



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[Redacted]

DECISION

FCP/156485

PRELIMINARY RECITALS

Pursuant to a petition filed April 01, 2014, under Wis. Admin. Code § DHS 10.55, to review a decision by the Milw Cty Dept Family Care - MCO in regard to Medical Assistance, a hearing was held on August 06, 2014, at Milwaukee, Wisconsin.

The issue for determination is whether the agency met its burden to prove that that the termination of “Mom’s Meals” and the meal card support was appropriate.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[Redacted]

Petitioner's Representative:

[Redacted]

Respondent:

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

By: David Schwabauer
Milw Cty Dept Family Care - MCO
901 N 9th St
Milwaukee, WI 53233

ADMINISTRATIVE LAW JUDGE:

John P. Tedesco
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner is a resident of Milwaukee County. She is 71 years old. She lives alone.
2. Petitioner is a member of the Family Care Program (FCP).

3. Petitioner has mobility limitations. She has difficulty standing. Petitioner has diabetes and related dietary restrictions and requirements. Petitioner is able to stand only briefly to prepare meals. Petitioner is inconsistent in her ability to safely use kitchen tools such as knives and ovens and open flame/stove burners.
4. Petitioner has been having delivered meals from the meal delivery service named "Mom's Meals" and the use of a meal card through the FCP. Petitioner also receives 15 minutes of time per day for her PCW/SHC worker to prepare meals for her.
5. The agency terminated these supports.
6. Petitioner appealed.

DISCUSSION

The agency takes the position that the meal supports are not needed because petitioner is able to prepare her own meals. The agency points to the "Home Delivered Meals Decision Tree" (see ex. #8) and concludes that because she can cook her own meals, the FCP support is not necessary. The agency's perception of what it means to cook her own meals is critical though. The agency believes that petitioner can get by with the preparation of a cold sandwich or a microwaved pre-made meal. During the hearing, when asked how the pre-made meals would be cooked and prepared and packaged and refrigerated the agency seemed to think that the 15 minutes per day of SHC time for meal preparation was adequate. I note that petitioner was receiving that 15 minutes even when she was receiving the delivered meals. But, that aside, I find it entirely unrealistic that a SHC could prepare two fresh meals per day and package them for petitioner in 15 minutes. I also note that petitioner's team seemed oblivious to petitioner's limitations and concerns about nutrition and functional abilities relating to meal prep. Notably, when petitioner testified that she has previously burned herself on a hot dish from the microwave oven, one team member argued that everyone burns themselves once in a while but we don't stop cooking. The lack of understanding that a 71 year old person who lives alone would have such a reticence is shocking given the chosen career of that person.

Overall, it is the burden of the agency to support the appropriateness of the termination of a service. The petitioner was far more persuasive in her presentation. Because her needs are specific with regard to her diabetes, it would be reasonable for the FCP to limit the service to diabetic meals. But, the termination of the meal supports was not established as appropriate on this record.

CONCLUSIONS OF LAW

The agency failed to meet its burden.

THEREFORE, it is

ORDERED

That the matter is remanded to the Department and its county agent with instructions to reverse the actions terminating the Mom's meals support and the meal card support. These actions must be completed within 10 days.

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 19th day of August, 2014

\sJohn P. Tedesco
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 August 19, 2014.

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

