



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

FCP/157803

PRELIMINARY RECITALS

Pursuant to a petition filed May 21, 2014, under Wis. Admin. Code § DHS 10.55, to review a decision by the Continuum in regard to Family Care Program (FCP, an MA-related program) benefits, a hearing was held on August 21, 2014, at Madison, Wisconsin. A hearing set for July 9, 2014, was rescheduled at the petitioner's request. With the parties' consent, the hearing record was held open for additional comments, which were received.

The issue for determination is whether the FC agency correctly declined to increase the petitioner's level of FCP-paid Supportive Home Care (SHC) hours above 38 hours weekly.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]

Respondent:

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

By: Ava Gray, Supervisor-Baraboo Care Mgmt. Unit
Continuum
28526 US Hwy 14
Lone Rock, WI 53556

ADMINISTRATIVE LAW JUDGE:

Nancy J. Gagnon
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner is a resident of Sauk County.

2. The petitioner was found eligible for participation in Wisconsin FC as of December, 2013. FC services are furnished through a local care management organization (CMO), which is under contract with the FC program.
3. The petitioner, age 56, resides in a house with her husband, [REDACTED]. The petitioner has diagnoses of asthma, vertigo, fibromyalgia, chronic fatigue syndrome, postural orthostatic tachycardia syndrome (POTS), irregular heartbeat, low blood pressure, history of mild stroke with left-sided weakness, low/double vision, nystagmus, light photosensitivity, migraine, osteoarthritis, hip/sacroiliac joint dysfunction, Reynaud's Syndrome, and right knee pain from a 2012 fall. The petitioner requires physical assistance to bathe, dress, groom, transfer, use the toilet, take her medication, and ambulate within her home. The petitioner is not mentally ill, does not wander, and is not dangerous to self or others.
4. The CMO initially determined that the petitioner required 38 hours of SHC weekly to cost-effectively meet her care needs. The petitioner resides with her husband. He has his own health problems: obesity, lumbar stenosis, cardiac issues, sleep apnea, osteoarthritis, diabetes, neuropathy, hypertension, and bipolar disorder. He has his own FC case and service plan. His service plan includes 30 minutes monthly for refrigerator cleaning, 60 minutes weekly for grocery shopping, 15 minutes weekly for vacuuming, and five minutes weekly for garbage removal.
5. On March 28, 2014, the petitioner requested an additional 4.6 hours weekly for help with ambulation therapy, four times daily. The CMO denied that request on April 10, 2014. The requested ambulation help is a medical necessity for the petitioner.
6. On March 26, 2014, the petitioner requested an additional seven SHC hours weekly (one hour daily) for help with reading, writing and bill payments. The CMO denied that request by written notice dated April 16, 2014.
7. On April 23, 2014, the petitioner requested an additional 10 hours weekly for more help with: ambulation, mopping/scrubbing floors, bathing, linen changes, laundry, shopping, refrigerator cleaning, and meal preparation. The CMO denied that request on May 6, 2014. The petitioner then filed a fair hearing request.
8. After reviewing the petitioner's hearing exhibits, the CMO asked for time to reconsider its position. On August 28, 2014, the CMO issued a memo to this Judge, advising that it was willing to increase the petitioner's SHC time by 19.5 hours weekly. The additional minutes were apportioned as follows:
 - Ambulation: was 175, plus 105 = 280 weekly (40 minutes daily)
 - Showering: was 154, plus 476 = 630 weekly (90 minutes daily)
 - Skin care: was 35, plus 21 = 56 weekly (8 minutes daily)
 - Clean eqpt.: was 0, plus 35 = 35 weekly (5 minutes daily)
 - Mop/vacuum: was 15, plus 30 = 45 weekly
 - Reading/bills: was 0, plus 420 = 420 weekly (60 minutes daily)
 - Laundry: was 72, plus 72 = 144 weekly

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).

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; ... 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; ...

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 remaining question is, how many SHC hours are essential to meeting the petitioner's needs?

The petitioner disagrees with the CMO's service plan because it provides 38 hours per week of supportive home care. Post-hearing, the CMO has revised its position to include **57.5** weekly SHC hours.

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.*

...

(emphasis added)

Wis. Admin. Code §DHS 10.44(2)(f).

The dispute related to the April 10 denial of ambulation time has been resolved. The CMO has now agreed to 40 minutes daily of ambulation time. I strongly concur with the increase in ambulation time.

The dispute related to the April 16, 2014 denial of secretarial time has been resolved. The CMO has now agreed to 60 minutes daily of secretarial support. If the CMO had not so agreed, I would have granted two hours per week. The petitioner's low vision is not in doubt, but an efficient person/helper can perform household bill-paying in one hour weekly. Further, if secretarial time is needed to track ■■■'s SDS worker time, it should be on ■■■'s service plan rather than the petitioner's plan. However, I will not disturb the CMO's more generous allocation here.

The May 6, 2014 denial dispute has been partially resolved. The CMO agreed to increased time for mopping, skin care, and cleaning/maintaining equipment, as requested by the petitioner. The petitioner asked that time for her twice daily showers be increased from 22 minutes to 135 minutes daily. The CMO has now agreed to 90 minutes daily. I agree with the CMO's amount. The state standard for PCW showering time in the Medicaid program is 30 minutes per shower. There is no basis for significant deviation from the state standard here. See, <https://www.forwardhealth.wi.gov/WIPortal/Default.aspx>, at online handbooks-Medicaid-Personal Care- covered services-topic #4621.

The petitioner raised the need for more dishwashing, eye care, and garbage removal minutes for the first time at hearing. She should initiate those requests with the CMO; I will not rule on them here.

Post-hearing, the CMO agreed to 144 minutes weekly (*i.e.*, twice weekly sessions) for laundry. The petitioner asks for 175 minutes (25 minutes daily, every day). She asserts that she needs a bed linen change with laundry every day due to night-time incontinence. Neither Depends nor Chux/bed underpads are currently used. The petitioner asserts that she cannot use either of these incontinence products due to Multiple Chemical Sensitivity (MCS). But her submitted medical diagnosis list does not include MCS. I agree with the CMO that the use of underpads should be attempted as a more cost-effective measure than daily laundry.

The CMO previously approved 60 minutes weekly for grocery shopping. The petitioner's "actual times" chart states that she needs 66 minutes. The petitioner has the burden of proof by a preponderance of the evidence. Her justification for more time was not compelling; the CMO's position is upheld.

Finally, the CMO previously approved 420 minutes weekly (60 minutes daily) to prepare the petitioner's three daily meals. The petitioner is not underweight (184 pounds). She seeks 515 minutes weekly (74 minutes daily). The CMO position is upheld.

After tallying the time allotments that I have determined, in my discretion, to be "reasonable" and "cost-effective," a weekly average of 57.5 hours of service time results.

CONCLUSIONS OF LAW

1. To meet the petitioner's credible care needs, the petitioner reasonably requires 57.5 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 **57.5** weekly SHC hours into the petitioner's current ISP, effective September 29, 2014, and to 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.

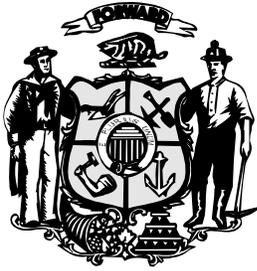
APPEAL TO COURT

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 29th day of September, 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 September 29, 2014.

Continuus
Office of Family Care Expansion