



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of



DECISION

FCP/157130

PRELIMINARY RECITALS

Pursuant to a petition filed April 24, 2014, under Wis. Admin. Code § DHS 10.55, to review a decision by the Community Care Inc. in regard to Medical Assistance, a hearing was held on June 17, 2014, at Kenosha, Wisconsin.

The issue for determination is whether the agency properly reduced the Petitioner's supportive home care services.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:



Petitioner's Representative:



Respondent:

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

By: Janet Hogan
Community Care Inc.
205 Bishops Way
Brookfield, WI 53005

ADMINISTRATIVE LAW JUDGE:

Debra Bursinger
Division of Hearings and Appeals

FINDINGS OF FACT

- 1. Petitioner (CARES # [redacted]) is a resident of Kenosha County. Petitioner lives alone.
2. Petitioner's primary diagnosis is multiple sclerosis/ALS with additional diagnoses that include chronic pain/fatigue/fibromyalgia/headaches, deep vein thrombosis, disorders of heart rate or

rhythm, recurrent urinary tract infections, hyperlipidemia/hypercholesterolemia, hypertension, incontinence, dementia. Petitioner is non-ambulatory and uses a wheelchair.

3. On October 11, 2013, the agency conducted an assessment of the Petitioner using the In-Home Assessment Tool (IHAT). The agency assessed the following needs for the Petitioner:

Shower - 30 minutes/task, 7x/week. It noted Petitioner needs assistance transferring to the shower and can bathe herself. It also noted that Petitioner was able to do a partial bath independently on non-shower days.

Undressing/Dressing – 15 minutes/task, 14x/week. It noted Petitioner requires assistance due to incontinence.

Apply Skin Lotion/Preventive Skin Care – 10 minutes/task, 7x/week.

Toileting – 10 minutes/task, 35x/week

Changing Incontinent Client – 10 minutes/task, 14x/week.

Repositioning – 10 minutes/task, 21x/week. It is noted that assistance is needed with bed pan use and overnight.

Simple Pivot Transfer – 5 minutes/task, 28x/week.

Total Minutes needed for ADL's was 1330 minutes/week.

Regular Housekeeping, resides alone, apartment – 90 minutes/task, 1x/week

Meal Preparation – 15 minutes/task, 21x/week. It is noted that Petitioner can make cold foods and heat in microwave.

Grocery/Medical Shopping – 60 minutes/task, 1x/week. It is noted that caregiver will accompany Petitioner to food pantry of choice at least once/month.

Laundry (on-site) – 30 minutes/task, 3x/week. It is noted that this is due to incontinence.

Linen Change – 8 minutes/task, 3x/week. It is noted that this is due to incontinence.

Supervision – 164 minutes/day. It is noted that Petitioner is unable to transfer from bed to wheelchair without assistance at this time.

Total Minutes needed for Routine Homemaking was 656 minutes/day plus 579 minutes/week.

Total number of hours of services/month was 470 hours.

4. On March 7, 2014, the agency completed an IHAT. The agency assessed the following needs for the Petitioner:

Shower – 22 minutes/task, 1x/day. Petitioner needs assistance with transfer to shower; can bathe herself.

Undressing/dressing – 17 minutes/task, 2x/day. Petitioner needs assistance dressing in the morning and undressing in the evening.

Hair care – 11 minutes/task, 1x/day.

Apply skin lotion/preventive skin care – 5 minutes/task, 1x/day. Petitioner needs help with legs and back.

Toileting – 11 minutes/task, 4x/week. Petitioner states she has help with toileting approximately once every other day for bowel movement.

Assist with Bedpan – 12 minutes/task, 5x/day.

Changing Incontinent Client – 10 minutes/task, 3x/day. Petitioner and staff report that she needs to be changed.

Repositioning – 8 minutes/task, 3x/day. Member is repositioned three times/night.

Simple Pivot Transfer – 9 minutes/task, 7x/day. Petitioner requires assistance with transfer into and out of bed.

Total Minutes for ADLs – 249 minutes/day, 44 minutes/week.

Regular Housekeeping – 90 minutes/task, 1x/week

Meal Preparation – 20 minutes/task, 2x/day

Grocery/Medical Shopping – 60 minutes/task, 1x/week

Laundry (on-site) – 15 minutes/task, 2x/day due to incontinence

Linen Change – 5 minutes/task, 3x/week due to incontinence.

Clean/maintain equipment – 15 minutes/task, 3x/week. Clean commode/shower chair and any other DME.

Supervision – 336 minutes/day to cover overnight from 11 p.m. – 5 a.m. Petitioner is unable to transfer from bed to wheelchair without assistance at this time. Night shift includes help with the bedpan 2x/night. 336 minutes supervision + 24 minutes for bedpan is 360 units/week.

Assist with ROM – 10 minutes/task, 3x/day.

Total Hours for the Month – 367 hours/month.

