



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

In the Matter of:

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

DECISION

FCP/159769

PRELIMINARY RECITALS

Pursuant to a petition filed August 7, 2014, under Wis. Admin. Code § DHS 10.55, to review a decision by the Care Wisconsin First, Inc. ["Care"] in regard to Medical Assistance ["MA"], a Hearing via telephone was held on September 18, 2014.

The issue for determination is whether Care must reimburse petitioner's mother for monthly car trips she makes between her home and petitioner's [REDACTED] for the purpose of returning petitioner to his [REDACTED] after petitioner visits with her.

There appeared at that time via telephone following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED] (not present at September 18, 2104 Hearing)
[REDACTED]
[REDACTED]
[REDACTED]

Represented by:

[REDACTED]
[REDACTED]
[REDACTED]

Respondent:

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

By: Liz Wesoleck, Member Rights Specialist
Care Wisconsin First, Inc
2802 International Lane
Madison, WI 53704-3124

ADMINISTRATIVE LAW JUDGE:

Sean P. Maloney
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (45 years old) is a resident of Waushara County Wisconsin.
2. Petitioner lives in an [REDACTED] in Oconto Falls; Wisconsin; his mother lives in her home near Pine River, Wisconsin.
3. It is approximately [REDACTED] miles from petitioner's [REDACTED] to his mother's home near Pine River.
4. Petitioner visits his mother in her home in Pine River on a monthly basis; petitioner's [REDACTED] provides transportation for petitioner from the [REDACTED] to his mother's home; petitioner's mother drives petitioner back to the [REDACTED] after the visit.
5. On July 25, 2014 petitioner requested that Care reimburse his mother for driving him back to the [REDACTED] after his monthly visits.
6. By a *Notice of Action* dated July 29, 2014 Care denied petitioner's request that Care reimburse his mother for driving him back to the [REDACTED] after his monthly visits.

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 his request that Care reimburse his mother for driving him back to the [REDACTED] was denied.

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.

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).

A mother providing transportation for her own son back to his [REDACTED] after he visits with her does not exceed typical caregiving/support responsibilities. In fact, as noted above, non-medical transportation is assumed to be the responsibility of family members, whether they reside with, or separate from the member. See also, *Care Wisconsin*, "Considerations for paying Family Caregiver and/or In-home Caregiver under SDS" (page 38 of Appeal Hearing Packet Submitted by Care). Therefore, Care is not required to reimburse petitioner's mother for monthly car trips she makes between her home and petitioner's [REDACTED] for the purpose of returning petitioner to his [REDACTED] after petitioner visits with her.

CONCLUSIONS OF LAW

For the reasons discussed above, Care is not required to reimburse petitioner's mother for monthly car trips she makes between her home and petitioner's [REDACTED] for the purpose of returning petitioner to his [REDACTED] after petitioner visits with her.

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 6th day of October, 2014

\sSean P. Maloney
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

Brian Hayes, Administrator
Suite 201
5005 University Avenue
Madison, WI 53705-5400

Telephone: (608) 266-3096
FAX: (608) 264-9885
email: DHAmail@wisconsin.gov
Internet: <http://dha.state.wi.us>

The preceding decision was sent to the following parties on October 6, 2014.

Care Wisconsin First, Inc
Office of Family Care Expansion