



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

██████████
██████████
██████████
██████████

DECISION

FCP/157522

PRELIMINARY RECITALS

Pursuant to a petition filed May 09, 2014, under Wis. Admin. Code § DHS 10.55, to review a decision by the Western Wisconsin Cares-FCP in regard to Medical Assistance, a telephonic hearing was held on July 23, 2014, at Whitehall, Wisconsin. At the request of petitioner, a hearing set for June 25, 2014 was rescheduled. At the request of the parties, the record was held open for one week for written closing arguments by both parties to the Division of Hearings and Appeals (DHA). Both parties timely submitted their closing arguments which are received into the hearing record. The FCP's written closing argument is marked as Exhibit 3 and the petitioner's argument is marked as Exhibit 4.

The issue for determination is whether the Family Care Program (FCP) correctly denied the petitioner's request for widening of a second bathroom doorway in her home (after approving the widening of the doorway to her master bathroom/bedroom) due to the cost effectiveness of the request.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

██████████
██████████
██████████
██████████

█

Respondent:

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

By: Jeanne Itzen, Family Care quality coordinator
Western Wisconsin Cares-Family Care Program
P.O. Box 167
Blair, WI 54616

ADMINISTRATIVE LAW JUDGE:

Gary M. Wolkstein
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner is a 57 year old resident of Trempealeau County who resides independently in her own single level home. Her home is about 52 feet long and 26 feet wide. See Exhibits 1 and 3.
2. The petitioner has been enrolled in the Family Care Program through Western Wisconsin Cares.
3. The petitioner uses a walker and wheelchair for mobility in her home.
4. The petitioner received gastric bypass surgery which successfully reduced her weight to less than 300 pounds, and thus is more mobile.
5. The petitioner is authorized for Family Care Program (FCP) Supportive Home Care (SHC) worker services for 14 hours per week.
6. FCP authorized the petitioner to receive 10 hours per week of "Companion Care."
7. The petitioner has chronic, ongoing, incontinence problems which add to her risk of skin breakdown issues.
8. The petitioner requested that the doorway to her master bedroom and master bathroom be widened to make that bathroom and bedroom fully accessible with her walker or wheelchair.
9. On March 18, 2014, petitioner requested that the doorway (entryway) to her second (hallway) bathroom be widened so that petitioner can have another alternative access to a second bathroom on the other side of her home, due to her incontinence.
10. The Western Wisconsin Cares Family Care Program sent an April 2, 2014 Notice of Action to the petitioner stating that it was denying the petitioner's request for widening of a doorway to a second bathroom door because it would be duplicative and not cost effective to widen a second bathroom door when her master bathroom has already been made fully accessible. See Exhibit 2.
11. On July 23, 2014, a FC social worker confirmed at petitioner's home that the re-modeling project had been completed to widen the doorways to petitioner's master bathroom and bedroom doors. Petitioner also has a specialized handicap accessible bathroom with grab bars, accessible shower and toilet in her master bathroom. See Exhibit 3.
12. The petitioner does receive a variety of incontinence products to address her incontinence problems. See Exhibit 3.
13. The Family Care Program and petitioner submitted written closing arguments to DHA which are received into the hearing record as Exhibits 3 and 4 respectively. See above Preliminary Recitals.
14. During the July 23, 2014 hearing and in its closing argument, the Family Care Program (FCP) established the following reasons for denying the widening of petitioner's doorway to her second bathroom: a) FCP has already approved and completed the project to widen the doorways to petitioner's master bathroom and bedroom doors with specialized handicap accessible bathroom with grab bars, accessible shower and toilet in her master bathroom; b) the petitioner does have incontinence products if petitioner has an accident; c) petitioner is only about 20 feet from the master bathroom when she is using her computer in the living room; d) petitioner's hospital bed could be moved into petitioner's master bedroom to be closer to the master bathroom; e) FCP asserts it is a "duplication" of services for the petitioner to have a second bathroom doorway widened and a second bedroom door widened; and f) petitioner does received supportive home care and "companion" care to assist her with incontinence issues.

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 denies a requested service, the client is allowed to file a local grievance. The petitioner did apparently file a local grievance, per Wis. Admin. Code §DHS 10.53, and the original service denial was upheld in that review. The petitioner then appropriately sought a fair hearing for a further, *de novo* review of the denial decision.

I conclude that the Family Care Program (FCP) correctly denied the petitioner’s request for widening of a second bathroom door in her home (after approved the widening of one door to her master bathroom/bedroom) due to the cost effectiveness and duplication of the request. 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.

Wis. Admin. Code §DHS 10.41(2) (June, 2009).

The general 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:

DHS 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.*

...
(Emphasis Added)

Wis. Admin. Code §DHS 10.44(2)(f).

During the July 23, 2014 hearing, the Family Care Program's representative, Jean Itzen and FCP witnesses (RN Olson and social worker Kensmore) testified convincingly that the Family Care Program was correctly denying the petitioner's request for widening of a second bathroom door in her home due to the cost effectiveness and duplication of the request for the reasons set forth in Finding of Fact #14 above.

During the hearing and in her closing argument, the petitioner explained that due to ongoing concerns about possible skin breakdown from her incontinence, she needs the quickest way to gain access to a bathroom. Petitioner admitted that it may be only a very short distance (10 – 20 feet) between going to her master bathroom versus the second hallway bathroom. However, petitioner argued that sometimes even a small distance can make a difference to avoid an incontinence issue. The petitioner did explain that in the past she has experienced medical problems with skin breakdown.

The petitioner's position is understandable. However, the petitioner was unable to refute that the Family Care Program has already made many reasonable efforts to meet her medical and non-medical needs as explained in Exhibit 3 and Finding of Fact #14 above. It does appear that the need for the widening of a second doorway to a second bathroom is a duplicative of the re-modeling already completed for petitioner's master bathroom and master bedroom access. While it would be convenient to have a second bathroom on the other side of the house, it is only a relatively short distance for petitioner to travel for access to her master bathroom. In its closing argument, the Family Care Program stated in pertinent part: "The WWC Care Management Team has worked on establishing a safe outcome that meets [REDACTED]'s needs; we have tried to be thoughtful about [REDACTED]'s needs throughout this process and have considered her preferences. We have continued to assess this throughout the hearing process and remain steadfast in our decision about the denial of the secondary doors requested." The petitioner was unable to undermine FCP's case. Accordingly, based upon the entire hearing record, I conclude that the Family Care Program (FCP) correctly denied the petitioner's request for widening of two doors in her home, due to the cost effectiveness and duplication of the request.

CONCLUSIONS OF LAW

The Family Care Program correctly denied the petitioner's request for widening of a second bathroom doors in her home (and only approved the widening of the one door to her master bathroom/bedroom) due to the cost effectiveness and duplication of the request.

THEREFORE, it is

ORDERED

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 11th day of September, 2014

\sGary M. Wolkstein
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 September 11, 2014.

Western Wisconsin Cares-FCP
Office of Family Care Expansion