



**STATE OF WISCONSIN
Division of Hearings and Appeals**

In the Matter of

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

DECISION

CWA/157219

PRELIMINARY RECITALS

Pursuant to a petition filed April 23, 2014, under Wis. Admin. Code § HA 3.03, to review a decision by the Brown County Human Services in regard to COP-Waiver services, a hearing was held on June 17, 2014, at Green Bay, Wisconsin.

The issue for determination is whether the county agency correctly reduced the petitioner’s supportive home care (SHC) hours from six hours to two hours weekly.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
With: [REDACTED]
[REDACTED]
[REDACTED]

Respondent:

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

By: Michael Leichey, case manager
Brown County Human Services
Economic Support-2nd Floor
111 N. Jefferson St.
Green Bay, WI 54301

ADMINISTRATIVE LAW JUDGE:

Nancy J. Gagnon (telephonically)
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Brown County. He is certified as eligible for the COP-Waiver program.

2. The petitioner, age 74, resides with his wife in a two-bedroom apartment. He receives some personal care services that are paid by the Medicaid program; those services are not the subject of this appeal. The petitioner's wife, age 72, prepares his meals, does laundry, and makes some of his medical appointments. It is assumed that she keeps the second bedroom (not used by the petitioner for sleeping) clean.
3. The SHC services needed by the petitioner are (1) bathroom cleaning, (2) vacuuming and dusting of the living room, bedroom and bathroom, and (3) mopping or sweeping of all floors, once weekly. The agency correctly determined that 90 minutes weekly for these tasks was sufficient. The agency then added time for assistance to the spouse as needed for setting up medical appointments and a once monthly episode of organizing pots and dishes in the kitchen, to reach a weekly average of two hours of SHC time.
4. Prior to April 7, 2014, the program authorized an excessive six hours weekly of SHC time to provide the above services. The case underwent an in-home assessment on March 26, 2014. On March 27, 2014, the program issued a *Long-Term Care Services Notice of Agency Action*, which advised that SHC services would be reduced to two hours weekly effective April 7, 2014. The petitioner appealed.

DISCUSSION

The MA Home and Community-Based Waiver Programs (*e.g.*, Community Integration Program, Community Options Program - Waiver) are partially funded by the federal government through the Medicaid (MA) program. These Waiver programs must meet federal requirements, including MA regulations when applicable. To receive services through the Waiver programs, a person must be currently eligible for MA, have institutional-level care needs, and be elderly or disabled. *Medicaid Eligibility Handbook (MEH)*, §28.1, available at <http://www.emhandbooks.wisconsin.gov/meh-ebd/meh.htm> and the *Medicaid Home & Community Based Services Waivers Manual (Manual)*, available at http://www.dhs.wisconsin.gov/ltc_cop/waivermanual/index.htm (viewed in June 2014).

I conclude that the county agency correctly determined the appropriate number of SHC hours on March 27, 2014. The agency has developed a chart that lists standard amounts of performance time for household tasks. *See*, Exhibit 3. Those times, plus a modest "rounding up," were used to arrive at the two hours weekly figure here. Although the petitioner initially argued for six hours, and then argued for four hours at hearing, his evidence did not support his argument. His evidence consisted of his wife's testimony that four SHC hours weekly were needed. She asserted that it takes 60 minutes weekly to clean a bathroom. That assertion is not credible. This Judge has had several housecleaners over three decades, and none of them have ever taken over 30 minutes to clean a full bathroom on an every-other-week schedule. The petitioner did not identify any special circumstances that made cleaning his residence more challenging than normal. The agency has met its burden of establishing, by a preponderance of the credible evidence, that two hours of weekly SHC time is sufficient to meet the petitioner's needs.

CONCLUSIONS OF LAW

1. The petitioner's SHC needs can be adequately met with two hours of SHC service weekly.
2. The county agency correctly reduced the petitioner's SHC hours effective April 7, 2014.

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 19th day of June, 2014

\sNancy J. Gagnon
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 June 19, 2014.

Brown County Human Services
Bureau of Long-Term Support