



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

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In the Matter of:

██████████  
██████████  
████████████████████

DECISION

FCP/155801

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**PRELIMINARY RECITALS**

Pursuant to a petition filed February 28, 2014, under Wis. Admin. Code § DHS 10.55, to review a decision by the Community Care of Central Wisconsin [“CCCW”] in regard to Medical Assistance [“MA”], a Hearing was held via telephone on July 7, 2014. At petitioner’s request Hearings scheduled for June 10, 2014 and April 22, 2014 were rescheduled.

The issue for determination is whether petitioner’s paid MA Family Care Program [“FCP”] Supportive Home Care [“SHC”] hours may be decreased from 85 hours per month to 42 hours per month.

There appeared at that time via telephone the following persons:

**PARTIES IN INTEREST:**

Petitioner:

██████████  
██████████  
████████████████████

Petitioner's Representative:

Attorney ██████████  
████████████████████

Respondent:

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

By: Evelyn Heikenen, Member Services Manager  
Community Care of Central Wisconsin  
3349 Church St, Suite 1  
Stevens Point, WI 54481

**OTHER PERSONS PRESENT:**

██████████, Community Resource Coordinator, CCCW  
██████████, Member Support Coordination Manager, CCCW  
██████████, Member Coordination Manager, CCCW

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

### **FINDINGS OF FACT**

1. Petitioner (53 years old) is a resident of Portage County, Wisconsin.
2. Petitioner has the following diagnoses: rhinitis; degenerative spinal changes; visual impairment (congenital optic nerve atrophy, progressive without hope of improvement; visual acuity of count fingers at approximately 3 feet in both eyes; legal blindness); fibromyalgia; duodenal ulcer; optic neuritis; degenerative disc disease; somatization disorder; panic disorder; depression; rotator cuff tendinopathy; gastroesophageal reflux disease; migraines; dysthymic disorder; sinusitis; cervical stenosis; chronic pain; carpal tunnel syndrome; lumbar spondylosis; she has severe neuropathic pain in her leg with significant limitations regarding pain in hip and low back; she has an implanted electronic stimulator for pain relief.
3. Petitioner has been allowed 85 hours per month of SHC funded by CCCW
4. CCCW sent petitioner a *Notice of Action* letter dated January 15, 2014 notifying her that effective January 29, 2014 her SHC hours would be reduced from 85 hours per month to 42 hours per month.
5. CCCW reduced petitioner's SHC hours to 42 hours per month because that amount will "address all needs identified on the Long Term Care Functional Screen and Assessment" ["LTCFS"] (CCCW is willing to reduce petitioner's SHC hours gradually to allow her to get used to the change); the LTCFS is not part of the record of this matter.
6. CCCW states that an in-home Physical Therapy ["PT"] and Occupational Therapy ["OT"] assessment of petitioner would be beneficial so that appropriate recommendations can be made; no in-home PT or OT assessment of petitioner has been done.
7. Petitioner currently does not use all of the 85 SHC hours per month that she is allowed; petitioner states that she needs 60 to 65 SHC hours per month.

### **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) (December 2013). A person may be eligible for FCP, but yet not entitled to enroll in a CMO. Wis. Admin. Code § DHS 10.36(1) (December 2013). 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) (December 2013). Such persons may pay privately for CMO services. Wis. Admin. Code §§ DHS 10.36(3) & 10.37 (December 2013).

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 SCH hours would be reduced to 42 hours per month.

This matter must be decided by the preponderance of the credible evidence. Wis. Admin. Code § HA 3.09(4) (September 2001). It cannot be concluded, based on the preponderance of the evidence in the record of this matter as reflected in the above *Findings of Fact*, that petitioner's SCH hours may not be reduced to 42 hours per month. This is because insufficient evidence has been offered by CCCW to

support such a drastic reduction. In particular, the LTCFS is not part of the record of this matter. Further, no in-home PT or OT assessment of petitioner has been done.

It is noted that petitioner currently does not use all of the 85 SHC hours per month that she is allowed. Additionally, petitioner states that she needs 60 to 65 SHC hours per month. Based on this, a reduction to 65 SHC hours per month is allowable.

### CONCLUSIONS OF LAW

For the reasons discussed above, petitioner's SHC hours may not be reduced from 85 hours per month to 42 hours per month, but her SHC should be reduced to 65 hours per month.

### ORDERED

That this matter be REMANDED to CCCW, that CCCW not reduce petitioner's SHC hours from 85 hours per month to 42 hours per month, that CCCW reduce petitioner's SHC hours to 65 hours per month, and that CCCW do all of this within 10 days of that date of this *Decision*.

### **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 15th day of August, 2014

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\sSean P. Maloney  
Administrative Law Judge  
Division of Hearings and Appeals



**State of Wisconsin \DIVISION OF HEARINGS AND APPEALS**

Brian Hayes, Administrator  
Suite 201  
5005 University Avenue  
Madison, WI 53705-5400

Telephone: (608) 266-3096  
FAX: (608) 264-9885  
email: [DHAmail@wisconsin.gov](mailto:DHAmail@wisconsin.gov)  
Internet: <http://dha.state.wi.us>

The preceding decision was sent to the following parties on August 15, 2014.

Community Care of Central Wisconsin  
Office of Family Care Expansion  
Attorney [REDACTED] [REDACTED]