



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of:

[Redacted case name]

DECISION

FCP/155742

PRELIMINARY RECITALS

Pursuant to a petition filed February 26, 2014, under Wis. Admin. Code § DHS 10.55, to review a decision by the Milwaukee County Department of Family Care - MCO ["County"] in regard to Medical Assistance ["MA"], a Hearing was held via telephone on May 21, 2014. At petitioner's request a Hearing scheduled for April 23, 2014 was rescheduled.

The issue for determination is whether petitioner's paid MA Family Care Program ["FCP"] Supportive Home Care ["SHC"] hours may be reduced from 13.5 hours per week to 11.75 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 Coordinator
Joan Scheeler, RN Case Manager
Vicki Serflek, Team Lead
Nicholas McDowell, Case Manager
Milwaukee County Department of Family Care - MCO
901 N 9th St
Milwaukee, WI 53233

OTHER PERSON PRESENT:

[Redacted name], petitioner's niece and PCW

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

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]; 68 years old) is a resident of Milwaukee County, Wisconsin.
2. Petitioner requires assistance with laundry, meal prep, shopping, and household chores.
3. Petitioner's SHC caregiver provider is her niece ["CS"].
4. Petitioner lives in the bottom ½ of a duplex; CS lives in the upper ½ of the same duplex.
5. On January 15, 2014 a visit to petitioner's home was made by a Registered Nurse ["RN"] for the County; the purpose of the visit was to conduct a 6-month review and also a support home care assessment; the support home care assessment was completed on January 30, 2014.
6. Meal preparation is performed by CS for petitioner in CS's upper part of the duplex; CS has a microwave in her upper part of the duplex.
7. By a *Notice of Action* letter dated February 3, 2014 the County reduced petitioner's paid SHC hours from 13.5 hours per week to 11.75 hours per week effective February 18, 2014.
8. The reason for the reduction relates primarily to meal prep time; meal prep time was reduced because CS can prepare larger amounts of food at one time and then simply reheat food for some future meals (instead of preparing each meal from scratch every time); 11.75 SHC hours per week allows time 3 times per week for CS to prepare larger meals, part of which could be reheated later; petitioner herself is able to prepare some cold foods.

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 she was notified that her SHC hours would be reduced from 13.5 hours per week to 11.75 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 11.75 hours per week of paid SHC is adequate to meet petitioner's needs. The County's reasoning that CS can prepare larger amounts of food at one time and then simply reheat food for some future meals (instead of preparing each meal from scratch every time) is reasonable and credible. Further, petitioner herself is able to prepare some cold foods.

Petitioner testified that she does not have a microwave in her lower part of the duplex. However, meal preparation is performed by CS in her own upper part of the duplex where CS has a microwave there.

Petitioner testified that she does not eat leftover food, that she has stomach problems (ulcer), and that she does not care for cold food. However, petitioner has provided no medical documentation to support her claimed stomach problems or to support any dietary restriction.

CONCLUSIONS OF LAW

For the reasons discussed above, petitioner's paid FCP SHC hours may be reduced from 13.5 hours per week to 11.75 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 4th day of June, 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 June 4, 2014.

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