



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

Redact
Redact
Redact

DECISION

FCP/160764

PRELIMINARY RECITALS

Pursuant to a petition filed September 22, 2014, under Wis. Admin. Code § DHS 10.55, to review a decision by the Community Care Inc. in regard to Medical Assistance, a telephone hearing was held on November 05, 2014.

The issue for determination is whether the respondent correctly denied petitioner's request for repair of her motorized scooter.

There appeared at that time the following persons:

PARTIES IN INTEREST:

Petitioner:

Redact
Redact
Redact

Petitioner's Representative:

Redact
Redact

Respondent:

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

By: Redact

Community Care Inc.
205 Bishops Way
Brookfield, WI 53005

ADMINISTRATIVE LAW JUDGE:

Peter McCombs
Division of Hearings and Appeals

FINDINGS OF FACT

- 1. Petitioner (CARES # Redact) is a 52 year old resident of Outagamie County who resides independently in her own apartment.

2. The petitioner suffers from bilateral foot and ankle degenerative joint disease, bilateral carpal tunnel syndrome, right elbow epicondylitis, and fibromyalgia. Ex. 2, p. 3.
3. Petitioner has used a motorized scooter in the past, and presently uses a wheeled walker for mobility on “bad” days.
4. Petitioner’s physician has provided petitioner with a prescription for a power operated device for in home use. Exhibit 2, p.1
5. The petitioner requested that the Family Care program repair her motorized scooter on or about April 25, 2014.
6. The respondent sent a June 12, 2014, Notice of Action to the petitioner stating that it was denying the petitioner’s request for the scooter repair. The basis for the denial was that the use of a scooter was not the most effective or cost-effective option in achieving petitioner’s outcomes. See, Exhibit 3.

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 apparently 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) incorrectly denied the petitioner’s request for a power operated Scooter. 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, Stats., the long-term support community options program under s. 46.27, Stats., and specified 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.

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 CMO shall provide support, as needed, to enable the enrollee, family members or other representatives to make informed service plan decisions, and for the enrollee to participate as a full partner in the entire assessment and individual service plan development process. 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.
4. Is agreed to by the enrollee, except as provided in subd. 5.
5. If the enrollee and the CMO do not agree on a service plan, provide a method for the enrollee to file a grievance under s. DHS 10.53, request department review under s. DHS 10.54, or request a fair hearing under s. DHS 10.55. Pending the outcome of the grievance, review or fair hearing, the CMO shall offer its service plan for the enrollee, continue negotiating with the enrollee and document that the service plan meets all of the following conditions:
 - a. Meets the conditions specified under subds. 1. to 3.
 - b. *Would not have a significant, long-term negative impact on the enrollee's long-term care outcomes identified under par. (e) 2.*
 - c. Balances the needs and outcomes identified by the comprehensive assessment with reasonable cost, immediate availability of services and ability of the CMO to develop alternative services and living arrangements.
 - d. Was developed after active negotiation between the CMO and the enrollee, during which the CMO offered to find or develop alternatives that would be more acceptable to both parties.

(emphasis added) Wis. Admin. Code §DHS 10.44(2)(f).

During the November 5, 2014, hearing, the Department representative testified that the Family Care Program was denying the petitioner's request for scooter repairs because the:

...use of a scooter would limit Ms. **Redact**'s independence in the long run by ultimately causing decreased strength and functioning in lower extremities due to lack of use. Lack of use could lead to increased care needs and cost in the future. Ms. **Redact** is able to sufficiently and safely use custom fit car and/or walker in order to complete mobility Related Activities of Daily Living... Ms. **Redact**'s apartment does not provide adequate access or maneuvering space for the operation of a scooter.

Exhibit 3.

Petitioner and her representatives countered that petitioner's use of a scooter was determined medically necessary in the past, and her conditions have not improved since; furthermore, her medical provider has submitted a prescription for the scooter, which was dated May, 2014. Petitioner's providers weighed in as well, stating:

...[Petitioner] does use a walker or cane however frequent use of these devices aggravates her arm and hand symptoms. She avoids going places because of her limited mobility and will only shop at stores that have a scooter available for her to use.

Medical Notes, Redact, Exhibit 2, p.1.

...Use of a walker during these times increases symptoms of her upper extremity diagnoses. ... At this time, I do not see a clear reason to avoid repairs to this scooter. It is quite likely if this scooter were functioning at the time of her recent ankle surgery, that the shoulder manipulation and physical therapy follow-up would not have been necessary.

Correspondence, Redact, Exhibit 2, p.3.

The petitioner and her representatives provided testimony and evidence to establish that the requested scooter would increase the petitioner's self-reliance and independence. Petitioner's representative argued convincingly that the Family Care Program incorrectly denied the scooter repair, as such motorized scooter would increase petitioner's self-reliance and independence which are both clearly stated goals of the Family Care Program as confirmed above in Wis. Admin. Code §DHS 10.44(2)(f).

The respondent was unable to refute that testimony or evidence. In testimony and written submission, the respondent's representative referenced its finding that the petitioner's apartment was too cluttered to support use of a motorized scooter. She also raised concerns that petitioner only wanted to repair her scooter because her vehicle was no longer functional. Aside from the representative's testimony, there was nothing provided to corroborate these assertions. Similarly, the respondent's assertions that use of the scooter would be detrimental to petitioner's medical situation are at odds with the medical opinions of petitioner's providers, and lack any corroborating medical basis.

The petitioner's representative established that (1) petitioner's provider has prescribed a power operated mobility device, (2) petitioner's use of a walker/cane causes shoulder pain to flare, (3) petitioner's providers have opined that her use of a scooter will allow her to remain independent, (4) petitioner's functional screen identifies petitioner's need for assistance with ambulation around her home, and (5) repair of the scooter is in accord with petitioner's plan of care. I find that the scooter clearly provides the means by which the petitioner can retain her independence and self-reliance. Accordingly, based upon the entire hearing record, I conclude that the Family Care Program (FCP) incorrectly denied the petitioner's request for repair of petitioner's power operated scooter.

CONCLUSIONS OF LAW

The Family Care Program incorrectly denied the petitioner's request for repair of petitioner's power operated scooter.

THEREFORE, it is

ORDERED

The matter is remanded to the respondent with instructions to: a) confer with the petitioner's representative regarding the most appropriate and cost-effective motorized scooter repair, and b) take the necessary action to approve coverage of such appropriate and cost-effective motorized scooter repair, 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 5th day of
December, 2014.

\sPeter McCombs
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 5, 2014.

Community Care Inc.
Office of Family Care Expansion

Redact