



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

FCP/156226

PRELIMINARY RECITALS

Pursuant to a petition filed March 22, 2014, under Wis. Admin. Code § DHS 10.55, to review a decision by the Milwaukee County Dept. of Family Care - MCO in regard to Family Care (FC) benefits, a hearing was held on May 7, 2014, at Milwaukee, Wisconsin. The hearing record was held open for proof of the extent of the petitioner's vision problem; that proof was received.

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

There appeared at that time 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: Rosaida Schrank, QI Coordinator
Milw Cty Dept Family Care - MCO
901 N 9th St
Milwaukee, WI 53233

ADMINISTRATIVE LAW JUDGE:

Nancy J. Gagnon
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner is a resident of Milwaukee 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 he continues to

have functional care needs at the requisite level. The petitioner underwent such functional screenings in February and March, 2014. As a result of both 2014 functional screenings, the FC program determined that the petitioner was no longer functionally eligible for the program. On March 4, 2014, the FC agency issued notice to the petitioner advising him that he was no longer eligible for “nursing home level” FC benefits due to his failure to satisfy the nursing home related functional eligibility requirements of the program, effective March 14, 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/155925 (Wis. Div. of Hearings & Appeals May 28, 2014).

3. The petitioner, age 66, has diagnoses of macular degeneration, anemia, chronic lower back pain, sleep apnea, enlarged prostate, and high cholesterol. The extent of the macular degeneration is significant, with the petitioner having vision of 20/200 – 200/400 in the left eye, following treatment by injections. He rents a residence with a roommate.
4. *ADLs*. The petitioner is ambulatory with a cane and independent in bathing, eating, home mobility, toileting, and transferring. When bathing, the petitioner uses a shower chair, but that does not make him dependent on a caregiver for that task. The petitioner does require some assistance with dressing fasteners, due to his low vision.
5. *Instrumental ADLs*. The petitioner is able to ingest his medication independently, but requires help once/twice weekly to set up his medication, due to his poor vision. The petitioner does need physical assistance with laundry and household chores, and requires help with writing checks (money management) due to poor vision. The petitioner is capable of microwave or cold meal preparation only. He is independent in the use of a telephone, and but cannot drive an automobile. The petitioner is not employed. He 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. He does not require outpatient mental health services.
6. On March 18, 2014, the FC agency issued a *Notice of Action* to the petitioner. The *Notice* advised that, if the petitioner continued to be eligible for the program, the amount of FC-paid supportive home care time would be reduced from 5.5 hours weekly to 1.5 hours weekly. The basis for reduction was that an interview/observations made by FC personnel on February 25, 2014, led the agency to conclude that care needs had been previously overstated. The petitioner timely appealed from the *Notice*, and SHC services were ordered continued pending appeal.

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 February 2014, and concluded that he was receiving more services than were necessary. This view was captured in the Notice as follows :

On 2/25/2014, your interdisciplinary team spoke to you regarding your services. You reported that you only have 2 bad days out of a month and on those days you don't really do anything besides lie in bed and rest. On the other days of the month you reported that you are able to complete tasks such as your ADLs/IADLs, shoveling, fixing cars, and caring for your pets.

See, Exhibit 3, Notice.

Although I would have agreed that a reduction in 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 hours is moot.

CONCLUSIONS OF LAW

1. The FC CMO may discontinue the petitioner's SHC services, as he 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 29th day of May, 2014

\sNancy J. Gagnon
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
Internet: <http://dha.state.wi.us>

The preceding decision was sent to the following parties on May 29, 2014.

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