



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]

AMENDED DECISION

FCP/158076

PRELIMINARY RECITALS

Pursuant to a petition filed June 02, 2014, under Wis. Admin. Code § DHS 10.55, to review a decision by the Milwaukee County Department of Family Care - MCO in regard to Medical Assistance, a hearing was held on July 22, 2014, at Milwaukee, Wisconsin. A Decision was originally issued on August 29, 2014, which contained an error in the Order section. This Amended Decision corrects the Order.

The issue for determination is whether the respondent correctly seeks to end petitioner's use of Transit Plus transportation services.

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: Amber Beck

Milw Cty Dept Family Care - MCO
901 N 9th St
Milwaukee, WI 53233

ADMINISTRATIVE LAW JUDGE:

Peter McCombs
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Milwaukee County.
2. The petitioner receives Family Care Medical Assistance benefits through Milwaukee County Department of Family Care.

3. Family Care is required to pay for medically necessary transportation.
4. The petitioner cannot drive, and has received transit services through Transit Plus since at least 2008. Family Care has paid for these services.
5. Family Care seeks to terminate petitioner's Transit Plus transit taxi tickets, in favor of other transportation providers.

DISCUSSION

The petitioner receives medical assistance benefits and personal care services through Family Care, which is part of the Wisconsin Partnership Program, a health-service delivery system authorized by a medical assistance waiver under 42 USC 1315. It is designed to increase the ability of the frail elderly and those under 65 with disabilities to live where they want, participate in community life, and make decisions regarding their own care.

The Partnership Program places a recipient under the roof of a single private provider that receives a uniform fee, called a capitation rate, for each person it serves. The provider is responsible for ensuring that the person receives all the Medicaid and Medicare services available to her. The theory behind the program is that it will save money by providing recipients with only the services they need rather than requiring that they enroll in several programs whose services may overlap.

Each provider signs a contract with the State of Wisconsin that sets forth exactly what services it must render. Family Care's contract requires it to provide services to physically and developmentally disabled adults and frail elders who are financially eligible for medical assistance and "[f]unctionally eligible as determined via the Long-term Care Functional Screen..." *Contract Between Department of Health and Family Services and Family Care, Inc. 2009.*

When determining whether a service is necessary, one must review, among other things, the medical necessity of the service, the appropriateness of the service, the cost of the service, the extent to which less expensive alternative services are available, and whether the service is an effective and appropriate use of available services. Wis. Adm. Code § HFS 107.02(3)(e)1.,2.,3.,6. and 7. "Medically necessary" means a medical assistance service under ch. HFS 107 that is:

- (a) Required to prevent, identify or treat a recipient's illness, injury or disability; and
- (b) Meets the following standards:
 1. Is consistent with the recipient's symptoms or with prevention, diagnosis or treatment of the recipient's illness, injury or disability;
 2. Is provided consistent with standards of acceptable quality of care applicable to the type of service, the type of provider, and the setting in which the service is provided;
 3. Is appropriate with regard to generally accepted standards of medical practice;
 4. Is not medically contraindicated with regard to the recipient's diagnoses, the recipient's symptoms or other medically necessary services being provided to the recipient;
 5. Is of proven medical value or usefulness and, consistent with s. HFS 107.035, is not experimental in nature;
 6. Is not duplicative with respect to other services being provided to the recipient;
 7. Is not solely for the convenience of the recipient, the recipient's family, or a provider;
 8. With respect to prior authorization of a service and to other prospective coverage determinations made by the department, is cost-effective compared to an alternative medically necessary service which is reasonably accessible to the recipient; and
 9. Is the most appropriate supply or level of service that can safely and effectively be provided to the recipient.

Family Care's contract with the Wisconsin Department of Human Services requires it to fund "[t]ransportation services as defined in DHS 107.23 (except ambulance)." Wis. Admin. Code § DHS 107.23 is the basic medical assistance section pertaining to transportation and does not include any provisions that affect the petitioner's eligibility for the services discussed in this decision.

Family Care has been providing petitioner with transit taxi tickets via Transit Plus since approximately 2008. It has now determined that petitioner should look into other, more cost-effective options. The respondent's representative testified that Transit Plus is the most expensive transportation service. The petitioner contends that on a few occasions when she has used an alternative transportation provider she has encountered timeliness issues. She is concerned that such issues may persist into the future.

I am unable to find that the petitioner has established any error on the part of the respondent. The respondent has made a determination based on cost-effectiveness, which is entirely within its purview. The petitioner is concerned about the potential for future issues with other carriers, but I cannot make a finding of error based upon what might happen.

CONCLUSIONS OF LAW

The respondent correctly terminated petitioner's Transit Plus transit taxi tickets based upon cost-effectiveness.

THEREFORE, it is **ORDERED**

That the petitioner's appeal 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 4 day of September
2014.

A handwritten signature in black ink, appearing to read 'Peter McCombs', is written over a horizontal line.

Peter McCombs
Administrative Law Judge
Division of Hearings and Appeals