



STATE OF WISCONSIN  
Division of Hearings and Appeals

In the Matter of

[REDACTED]  
c/o [REDACTED]  
[REDACTED]  
[REDACTED]

DECISION

FCP/156758

**PRELIMINARY RECITALS**

Pursuant to a petition filed April 10, 2014, under Wis. Admin. Code, §DHS 10.55, to review a decision by the Milwaukee County Dept. of Family Care to reduce Family Care Program (FCP) services, a hearing was held on July 17, 2014, by telephone. A hearing set for June 18, 2014 was rescheduled at the petitioner's request.

The issue for determination is whether the agency correctly discontinued supportive home care (SHC) services because petitioner lives with family members.

**PARTIES IN INTEREST:**

Petitioner:

[REDACTED]  
c/o [REDACTED]  
[REDACTED]  
[REDACTED]

Respondent:

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

By: Lillian Alford  
Milwaukee County Dept. of Family Care  
901 N. 9th St.  
Milwaukee, WI 53233

**ADMINISTRATIVE LAW JUDGE:**

Brian C. Schneider  
Division of Hearings and Appeals

**FINDINGS OF FACT**

1. Petitioner is a resident of Milwaukee County who is eligible for FCP services. Milwaukee County Dept. of Family Care is his managed care organization (MCO).
2. Petitioner is 82 years old with a number of medical conditions including COPD, arthritis, history of stroke, memory loss, and hypertension. He lives with family members.

3. Prior to the action in this appeal petitioner received 31 hours per week SHC services. During an annual review the care team recommended reductions because petitioner's living situation had not been accounted for previously. As a result the team determined that SHC should be reduced to 25.25 hours per week to account for cleaning of common areas, breakfast preparation, and grooming. In May, 2014, after the appeal was filed, the agency offered to add back 1.75 hours of SHC for grooming and general purposes, meaning that the reduction would be from 31 to 27 hours per week.
4. Petitioner lives in an upstairs portion of the home. He eats breakfast on his own separate from family members.

### **DISCUSSION**

The Family Care program, which is supervised by the Department of Health Services, is designed to provide appropriate long-term care services for elderly or disabled adults. It is authorized in the Wisconsin Statutes, §46.286, and is described comprehensively in the Wisconsin Administrative Code, Chapter DHS 10.

The MCO must develop an Individual Service Plan (ISP) in partnership with the client. Wis. Admin. Code, §DHS 10.44(2)(f). The ISP must reasonably and effectively address all of the client's long-term needs and outcomes to assist the client to be as self-reliant and autonomous as possible, but nevertheless must be cost effective. While the client has input, the MCO does not have to provide all services the client desires if there are less expensive alternatives to achieve the same results. Wis. Admin. Code, §DHS 10.44(1)(f); DHS booklet, Being a Full Partner in Family Care, page 9. ISPs must be reviewed periodically. Admin. Code, §DHS 10.44(j)(5).

Wis. Stat., §46.287(2)(a)1 provides that a person may request a fair hearing to contest the reduction of services under the FCP program, among other things, directly to the Division of Hearings and Appeals. In addition, the participant can file a grievance with the MCO over any decision, omission, or action of the MCO. The grievance committee shall review and attempt to resolve the dispute. If the dispute is not resolved to the participant's satisfaction, he may then request a hearing with the Division of Hearings and Appeals.

As has been noted many times in the past, there are no standards written in the law or policy on how to make such a determination in an FCP case. It comes down to the general criteria for determining authorization for services – medical appropriateness and necessity, cost effectiveness, statutory and rule limitations, and effectiveness of the service. See Wis. Admin. Code, §DHS 107.02(3)(e).

However, for SHC services, there are additional guidelines within the FCP program. See page 31 of the agency's hearing submission. Specifically, the guidelines provide that SHC services are to be provided only for areas belonging solely to the member. Services that are typically assumed to be the responsibility of persons living in the same household are routine laundry, meal preparation, shopping, usual cleaning, general non-medical supervision, and transportation. Maintenance and upkeep of shared areas are the responsibility of household members, not a paid caregiver.

The agency showed clearly the areas in which SHC was reduced. Petitioner responded specifically only about breakfast, that he eats separately from the rest of the family. However, it appears that meal was the reason why the agency offered to add back some general SHC time. 27 hours per week for SHC is a substantial amount of time for a person living with family members. It clearly takes into account that petitioner needs substantial assistance and that he has a large area of the home devoted to his living quarters. I conclude that the reduction from 31 to 27 hours is not unreasonable.

**CONCLUSIONS OF LAW**

The agency correctly reduced SHC hours to account for petitioner's residing with family members.

**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 22nd day of July, 2014

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\sBrian C. Schneider  
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 July 22, 2014.

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