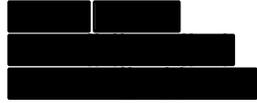




STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of



DECISION

FCP/159329

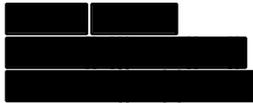
PRELIMINARY RECITALS

Pursuant to a petition filed July 23, 2014, under Wis. Admin. Code, §DHS 10.55, to review a decision by Western Wisconsin Cares to discontinue a Family Care Program (FCP) service, a hearing was held on October 8, 2014, by telephone. A hearing set for September 10, 2014 was rescheduled at the petitioner's request.

The issue for determination is whether the agency correctly discontinued a personal emergency response system (PERS) after her level of care changed.

PARTIES IN INTEREST:

Petitioner:



Respondent:

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

By: Lisa Koepp
Western Wisconsin Cares
P.O. Box 190
Neillsville, WI 54456

ADMINISTRATIVE LAW JUDGE:

Brian C. Schneider
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # ) is a resident of Clark County.
2. Petitioner received FCP services after meeting the nursing home level of care. A PERS was included in her benefit package. In 2014 a reassessment was done and petitioner's level of care had improved so that she now is at the non-nursing home level.

3. By a notice dated June 30, 2014, the agency informed petitioner that the PERS was being discontinued. The agency found that petitioner no longer was a risk for falling due to her improvement in health. She goes to exercise classes, regularly walks at the mall, no longer uses a walker to ambulate, and has not reported a fall in more than six months. She last used the PERS approximately one year before the assessment.

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 PERS.

The Western Wisconsin Cares representatives acknowledged that a fair hearing judge could still order the provision of the service even if it is not part of the benefit package. While I am not so sure that I have that authority, in this case I would uphold the action anyway. The discontinuance of the PERS was done for sound reasons. The simple fact is that petitioner has not needed or used the PERS for a substantial period of time. A large reason for the change in her level of care was due to the same health improvement that changed the need for the PERS. It appears now that petitioner has some mental comfort in knowing that the PERS is available, but she has other alternatives such as a cell phone.

I note that petitioner raised some recent changes in her health. Obviously, if her health deteriorates she can always request the agency to look at her situation again.

CONCLUSIONS OF LAW

The agency correctly discontinued provision of a PERS service for petitioner because the service is not part of her benefit package and because she no longer requires the services due to improvements in her health.

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 13th day of October, 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 October 13, 2014.

Western Wisconsin Cares-FCP
Office of Family Care Expansion