



FH

Redact

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

Redact
Redact

DECISION

FCP/158975

PRELIMINARY RECITALS

Pursuant to a petition filed July 11, 2014, under Wis. Admin. Code § DHS 10.55, to review a decision by the Care Wisconsin in regard to Medical Assistance, a telephonic hearing was held on October 07, 2014, at Jefferson, Wisconsin. The petitioner specifically stated that she wanted to proceed with the hearing on October 7, 2014 by representing herself, as she was unable to obtain any representation. At the request of petitioner, a hearing set for August 26, 2014 was rescheduled so that documents could be re-sent to the petitioner by Care Wisconsin. At the request of the parties, the record was held open for consecutive closing arguments to the Division of Hearings and Appeals (DHA). Both parties timely submitted their closing arguments to DHA which are received into the hearing record.

The issue for determination is whether the Family Care Program correctly reduced the petitioner's Supportive Home Care (SHC) hours from 9 to 5.25 hours per week effective July 14, 2014.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

Redact
Redact

Respondent:

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

By: Redact, RN case manager
Care Wisconsin, Inc.
2802 International Lane
Madison, WI 53704-3124

ADMINISTRATIVE LAW JUDGE:

Gary M. Wolkstein
Division of Hearings and Appeals

### FINDINGS OF FACT

1. Petitioner (CARES # [Redacted]) is a 75 year old resident of Jefferson County who resides with her 78 year old husband, [Redacted] R [Redacted].
2. The petitioner is diagnosed with chronic fatigue syndrome, fibromyalgia, Addison's Disease, bowel issues, arthritis and lower extremity weakness, and pain.
3. The petitioner received 9 hours per week of Supportive Home Care (SHC) services through Care Wisconsin, Inc.
4. Petitioner's physician, Dr. [Redacted], sent an August 19, 2014 letter stating his recommendation that petitioner needs 9 hours per week of supportive home care services per week, due to her Secondary Addison's Disease, bowel issues, and arthritis.
5. Care Wisconsin Staff RN [Redacted] and RN [Redacted] met with petitioner in her home for her six month June 24, 2014 assessment of her SHC needs. While petitioner indicated during that assessment that she could prepare her own breakfast and snacks independently, the hearing record indicates that petitioner most of the time was unable to do so independently but instead needed SHC assistance. Petitioner inaccurately alleged that her husband and children were available to take care of her laundry and grocery shopping and meal preparation needs, as indicated in Finding of Fact #7 below.
6. Care Wisconsin sent a June 30, 2014 notice to the petitioner stating that her supportive home care hours would be reduced from 9 to 5.25 hours per week effective July 14, 2014 due to: a) petitioner no longer needing 9 hours of SHC services per week to support her outcome; and b) informal support from family members is available to provide services to the petitioner not provided in a formal way by SHC services.
7. In his September 30, 2014 letter, petitioner's son, [Redacted] argued persuasively that Care Wisconsin was incorrect that family members could informally provide continued services for the petitioner so that her SHC services could be safely reduced from 9 to 5.25 hours per week. In that letter (and other letters from his siblings), Mr. [Redacted] indicated the following reasons why family support could not replace the reduced SHC hours: a) petitioner's husband's health has declined and he as the most constant caregiver can no longer provide almost any services at all for his wife; b) petitioner's children no longer have the time, travel time, or the means to meet their mother's meal preparation, grocery shopping or laundry needs. The petitioner's daughter and sons sent letters to DHA that for various professional and personal reasons they will not be able to continue to assist their mother at the same level. See petitioner's husband's letter and her children's letters.
8. In its November 4, 2014 closing argument, Care Wisconsin responded to the petitioner's statements during the hearing and other exhibits, and stipulated based upon her son's broken washing machine to increase petitioner's SHC hours from 5.25 to 6 hours per week.

### 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, s/he may then request a hearing with the Division of Hearings and Appeals.

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 in an FCP case. 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).

In the instant case, the issue is whether the Family Care Program through its agent, Care Wisconsin, correctly reduced the petitioner's Supportive Home Care (SHC) hours from 9 to 5.25 hours per week effective July 14, 2014. It appears that the petitioner was perhaps overly optimistic during her June 24, 2014 home assessment which resulted in the Care Wisconsin RNs believing that petitioner's SHC hours could be safely reduced from 9 to 5.25 hours due to petitioner appearing to no longer needing 9 hours of SHC services per week to support her needs with informal support from family members who allegedly were available to provide services to the petitioner not provided in a formal way by SHC services.

However, as noted by Care Wisconsin in its November 4, 2014 closing argument, the petitioner's testimony and evidence for the October 7, 2014 hearing was very different from her prior assertions of independence in certain tasks during the June 24, 2014 assessment. Based upon new information (son's broken washing machine), Care Wisconsin stipulated to increase petitioner's SHC hours from 5.25 to 6.0 hours per week. However, it also appears that other circumstances have changed since the June 24, 2014 assessment to support petitioner's SHC need for the full 9 hours.

The primary change is that petitioner's husband's health has declined, and he is basically unable to assist the petitioner in most of her ADLs or IADLs. The second change (or misstatement by petitioner) is that her children were able and willing to continue to take care of her laundry and grocery shopping and meal preparation needs. However, as indicated by Finding of Fact #7 above, the petitioner's children for professional, family, and personal reasons established why family support could not replace the reduced SHC hours. Care Wisconsin has not provided any reliable evidence to refute such evidence. While it is understandable that Care Wisconsin decided to reduce petitioner's SHC hours based upon petitioner's answers during the June 24, 2014 assessment, a review of the entire hearing record indicates that based upon change of circumstances the petitioner as of July 14, 2014 needed 9 hours per week of SHC services. Accordingly, based upon the above, I conclude that the Family Care Program incorrectly reduced the petitioner's Supportive Home Care (SHC) hours from 9 to 5.25 hours per week effective July 14, 2014.

### **CONCLUSIONS OF LAW**

1. The Family Care Program incorrectly reduced the petitioner's Supportive Home Care (SHC) hours from 9 to 5.25 hours per week effective July 14, 2014.
2. The Family Care Program should restore 9 hours per week of SHC hours for the petitioner retroactive to July 14, 2014.

**THEREFORE, it is**

**ORDERED**

The matter is remanded to the Family Care Program to take the necessary administrative actions to restore 9 hours per week of Supportive Home Care (SHC) hours for the petitioner retroactive to July 14, 2014, within 10 days of the date of this Decision.

**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 26th day of December, 2014

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\sGary M. Wolkstein  
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 December 26, 2014.

Care Wisconsin First, Inc  
Office of Family Care Expansion