



STATE OF WISCONSIN  
Division of Hearings and Appeals

In the Matter of:

[REDACTED]

DECISION

FCP/156482

PRELIMINARY RECITALS

Pursuant to a petition filed April 1, 2014, under Wis. Admin. Code § DHS 10.55, to review a decision by the Western Wisconsin Cares [“WWC”] regard to Medical Assistance [“MA”], a Hearing was held via telephone on July 7, 2014. At petitioner’s request Hearings scheduled for June 17, 2014 and May 15, 2014 were rescheduled. The Hearing for this matter was held at the same time as the Hearing for the following closely related matter concerning the same petitioner: FCP/156481.

The issue for determination is petitioner’s paid MA Family Care Program [“FCP”] Supportive Home Care [“SHC”] hours may be decreased from 4 hours per week to 2 hours per week.

There appeared at that time via telephone the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]

Respondent:

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

By: Alice Benson, Quality Director  
Western Wisconsin Cares  
Suite 100  
1407 Saint Andrew Street  
La Crosse, Wisconsin  
54603-2378

OTHER PERSONS PRESENT:

[REDACTED], petitioner’s old family friend & former employee  
[REDACTED], Social Worker, WWC  
[REDACTED], Unit Manager, WWC

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

### FINDINGS OF FACT

1. Petitioner (61 years old) is a resident of La Crosse County, Wisconsin.
2. Petitioner has degenerative arthritis, back pain, depression, GERD, left shoulder pain, neuropathy in right arm, osteoporosis, numerous allergies, asthma, and other ailments; she has had a bilateral mastectomy (due to cancer); she takes various medications.
3. Petitioner lives in a small apartment in a high-rise; she is not to do repetitive bending or lifting and is restricted to lifting a maximum of 15 pounds; she is unable to perform heavy cleaning tasks; she needs help with budgeting (due to cognitive issues), grocery shopping (unable to lift heavy bags and unable to stay focused), cleaning, laundry, and organizing; she uses a quad cane and a walker for mobility; she uses grab bars in the bathroom; she does not drive and does not own a vehicle.
4. Petitioner currently receives 4 SCH hours per week paid by WWC; in addition, petitioner also receives 5 hours per month of Self-Directed Support ["SDS"] paid for by WWC; WWC also funds home delivered meals 7 days per week (petitioner is unable to prepare supper meals but can make herself small, simple meals).
5. By a letter *Notice of Action* dated February 27, 2014 WWC reduced petitioner's SCH from 4 hours per week to 2 hours per week with an intended effective date of March 16, 2014.
6. In a letter dated March 13, 2014 one of petitioner's Medical Doctors ["MDs"] states: "I am writing to request that [petitioner] remain at the current weekly hours of home care assistance each week." In a letter dated June 2, 2014 another of petitioner's MDs states: "[Petitioner] has been under my care for greater than 10 years. . . . I am supporting her request to remain at the current level of home care."

### 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 SHC hours would be reduced from 4 hours per week to 2 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 4 hours per week of paid SHC is necessary to meet petitioner's needs. Two of petitioner's MD's have stated the need for such a level of SCH support for petitioner. Further, petitioner's many numerous ailments and limitations support that this level is needed for cleaning, grocery shopping, and organizing (4 hours per week amounts to about 34 minutes per day).

WWC's states that its team assessment, using a standard Time and Task Tool, indicates that only 2 hours per week are needed. WWC argues that increased SCH time has been in place form over a year for the purpose of helping petitioner to organize her apartment and the "team has not witnessed any change in living situation with this time in place." This may be correct however, as noted above, 4 hours per week is only about 34 minutes per day. Given the tasks that must be completed for petitioner this amount of time is required. This is especially true in light of the letters from petitioner's MDs.

### CONCLUSIONS OF LAW

For the reasons discussed above, petitioner's paid FCP SHC hours may not be decreased from 4 hours per week to 2 hours per week.

### **NOW, THEREFORE, it is ORDERED**

That this matter be REMANDED to WWC, that WWC not reduce petitioner's paid FCP SHC from 4 hours per week to 2 hours per week and that, within 10 days from the date of this Decision, WWC issue all FCP SHC benefits for which petitioner is otherwise eligible retroactive to the date they were reduced (but only for SHC services that petitioner actually received).

### **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 10th day of July, 2014

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\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 July 10, 2014.

Western Wisconsin Cares-FCP  
Office of Family Care Expansion