



**STATE OF WISCONSIN  
Division of Hearings and Appeals**

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In the Matter of:

[REDACTED]  
[REDACTED]  
[REDACTED]

DECISION

FCP/159165

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**PRELIMINARY RECITALS**

Pursuant to a petition filed July 16, 2014, under Wis. Admin. Code § DHS 10.55, to review a decision by iCare in regard to Medical Assistance ["MA"], a Hearing was held via telephone on September 9, 2014.

The issue for determination is whether it was correct to terminate petitioner's paid MA Family Care Program ["FCP"] Supportive Home Care ["SHC"].

There appeared at that time via telephone the following persons:

**PARTIES IN INTEREST:**

Petitioner:

[REDACTED]  
[REDACTED]  
[REDACTED]

Respondent:

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

BY: Elizabeth Bartlett  
General Counsel  
iCare  
1555 N. Rivercenter Drive  
Suite 206  
Milwaukee, WI 53212

**ADMINISTRATIVE LAW JUDGE:**

Sean P. Maloney  
Division of Hearings and Appeals

**FINDINGS OF FACT**

1. Petitioner (62 years old) is a resident of Milwaukee County, Wisconsin.

2. Petitioner lives with his girlfriend, who is also his caregiver, and is in a close, intimate relationship with her. Exhibits #1 & #4.
3. Petitioner has the following diagnoses: chronic bronchitis; hypertension; gout; lung cancer; and, kidney cancer. Exhibits #1, #3 & #4.
4. Petitioner was allowed 2 hours per day of SHC funded by iCare. Exhibit #1.
5. iCare sent petitioner a *Notice of Action* letter dated April 24, 2014 notifying him that his SHC had been terminated. Exhibit #1.
6. iCare terminated petitioner's SHC because "Informal support (or other support) is available to provide this service or support this outcome for you." Exhibit #1.

### DISCUSSION

FCP is available to eligible persons only through enrollment in a Care Management Organization ["CMO"] under contract with the Wisconsin Department of Health Services ["DHS"]. Wis. Admin. Code § DHS 10.41(1) (December 2013). A person may be eligible for FCP, but yet not entitled to enroll in a CMO. Wis. Admin. Code § DHS 10.36(1) (December 2013). A person who is found eligible for FCP but who does not meet certain conditions is not entitled to FCP benefits. Wis. Admin. Code § DHS 10.36(3) (December 2013). Such persons may pay privately for CMO services. Wis. Admin. Code §§ DHS 10.36(3) & 10.37 (December 2013).

In this case petitioner is eligible for FCP, is enrolled in a CMO, and is receiving FCP benefits. Petitioner appeals because he was notified that his SCH hours would be terminated.

FCP policy, as defined in the Medicaid waivers approved by the Centers for Medicare and Medicaid Services ["CMS"], is that family members, including spouses, or legal representatives may be paid for services if authorized. In order to be paid for services a family member must either:

- a) Provide an amount of service that exceeds normal family care giving responsibilities for a person in a similar family relationship who does not have a disability; or
- b) Demonstrate that he or she must forego paid employment in order to provide the service and is not receiving a pension, including Social Security retirement benefits.

In general, compensation to family members or legal representatives may be considered for needed services or supports that exceed the typical caregiving/support responsibilities for any family member of the same age. These are considered a "special caregiving responsibility" due to the member's disability.

Services that are **typically assumed to be the responsibility of family members, whether they reside with, or separate from the member**, are: routine laundry, meal preparation, grocery shopping, housecleaning (particularly if the living space is shared by the caregiver), general companionship, non-medical supervision, assisting with mobility, transportation or escorting a person to occasional medical appointments.

Services that are **typically assumed to exceed the caregiving/support responsibilities of a family member, whether they reside with, or separate from the member**, are: toileting, bathing (other than set-up), other personal care the member is unable to complete, frequent laundry due to

incontinence/illness, medical transportation, complete transfer assist or other unique services that may be considered for member-specific situations.<sup>1</sup>

Other Considerations:

- What is the nature of the relationship (close/intimate or acquaintance)?
- Are there any issues/concerns related to the background check or other issues related to the potential caregivers' ability to provide the service?
- Does the caregiver live with the member? If not, then is the distance the person must travel to provide care and support reasonable?
- Consider, judiciously and without personal judgment, how the caregiver and/or member are contributing to household expenses. For example, the member may be living with a family member and contributing to more than his/her share of household expenses. Or the caregiver may be living in the member's home and not contributing to expenses.

See, *OFCE Technical Assistance Series*, OFCE Memo 14-01, Issued June 26, 2014: "Paying Family Caregivers and Addressing Conflict of-Interest: A Guideline for MCO Interdisciplinary Team Staff" ["Meme 14-10"], pages 2-4. (Exhibit #5).

Petitioner has made no showing either that:

- a) his girlfriend provides an amount of service that exceeds normal family care giving responsibilities for a person in a similar family relationship who does not have a disability; or
- b) that his girlfriend must forego paid employment in order to provide the service and is not receiving a pension, including Social Security retirement benefits.

Indeed, the evidence in the record of this matter is that petitioner's girlfriend does not satisfy either "a" or "b" above. Exhibits #1, #2, #3 & #4. Furthermore, petitioner and his girlfriend live together and are in a close, intimate relationship. Therefore, it was correct to terminate petitioner's paid MA FCP SHC hours.

It is true that, strictly speaking, petitioner's girlfriend is not a "family member" of petitioner's. However, as has been noted, petitioner and his girlfriend live together and are in a close, intimate relationship and so must be considered as family for purposes of paid SHC support. Further, petitioner's girlfriend is part of petitioner's *natural supports* which are defined as follows: the social network, such as family, friends, neighbors, and other community activities or services that may be available to provide assistance to the member. Memo 14-01, page 2.

### **CONCLUSIONS OF LAW**

For the reasons discussed above, it was correct to terminate petitioner's paid MA FCP SHC hours.

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<sup>1</sup> The evidence in the record of this matter is that petitioner's girlfriend is paid for 1 hour per week of Personal Care Worker Services ["PCW"] to assist petitioner as needed with such things as toileting.

**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 22nd day of September, 2014

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\sSean P. Maloney  
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 September 22, 2014.

iCare  
Office of Family Care Expansion