



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

FCP/159274

PRELIMINARY RECITALS

Pursuant to a petition filed July 24, 2014, under Wis. Admin. Code § DHS 10.55, to review a decision by the Milwaukee County Department of Family Care - MCO in regard to Medical Assistance, a telephonic hearing was held on September 03, 2014, at Milwaukee, Wisconsin. At the request of the parties, the record was held open for the submission of consecutive written closing arguments to the Division of Hearings and Appeals (DHA). The Family Care Program timely submitted its closing argument to DHA and to the petitioner. However, the petitioner failed to submit a timely response to DHA even by the date of this decision.

The issue for determination is whether the Family Care Program (FCP) correctly denied the petitioner's request for an Inogen One Oxygen Concentrator because there are more cost effective and appropriate alternatives to meet petitioner's home use and portable oxygen needs.

There appeared at that time and place 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: Lillian Alford, manager
Milwaukee County Department Family Care - MCO
901 N 9th St
Milwaukee, WI 53233

ADMINISTRATIVE LAW JUDGE:

Gary M. Wolkstein
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner is a 60 year old resident of Milwaukee County who resides independently in her own first floor apartment.
2. The petitioner is diagnosed with COPD, anxiety disorder, chronic pain, depression, degenerative disc disease, and interstitial lung disease with cystic changes.
3. The petitioner is authorized for Family Care Program (FCP) Supportive Home Care (SHC) worker services. The petitioner is authorized to use her SHC worker to accompany her to appointments in the community.
4. The Family Care Program provides for the petitioner to receive a standard oxygen concentrator for in-home use, and portable oxygen tanks for community usage to treat her COPD. The oxygen tanks are delivered to petitioner's home.
5. Petitioner is able to climb up and down a small flight of stairs.
6. The petitioner accesses the community with transportation services.
7. The petitioner has been enrolled in the Milwaukee County Family Care Program.
8. During about April, 2014, petitioner requested that the Family Care Program provide a portable Inogen One Oxygen Concentrator that makes its own oxygen (and thus does not run out of oxygen) to meet her oxygen needs, and to have a lighter weight alternative. The Inogen One purifies and concentrates oxygen from the air, and has both a battery and plug for electrical re-charging of the battery.
9. The Milwaukee County Family Care Program sent an April 28, 2014 Notice of Action to the petitioner stating that it was denying the petitioner's request for an Inogen One Oxygen Concentrator because: a) the services is not cost effective when less costly portable oxygen alternatives are available to meet her medical, non-medical and travel needs; and b) petitioner's current portable oxygen tanks weigh about 2 pounds which is lighter than the Inogen One which weighs 4.9 pounds. See Exhibit 1.
10. The rental cost of the requested Inogen One Oxygen concentrator is \$39.29 per day or \$1,178.70 per month. The rental cost of petitioner's current standard concentrator and the portable oxygen tanks is \$14.20 per day or \$425.94 per month.
11. The Family Care Program submitted a convincing written closing argument to DHA which is received into the hearing record. See above Preliminary Recitals.
12. During the September 4, 2014 hearing and in its closing argument, the Family Care Program (FCP) established the following reasons for denying the requested Inogen One Oxygen concentrator: a) FCP provides the petitioner with standard oxygen concentrator for in-home use, and portable oxygen tanks for community and travel usage to treat her COPD. The oxygen tanks are delivered to petitioner's home; b) The Family Care Program has stipulated that it will arrange and coordinate for portable oxygen tanks to be delivered to alternative locations for petitioner's use when out of town or visiting family in Texas; c) the daily and monthly rental costs of the standard oxygen concentrator and portable tanks is considerably less costly than the requested Inogen One; d) the portable tanks are considerably lighter than the Inogen One, and thus more easily carried by the petitioner; e) if the power goes out in petitioner's home, she would not be able to re-charge the battery for the Inogen One.

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. Whenever the local Family Care program decides that a person is ineligible for the program, or when the CMO denies a requested service, the client is allowed to file a local grievance. The petitioner did file a local grievance, per Wis. Admin. Code §DHS 10.53, and the original service denial was upheld in that review. The petitioner then appropriately sought a fair hearing for a further, *de novo* review of the denial decision.

