



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

FCP/158743

PRELIMINARY RECITALS

Pursuant to a petition filed July 2, 2014, under Wis. Admin. Code, §DHS 10.55, to review a decision by Western Wisconsin Cares to deny a transportation service under the Family Care Program (FCP), a hearing was held on August 21, 2014, by telephone. A hearing set for August 13, 2014 was rescheduled at the petitioner's request.

The issue for determination is whether the agency correctly denied an independent transportation service for petitioner.

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]

Respondent:

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

By: Maria Towle, Care Manager
Western Wisconsin Cares
1407 St. Andrew St.
La Crosse, WI 54603

ADMINISTRATIVE LAW JUDGE:

Brian C. Schneider
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner is a resident of La Crosse County who receives FCP services.
2. Petitioner is diagnosed with anxiety and depression. He also has diet-controlled diabetes, chronic pain, and renal problems related to hepatitis.

3. Petitioner formerly had an independent transportation provider, RSVP, paid by FCP. The service was stopped because it was determined that petitioner could access the community by using city buses.
4. In May, 2014 petitioner requested that RSVP be approved again for medical appointments. Taking the city bus entails walking to the bus stop, waiting for buses, and then walking again to the appointment.
5. The agency denied the request by a notice dated May 30, 2014.

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 the RSVP transportation services. 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). I note that one of the limitations in the administrative code is that services are not covered if solely for the convenience of the recipient or his caretakers. See Admin. Code, §DHS 101.03(96m)(b)7.

In this case the sole reason that petitioner is requesting the RSVP service is for his convenience. He complains that a trip to the doctor takes up to three hours, but that includes the time in the doctor's office. He does not attend doctor appointments often, only once every few weeks. He complains that he gets thirsty on the bus and that he is not allowed to bring a water bottle on the bus, but I am unaware of any such prohibition by a city bus company (I went on-line to the La Crosse city transit website and found no prohibition against water bottles on city buses).

I conclude that the agency's denial of the request for independent transportation services was appropriate. Petitioner has access to less expensive services that are able to meet his needs.

CONCLUSIONS OF LAW

The agency correctly denied petitioner's request for independent transportation services because less expensive alternatives are available.

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 25th 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 25, 2014.

Western Wisconsin Cares-FCP
Office of Family Care Expansion