FH
[redacted]

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[redacted]

DECISION

FCP/158515

PRELIMINARY RECITALS

Pursuant to a petition filed June 23, 2014, under Wis. Admin. Code, §DHS 10.55, to review a decision by Care Wisconsin, Inc. in regard to Family Care Program (FCP) services, a hearing was held on August 13, 2014, by telephone. A hearing set for July 17, 2014 was rescheduled at the petitioner's request.

The issue for determination is whether the agency correctly denied a request to go to an out-of-network dentist.

PARTIES IN INTEREST:
Petitioner:

[redacted]

Respondent:

Department of Health Services
1 West Wilson Street, Room 651
Madison, Wisconsin 53703
By: Chris Beck
Care Wisconsin, Inc.
2802 International Lane
Madison, WI 53704-3124

ADMINISTRATIVE LAW JUDGE:
Brian C. Schneider
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES #[redacted]) is a resident of Dane County.
2. Petitioner is enrolled in the FCP with Care Wisconsin as her Managed Care Organization (MCO). Care Wisconsin's dental provider of choice is Access Dental because Access is the only provider in the area that accepts Medicaid rates, and the Department of Health Services requires the MCO to utilize providers that accept Medicaid rates when possible.

3. In 2014 petitioner requested that the MCO allow her to receive dental care from a different provider. She cited concerns about the care by Access employees, and in particular a bad episode where Access referred her to an oral surgeon, and she experienced a traumatic episode at the oral surgeon. Petitioner blames Access for the referral, in particular that the Access dentist did not answer questions on the surgeon's form concerning premedication and anesthesia.

4. Care Wisconsin denied the request. Petitioner filed a grievance, but the Care Wisconsin Grievance Committee upheld the denial.

5. While this appeal was pending petitioner's Care Wisconsin team implemented changes and policies to make petitioner's experience at Access better for her. Petitioner attended an appointment for cleaning in July without incident.

6. Petitioner's psychiatrist, rheumatologist, and licensed professional counselor all have written letters in support of a change in dentist, primarily due to the increased anxiety petitioner has experienced and her heightened pain response due to fibromyalgia.

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. It is authorized in the Wisconsin Statutes, §46.286, and is described comprehensively in the Wisconsin Administrative Code, Chapter DHS 10.

The MCO must develop an Individual Service Plan (ISP) in partnership with the client. Wis. Admin. Code, §DHS 10.44(2)(f). The ISP must reasonably and effectively address all of the client's long-term needs and outcomes to assist the client to be as self-reliant and autonomous as possible, but nevertheless must be cost effective. While the client has input, the MCO does not have to provide all services the client desires if there are less expensive alternatives to achieve the same results. Wis. Admin. Code, §DHS 10.44(1)(f); DHS booklet, Being a Full Partner in Family Care, page 9. ISPs must be reviewed periodically. Admin. Code, §DHS 10.44(j)(5).

Wis. Stat., §46.287(2)(a)1 provides that a person may request a fair hearing to contest the reduction of services under the FCP program, among other things, directly to the Division of Hearings and Appeals. In addition, the participant can file a grievance with the MCO over any decision, omission, or action of the MCO. The grievance committee shall review and attempt to resolve the dispute. If the dispute is not resolved to the participant's satisfaction, she may then request a hearing with the Division of Hearings and Appeals.

The issue in this case is whether the MCO acted appropriately in denying petitioner's request for a change in dentists. As has been noted many times in the past, there are no standards written in the law or policy on how to make such a determination. It comes down to the general criteria for determining authorization for services – medical appropriateness and necessity, cost effectiveness, statutory and rule limitations, and effectiveness of the service. See Wis. Admin. Code, §DHS 107.02(3)(e).

Care Wisconsin's position on this matter is very reasonable. The policy is that it must use a dental provider that accepts Medicaid rates when possible. Access Dental is available and accepts Medicaid rates, and by working with petitioner and the dentist changes can be implemented to continue Access's availability to petitioner. Thus a dental provider that accepts Medicaid is available to petitioner.

On the other hand, despite ongoing attempts by Care Wisconsin to alleviate the situation, it is evident that petitioner is obsessed with this issue. Although she had a successful session at Access in July, she still

raises concerns with going back there and the desire to try another dentist. Most importantly, two doctors and a professional counselor have written recommendations that a different dental provider be tried. It is true that a staff member contacted Dr. [redacted], the psychiatrist, to explain the attempts to alleviate the situation, and Dr. [redacted] agreed that the responses were appropriate. He also explained that he understood that much of the problem was petitioner's interpretation of the situation. That is the problem, however. No matter how hard Care Wisconsin tries to work with petitioner, HER interpretation leads to be stressed and anxious over going to Access Dental. Her interpretation might seem unreasonable to a lay person, but again, two doctors and a mental health professional suggest that a change might alleviate petitioner's anxiety.

I conclude, therefore, that the agency should allow petitioner to see an alternate dental provider. I hope the change is successful for petitioner, but I am concerned that petitioner will experience anxiety and heightened pain response no matter which dentist she goes to. I hope all goes well, but if petitioner returns in the future and asks for another change, the request will be met with skepticism.

CONCLUSIONS OF LAW

Although Care Wisconsin has taken extraordinary steps to make petitioner comfortable with the network dental provider, her continued anxiety and stress with the situation, as verified by three medical professionals, suggests that an alternate dental provider should be attempted.

THEREFORE, it is **ORDERED**

That the matter be remanded to the agency with instructions to allow petitioner to choose an out-of-network dental provider and to arrange care for her at the alternate provider as part of her FCP plan of care. The agency shall take the action within 10 days of this decision subject to delays necessitated by the process of choosing a provider and arranging services.

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 19th day of August, 2014

\sBrian C. Schneider
Administrative Law Judge
Division of Hearings and Appeals

State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

Brian Hayes, Administrator
Suite 201
5005 University Avenue
Madison, WI 53705-5400

Telephone: (608) 266-3096
FAX: (608) 264-9885
email: DHAmail@wisconsin.gov
Internet: http://dha.state.wi.us

The preceding decision was sent to the following parties on August 19, 2014.

Care Wisconsin First, Inc
Office of Family Care Expansion
ChrisL@drwi.org