I conclude that the Family Care Program (FCP) correctly denied the petitioner’s request for rental of the Inogen One oxygen concentrator because there are more cost effective and appropriate alternatives to meet petitioner’s home use and portable oxygen needs. The state code language on the scope of permissible services for the FC reads as follows:

DHS 10.41 Family Care services. ...

(2) SERVICES. Services provided under the family care benefit shall be determined through individual assessment of enrollee needs and values and detailed in an individual service plan unique to each enrollee. As appropriate to its target population and as specified in the department’s contract, each CMO shall have available at least the services and support items covered under the home and community-based waivers under 42 USC 1396n(c) and ss.46.275, 46.277 and 46.278, Stat., the long-term support services and support items under the state’s plan for medical assistance. In addition, a CMO may provide other services that substitute for or augment the specified services if these services are cost-effective and meet the needs of enrollees as identified through the individual assessment and service plan.

Wis. Admin. Code §DHS 10.41(2).

The general legal guidance that pertains to determining the type and quantity of daily care services that must be placed in an individualized service plan (ISP) is as follows:

DHS 10.44 Standards for performance by CMOs.

...

(2) CASE MANAGEMENT STANDARDS. The CMO shall provide case management services that meet all of the following standards:

...

(f) The CMO, in partnership with the enrollee, shall develop an individual service plan for each enrollee, with the full participation of the enrollee and any family members or other representatives that the enrollee wishes to participate. ... **The service plan shall meet all of the following conditions:**

1. **Reasonably and effectively addresses all of the long-term care needs** and utilizes all enrollee strengths and informal supports identified in the comprehensive assessment under par. (e)1.
2. *Reasonably and effectively addresses all of the enrollee’s long-term care outcomes* identified in the comprehensive assessment under par. (e)2 and assists the enrollee to be as self-reliant and autonomous as possible and desired by the enrollee.

3. *Is **cost-effective compared to alternative services** or supports that could meet the same needs and achieve similar outcomes.*

...
(Emphasis Added)

Wis. Admin. Code §DHS 10.44(2)(f).

During the September 3, 2014 hearing, the Family Care Program’s representatives testified convincingly that the Family Care Program was correctly denying the petitioner’s request for rental of the Inogen One oxygen concentrator for the reasons set forth in Finding of Fact #9 - #12 above.

During the hearing, the petitioner explained that she was concerned about running out of oxygen, if she is in the community or traveling. However, the Family Care Program representatives at the hearing and in writing stipulated that FCP will arrange and coordinate for portable oxygen tanks to be delivered to alternative locations for petitioner’s use when in the community, out of town generally, or visiting family in Texas. Furthermore, the hearing record is clear that the portable tanks are considerably lighter than the Inogen, and thus more easily carried by the petitioner.

The petitioner’s position is understandable. However, the petitioner was unable to refute that the Family Care Program has already made many reasonable efforts to meet her medical and non-medical needs as explained above. While it might be convenient to have the Inogen One which makes its own oxygen, the Family Care Program can meet the petitioner’s oxygen needs both in her home and away from her home. However, it will require that petitioner plan with the Family Care Program in advance of any trips so that her portable oxygen needs can be arranged and coordinated by FCP. The petitioner was unable to undermine FCP’s case. Moreover, FCP timely submitted its convincing closing argument to DHA and to the petitioner. However, the petitioner failed to submit a timely response to DHA even by the date of this decision. Accordingly, based upon the entire hearing record, I conclude that the Family Care Program (FCP) correctly denied the petitioner’s request for an Inogen One Oxygen Concentrator because there are more cost effective and appropriate alternatives to meet petitioner’s home use and portable oxygen needs.

CONCLUSIONS OF LAW

The Family Care Program correctly denied the petitioner’s request for an Inogen One Oxygen Concentrator because there are more cost effective and appropriate alternatives to meet petitioner’s home use and portable oxygen needs.

THEREFORE, it is ORDERED

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 26th day of November, 2014

\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 November 26, 2014.

Milw Cty Dept Family Care - MCO
Office of Family Care Expansion