The assessors noted that Petitioner exhibited no pain during the visit. It was also noted that the only time the Petitioner has incontinence issues is when there is no caregiver present to put her on the bedpan. The assessors reported that the Petitioner has limited range of motion in her legs, difficulty with balance and difficulty walking. A red rash was present on her back and mid-abdominal region and she complained of itching. It was also noted that Petitioner does not transfer but bears some weight on left leg and pivots. Otherwise she is assessed as a total assist for transfers. She has a history of UTIs and needs to be encouraged to take fluids. She has a history of decubitus ulcers. She was noted to be alert and oriented and able to make her needs known.

5. On March 10, 2014, the agency completed a Long Term Care Functional Screen for Petitioner. The screen indicates that the Petitioner meets the Physical Disability target group with a diagnosis of MS that significantly limits her major life activities of walking, self-care, working, overall mobility and capacity for independent living. Also, it indicates Petitioner meets the dementia target group with a diagnosis of dementia. The agency assessed the following needs:

Bathing – Level 1 – requires assistance with transfers for daily shower; able to wash herself once in the shower.

Dressing – Level 2 – Petitioner is able to complete upper body dressing. Needs physical assistance with lower body dressing.

Eating – independent

Mobility – independent; uses wheelchair or scooter in home

Toileting – Level 2 – Petitioner uses bedpan, needs assistance with all aspects of toileting; no incontinence

Transferring – Level 2 – Petitioner needs total assistance.

Meal Preparation – Level 1 – Petitioner can use a microwave to reheat food and is able to transport it to the eating area.

Medication Admin./Management – independent

Money Management – independent

Laundry – Level 2 – Petitioner needs complete assistance with all laundry and chores. Petitioner needs help with laundry more than once a week due to incontinence.

Overnight Care or supervision required. Caregiver cannot get at least 6 hours of uninterrupted sleep/night. Petitioner is unable to transfer in and out of bed independently, is unable to reposition herself in bed and needs help with the bedpan twice/night and repositioning three times/night.

Exercises/Range of Motion – 3-4x/day. Petitioner needs assistance with HEP 3x/day for 10 minutes each time.

Positioning in bed or wheelchair every 2 – 3 hours, 5+x/day.

Short term memory loss was noted during the screening.

6. On March 12, 2014, the agency issued a Notice of Action informing the Petitioner that it had made a decision to reduce her supportive home care hours from 470 hours/month to 367 hours/month effective March 26, 2014. The reason for the reduction was noted as the Petitioner's lack of need for the previous level of service based on her annual re-assessment.
7. On April 8, 2014, the agency adjusted its determination to 378 hours/month effective May 2, 2014. It revised the IHAT to increase time for meal preparation to 20 minutes/task, 3x/day and add Assistance with Medications, 7 minutes/task, 1x/week.
8. On April 24, 2014, the Petitioner filed an appeal with the Division of Hearings and Appeals.
9. On April 29, 2014, the agency reviewed its determination and issued a Notice of Action informing the Petitioner that it had revised its assessment of her needs. It notified her that it was reducing her supportive home care hours from 470 hours/month to 378 hours/month effective April 21, 2014. The reason for the reduction was noted as the Petitioner's lack of need for the previous level of service based on the agency's re-assessment.

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. Whenever the local Family Care program decides that a person is ineligible for the program, or when the CMO discontinues an ongoing service in the service plan, the client is allowed to file a fair hearing request. Because a service reduction is sought here, the petitioner appropriately sought a fair hearing for a further, de novo review of the CMO decision. Wis. Admin. Code §DHS 10.55(1).

The state code language on the scope of permissible services for the FC reads as follows:

DHS 10.41 Family care services. ...

(2) SERVICES. Services provided under the family care benefit shall be determined through individual assessment of enrollee needs and values and detailed in an individual service plan unique to each enrollee. As appropriate to its target population and as specified in the department's contract, each CMO shall have available at least the services and support items covered under the home and community-based waivers under 42 USC 1396n(c) and ss.46.275, 46.277 and 46.278, Stat., the long-term support services and support items under the state's plan for medical assistance. In addition, a CMO may

provide other services that substitute for or augment the specified services if these services are cost-effective and meet the needs of enrollees as identified through the individual assessment and service plan.

Note: The services that typically will be required to be available include adaptive aids; adult day care; assessment and case planning; case management; communication aids and interpreter services; counseling and therapeutic resources; daily living skills training; day services and treatment; home health services; home modification; home delivered and congregate meal services; nursing services; nursing home services, including care in an intermediate care facility for the mentally retarded or in an institution for mental diseases; personal care services; personal emergency response system services; prevocational services; protective payment and guardianship services; residential services in an RCAC, CBRF or AFH; respite care; durable medical equipment and specialized medical supplies; outpatient speech; physical and occupational therapy; supported employment; supportive home care; transportation services; mental health and alcohol or other drug abuse services; and community support program services.

