an Individual Service Plan (ISP) in partnership with the client. Wis. Admin. Code § DHS 10.44(2)(f). The ISP must reasonably address all of the client’s long-term needs to assist the client to be as autonomous as possible, while also being cost effective. While the client has input, the CMO does not have to provide all services the client desires if there are less expensive alternatives to achieve the same results. *Id.*, 10.44(1)(f). ISPs must be reviewed periodically. *Id.*, 10.44(j)(5). Supportive home care (SHC) services are included in the Family Care statute’s list of covered services. *See* also, Wis. Admin. Code §DHS 10.41(2) (June, 2009).

Here, the CMO interviewed and evaluated the petitioner in January 2014, and concluded that she did not need the requested service. This view was captured in Exhibit 2.

Although I would have agreed that a denial of such service hours was appropriate, I need not reach that issue here. That is because the petitioner is no longer eligible for the program, and is therefore no longer eligible for program-paid SHC services. Thus, the conflict over the number of SHC hours is moot.

CONCLUSIONS OF LAW

1. The FC CMO correctly denied the petitioner's SHC services, as she is no longer eligible for the program.

THEREFORE, it is**ORDERED**

That the petition 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 31st day of May, 2014

\sNancy J. Gagnon
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 June 2, 2014.

Continuus
Office of Family Care Expansion