



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

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

DECISION

FCP/157652

PRELIMINARY RECITALS

Pursuant to a petition filed May 15, 2014, under Wis. Admin. Code § DHS 10.55, to review a decision by the Western Wisconsin Cares-FCP in regard to Family Care (FC) benefits, a hearing was held on August 13, 2014, by telephone. Hearings set for June 4 and July 9, 2014, were rescheduled at the petitioner's request.

The issue for determination is whether the FC agency correctly reduced the petitioner's Supportive Home Care (SHC) hours from eight hours to 4.5 hours weekly.

There appeared at that time the following persons:

PARTIES IN INTEREST:

Petitioner:

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

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Respondent:

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

By: Josh Runyon, Care Manager
Western Wisconsin Cares-FCP

ADMINISTRATIVE LAW JUDGE:

Nancy J. Gagnon
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner is a resident of La Crosse County.
2. The petitioner has been found eligible for participation in the Wisconsin FCP for over a year. FCP services are furnished through a local care management organization (CMO), which is under contract with the FC program.

3. The petitioner, age 59, resides in the community. The petitioner has diagnoses of left eye blindness, diabetes mellitus type 2, neuropathy, GERD, hypertension, high cholesterol, obesity, sleep apnea, history of carpal tunnel repair, history of left elbow replacement, arthritis, asthma, depression, anxiety, personality disorder, cellulitis (left foot), hearing deficit in the left ear, and hypothyroidism. The petitioner is able to bathe, eat, dress, groom, transfer, use the toilet, take her oral medication, and get around in her residence independently. She requires the use of adaptive aids (grab bar, shower chair) when showering. The petitioner is independent in money management, decision-making, and the use of a telephone. She does not drive, and requires help with laundry and housekeeping. The petitioner does not wander, and is not dangerous to others.
4. The petitioner was previously granted eight hours of SHC weekly.
5. The CMO re-determined the amount of time needed by the petitioner as part of an annual review. The CMO determined that the petitioner continued to require 1.0 SHC hour weekly for housecleaning. It also determined that she continued to require 30 minutes every morning for a worker to wash the previous day's dishes, and awaken her and ensure that she takes her diabetes medication. These amounts total 4.5 hours weekly, and the petitioner agrees that she needs these services.

Prior to May 2014, the CMO had also authorized an additional 30 minutes daily for breakfast preparation. The petitioner eats her largest meal at breakfast, and she has agreed that she can prepare the food that she eats for lunch and dinner. After re-assessing the petitioner in April 2014, the CMO used its Resource Allocation Method analysis to determine that the 30 minutes daily for breakfast preparation was not necessary, and that time was eliminated from her care plan. The CMO issued a *Notice of Action* which reduced the SHC hours to 4.5 weekly (effective May 1, 2014) on April 14, 2014.
6. The petitioner apparently requested a local grievance, which did not resolve the matter.
7. The petitioner subsequently filed a hearing request with this Division.
8. The Long-Term Care Functional Screen (Screen) done on the petitioner by [REDACTED] [REDACTED] on July 24, 2013, contains a determination that the petitioner requires physical help with meal preparation at least twice per week. The petitioner has good days and bad days with her neuropathy and arthritis. On a good day she can prepare simple meals; on a bad day, she cannot. The petitioner requires two thirty-minute sessions for meal preparation per week.

DISCUSSION

The Family Care program is supervised by the Wisconsin Department of Health Services, and is designed to provide appropriate long-term care services for elderly or disabled adults. It is authorized at Wis. Stat. § 46.286, and is further described at Wis. Admin. Code, ch. DHS 10.

The CMO must develop an Individual Service Plan (ISP) in partnership with the client. Wis. Admin. Code § DHS 10.44(2)(f). The ISP must reasonably address all of the client's long-term needs to assist the client to be as autonomous as possible, while also being cost effective. While the client has input, the CMO does not have to provide all services the client desires if there are less expensive alternatives to achieve the same results. *Id.*, 10.44(1)(f). ISPs must be reviewed periodically. *Id.*, 10.44(j)(5).

I conclude that a reduction of FC-paid SHC hours was appropriate, but that it went too far. 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;... home delivered and congregate meal services;... durable medical equipment and specialized medical supplies; ... supportive home care; ... and community support program services.

Wis. Admin. Code §DHS 10.41(2). Supportive home care (SHC) 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 question that remains is, how many SHC hours are essential to meeting the petitioner’s needs?

The petitioner disagrees with the CMO’s proffered service plan because it provides 4.5 hours per week of supportive home care. The CMO arrived at this amount by eliminating 30 minutes per day for breakfast meal preparation. The petitioner desires to have the 30-minute breakfast preparation time restored for every day of the week.

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 ... 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).

In applying the code ISP standards, I conclude that the CMO was correct in deciding that breakfast preparation time was not needed every day. By her own admission, the petitioner has good days and bad days; she does not need this assistance on good days. She apparently was having a good day during her

grievance meeting, as she was observed to tear open a granola bar wrapper, open a liter bottle of water, and pour the water into a cup. The petitioner is also taking in adequate nutrition, as she is not underweight (257 pounds).

The petitioner credibly testified that she has good days and bad days, related to neuropathy and arthritis. On bad days, she cannot prepare breakfast. Her hands loosen up as the day goes on, and she is able to open food containers and reheat food for the later meals. Significantly, the Screen submitted by the petitioner shows that the screener formed the opinion that the petitioner required physical help with meal preparation more than once weekly. She noted that the petitioner “has difficulty opening packaging and pull-type lids [due to] arthritis” and concluded, “needs help more than 1x/wk so marked as 2.” I will adopt the independent screener’s conclusion, and determine that, to be “reasonable” and “cost-effective,” a weekly total of 5.5 hours of SHC time results (4.5 + 1.0 breakfast).

CONCLUSIONS OF LAW

1. The Division of Hearings and Appeals has jurisdiction to review the CMO’s decision to reduce the number of SHC hours furnished to the petitioner.
2. To meet the petitioner’s credible care needs, the petitioner reasonably requires 5.5 hours of SHC service time weekly from the Family Care program.

THEREFORE, it is

ORDERED

That the petition herein be remanded to the CMO with instructions to enter 5.5 hours of weekly SHC time into the petitioner’s current ISP, effective with the date of this Decision. The CMO shall report this accomplishment to DHA within 10 days of the date of this Decision. In all other respects, 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.

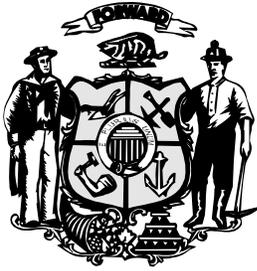
APPEAL TO COURT

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 13th day of October, 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 October 13, 2014.

Western Wisconsin Cares-FCP
Office of Family Care Expansion