Wis. Admin. Code §DHS 10.41(2). Supportive home care services are included in the list of covered services in the statutory note above. Having established that SHC hours can be a covered service, the issue is whether the agency's determination of the hours the Petitioner requires for supportive home care is appropriate to meet her needs.

The agency has developed tools to allow case managers to consistently determine the number of hours required by each recipient. The screening tools allot a specific amount of time in each area the recipient requires help, which the reviewer can then adjust to account for variables missing from the screening tools' calculations.

In this case, the agency utilized IHATs and a LTCFS to assess the Petitioner's needs. The primary dispute in this case concerns the reduction in time assessed for supervision and, more generally, for "routine homemaking."

The agency increased the amount of time needed for assistance with ADLs from 89 units/month to 120 units/month. The agency provided explanations at hearing and in the IHAT for the changes. Though there were reductions in time for some specific tasks, those reductions were the result of re-allocating the time to another category of tasks. Specifically, the agency reduced time for showering but increased time for hair care to account for the time needed for shampooing and other hair care. The time for toileting was decreased but the time for assistance with bed pan and the time for incontinence tasks increased. The time for repositioning decreased but the time for transfers increased. I found the agency's explanation for increasing the overall time for ADLs and re-allocating time for specific tasks to be reasonable and consistent with the Petitioner's current needs.

For routine homemaking tasks, the overall time decreased from 345 units/month to 215 units/month. The reason for the change was a reduction in time for supervision. With regard to routine homemaking tasks other than supervision, the time allocated for those tasks either remained the same or increased. With regard to those specific tasks, I found the agency's explanation for the changes to be reasonable and consistent with the Petitioner's current needs.

The time allocated for supervision decreased from 656 minutes/day to 336 minutes/day. The agency testified that the Petitioner requires overnight supervision from 11 p.m. – 5 a.m. due to her inability to transfer from bed to wheelchair without assistance. Thus she requires assistance during overnight hours when she needs to toilet and would also require assistance in case of an emergency to get out of bed. The agency noted that it added 24 minutes/day for assistance with bedpan which is required at night. The agency notes that supervision of 336 minutes plus 24 minutes for assistance with the bedpan covers the hours from 11 p.m. – 5 a.m. The agency asserts that the time allocated for ADLs, routine homemaking

and personal care is sufficient for the Petitioner's needs during the daytime hours and additional supervision time is not necessary to meet the Petitioner's needs.

The Petitioner and her caregiver testified that she needs additional supervision time during the day related to toileting and incontinence issues. The caregiver testified that she finds the Petitioner frequently soaked in urine when she arrives for her shift. There is a 90 minute gap between this caregiver's shift and the previous caregiver's shift. The Petitioner testified that she is unable to toilet or do her own incontinence care when a caregiver is not present. The Petitioner presented approximately one week of caregiver Communication Notes in support of her assertion that she needs additional supervision time for assistance with toileting and incontinence issues.

The agency has allocated 44 minutes/week for toileting, 60 minutes/day for assistance with bedpan and 30 minutes/day for assistance with incontinence issues. The Communication Notes do not support the Petitioner's testimony regarding her need for additional time for these issues. The supervision time for overnight care and the time allocated for specific tasks related to toileting appear to be reasonable based on the Petitioner's current needs.

Based on the evidence presented, I conclude that the agency presented sufficient evidence to support its assessment that the Petitioner requires 378 hours/ month of services.

CONCLUSIONS OF LAW

The agency properly reduced the Petitioner's supportive home care services.

THEREFORE, it is

ORDERED

That the Petitioner's appeal is dismissed.

REQUEST FOR A REHEARING

This is a final administrative decision. If you think this decision is based on a serious mistake in the facts or the law, you may request a rehearing. You may also ask for a rehearing if you have found new evidence which would change the decision. Your request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and tell why you did not have it at your first hearing. If you do not explain these things, your request will have to be denied.

To ask for a rehearing, send a written request to the Division of Hearings and Appeals, P.O. Box 7875, Madison, WI 53707-7875. Send a copy of your request to the other people named in this decision as "PARTIES IN INTEREST." Your request for a rehearing must be received no later than 20 days after the date of the decision. Late requests cannot be granted.

The process for asking for a rehearing is in Wis. Stat. § 227.49. A copy of the statutes can be found 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 served and filed with the appropriate court no more than 30 days after the date of this hearing decision (or 30 days after a denial of rehearing, if you ask for one).

For purposes of appeal to circuit court, the Respondent in this matter is the Department of Health Services. After filing the appeal with the appropriate court, it must be served on the Secretary of that

Department, either personally or by certified mail. The address of the Department is: 1 West Wilson Street, Room 651, Madison, Wisconsin 53703. A copy should also be sent to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400.

The appeal must also be served on the other "PARTIES IN INTEREST" named in this decision. The process for appeals to the Circuit Court is in Wis. Stat. §§ 227.52 and 227.53.

Given under my hand at the City of Milwaukee,
Wisconsin, this 8th day of July, 2014

\sDebra Bursinger
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 8, 2014.

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