FH

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[redacted]

DECISION

FCP/157279

PRELIMINARY RECITALS

Pursuant to a petition filed April 28, 2014, under Wis. Admin. Code § DHS 10.55, to review a decision by the Lakeland Care District in regard to Medical Assistance, a hearing was held on May 21, 2014, at Fond Du Lac, Wisconsin.

The issue for determination is whether the agency erred in its decision to reduce petitioner's personal care hours and her supportive home care hours as administered by the Family Care Program (FCP).

There appeared at that time and place the following persons:

PARTIES IN INTEREST:
Petitioner:

[redacted]

Respondent:

Department of Health Services
1 West Wilson Street, Room 651
Madison, Wisconsin 53703
By: Barb Sotelo
Lakeland Care District
N6654 Rolling Meadows Dr.
Fond du Lac, WI 54937

ADMINISTRATIVE LAW JUDGE:
John P. Tedesco
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner is a resident of Fond Du Lac County.
2. Petitioner was an ongoing FCP member. She was receiving supportive home care (SHC) services in an amount of 15 hours per week and personal care worker (PCW) services in an amount of 29 hours per week.

3. On March 25, 2014, the agency acted to reduce the service to 16.5 hours per week for PCW and 6 hours per week of SHC hours.

4. After further discussion with petitioner and in an effort to compromise, the agency on May 1, 2014 issued a notice informing petitioner that would approve 20 hours of PCW time and 9 hours of SHC time.

5. Petitioner appealed.

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). It is the agency's burden to prove by a preponderance of the evidence that the reduction in services and hours is appropriate.

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 is included in the list of covered services in the statutory note above. Having established that SHC and PCW hours can be covered services, the issue is whether the agency has appropriately determined the PCW and SHC hours that are essential to meeting the Petitioner's needs.

The skeletal legal guidance that pertains to determining the type and quantity of daily care services that must be placed in an individualized service plan (ISP) is as follows:

> HFS 10.44 Standards for performance by CMOs.
> …
> (2) CASE MANAGEMENT STANDARDS. The CMO shall provide case management services that meet all of the following standards:
> …
> (f) The CMO, in partnership with the enrollee, shall develop an individual service plan for each enrollee, with the full participation of the enrollee and any family members or other representatives that the enrollee wishes to participate. … The service plan shall meet all of the following conditions:
>
> 1. Reasonably and effectively addresses all of the long-term care needs and utilizes all enrollee strengths and informal supports identified in the comprehensive assessment under par. (e)1.
> 2. Reasonably and effectively addresses all of the enrollee's long-term care outcomes identified in the comprehensive assessment under par. (e)2 and assists the enrollee to be as self-reliant and autonomous as possible and desired by the enrollee.
>
> 3. Is cost-effective compared to alternative services or supports that could meet the same needs and achieve similar outcomes.
>
> …

Wis. Admin. Code §DHS 10.44(2)(f).

The agency argued at hearing that the reductions are justified for several reasons. It explained through credible, logical, and convincing testimony that petitioner is now on less medication (specifically no narcotics) that she was previously. For this reason, petitioner is more lucid and more independent. She is also less of a fall risk, though the record reflects that she still is at some risk for falls. Additionally, the agency points to recent cataract surgery as a reason for her increased independence. Overall, the agency argues that petitioner's condition has improved and she no longer needs the same amount of hours that were previously granted.

Petitioner argues that she needs the number of hours maintained. But, petitioner in unable to point to any fallacy in the reasoning of the agency. Instead, she simply argues that petitioner is at risk of falls and at risk of decline in her condition if services are reduced. But, such an argument is not an argument that certain hours are necessary, it is only an argument that fewer hours may possibly be insufficient. As is clear from the record, if a reduction of hours does turn out to be detrimental to petitioner, then the petitioner can request more hours and have a new assessment. Such a request would be stronger if actually accompanied by some evidence that the reduction has caused impact. But, given the evidence, it seems that a reduction may not cause any such impact. At the close of the hearing, petitioner expressed her willingness to accept some reduction – a compromise. But, it is not my place to mediate a compromise. Given this record, I do not see an error in the reduction of hours as determined by the agency.

CONCLUSIONS OF LAW

The agency did not err in the reduction of SHC and PCW hours.

THEREFORE, it is **ORDERED**

That this appeal 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 16th day of July, 2014

_____

\sJohn P. Tedesco
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 16, 2014.

Lakeland Care District
Office of Family Care Expansion