



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of



DECISION

FCP/158622

PRELIMINARY RECITALS

Pursuant to a petition filed June 24, 2014, under Wis. Admin. Code, §DHS 10.55, to review a decision by Lakeland Care District to discontinue Family Care Program (FCP) services, a hearing was held on August 6, 2014, by telephone.

The issue for determination is whether the agency correctly discontinued services after petitioner’s level of care changed.

PARTIES IN INTEREST:

Petitioner:



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Respondent:

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

By: Barb Sotelo, RN
Lakeland Care District
N6654 Rolling Meadows Dr.
Fond du Lac, WI 54937

ADMINISTRATIVE LAW JUDGE:

Brian C. Schneider
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # ) is a resident of Fond du Lac County who has been eligible for FCP.
2. In June, 2013, the agency did an annual reassessment. After completing the functional screen, the agency determined that petitioner no longer met the nursing home level of care; instead she met the non-nursing home level.

3. Petitioner received two services that are available under the nursing home FCP package but not the non-nursing home package. Those services were supportive home care and non-medical transportation assistance.
4. The agency kept the two services in place under a Sustainability Initiative to allow petitioner to plan for and seek out alternative options. However, by 2014 no alternatives were found, at least partly because petitioner was hesitant to seek alternative services.
5. In May, 2014, another functional screen was completed. Petitioner still was at the non-nursing home level of care.
6. On May 29, 2014, the agency notified petitioner that the two services would be ending effective June 13, 2014. A grievance hearing was conducted and the termination as upheld.
7. Another functional screen was done in July, 2014. Again the result was non-nursing home level of care.

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.

Wis. Admin. Code, §DHS 10.33(2) provides that an FCP applicant must have a functional capacity level of comprehensive or intermediate; I note here that Wis. Stat., §46.286, uses the terms “nursing home” and “non-nursing home” levels just as the agency in this case. If the person meets the comprehensive (nursing home) level, she is eligible for full services through a managed care organization (MCO), including Medical Assistance (MA). Wis. Admin. Code, §DHS 10.36(1)(a). If the person meets the intermediate (non-nursing home) level, she is eligible for full services only if she is in need of adult protective services or she is financially eligible for MA. Wis. Admin. Code, §DHS 10.36(1)(b). A person eligible under the non-nursing home level is eligible for less FCP services.

Services that can be provided to non-nursing home level recipients are seen at www.dhs.wisconsin.gov/LTCare/StateFedReqs/cy2014mcocontract-amendmnt1.pdf, which is the Department’s contract with the various MCOs. The allowed services are found at Addendum X.B (page 289 of the document) as referenced from page 81, “*Services for Members at the Non-Nursing Home Level of Care – Family Care.*” The services found at Addendum X.B do not include supportive home care or non-medical transportation. There is a reference to transportation services as defined in the Wis. Admin. Code, §DHS 107.23, but that section specifically discusses transportation to medical services. The services specific to the Lakeland Care District mirror the contract, as seen in Attachment G of Lakeland’s July 7, 2014 case summary.

Petitioner and her representatives advocated forcefully petitioner’s need for these services, but the problem is that they are requesting a continuation of services that cannot be provided by the MCO based upon petitioner’s level of care determination. In other words, Lakeland cannot offer these services anymore because petitioner no longer meets the nursing home level of care. Petitioner has not appealed the level of care determination, just the end of the services. I note, however, that based upon the testimony on petitioner’s behalf, she likely would not meet the nursing home level of care even if she appealed it, as she noted no need for assistance with medical concerns or activities of daily living beyond supportive home care and the non-medical transportation.

I must uphold the discontinuance of the two types of service, therefore, because at petitioner's level of care the MCO cannot provide the services.

CONCLUSIONS OF LAW

The MCO correctly discontinued supportive home care services and non-medical transportation services to petitioner because they are not covered under the FCP program for individuals who needs are at the non-nursing home level of care.

THEREFORE, it is ORDERED

That 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 12th day of August, 2014

\sBrian C. Schneider
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 August 12, 2014.

Lakeland Care District
Office of Family Care Expansion