



FH
[REDACTED]

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

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

FCP/160931

PRELIMINARY RECITALS

Pursuant to a petition filed September 27, 2014, under Wis. Admin. Code § DHS 10.55, to review a decision by the Milw Cty Dept Family Care - MCO in regard to Medical Assistance, a hearing was held on October 28, 2014, at Milwaukee, Wisconsin.

The issue for determination is whether the FCP agency correctly denied petitioner's request for repairs to his electric wheelchair.

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
Milw Cty Dept Family Care - MCO
901 N 9th St
Milwaukee, WI 53233

ADMINISTRATIVE LAW JUDGE:

John P. Tedesco
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Milwaukee County. He has diagnoses of arthritis, history of stroke (2003), and left side weakness.
2. Petitioner was provided an electric wheelchair prior to his enrollment in the Family Care Program (FCP).

3. Petitioner claims wheelchair needs repairs and that repairs were approved by health program prior to enrolling in FCP.
4. Petitioner claims recent problem with wheelchair battery failure.
5. Petitioner can ambulate in his home.
6. Petitioner can ambulate some short distances outside his home.
7. Petitioner uses the electric wheelchair to get around on city streets and his neighborhood.
8. Petitioner has allowed other persons to use his wheelchair in order to transport items such as groceries too burdensome to carry.
9. A January 2014 PT assessment by [REDACTED] recommended two visits per week for six weeks of skilled physical therapy in conjunction with a home exercise program and noted that "overall rehabilitation potential is good." The record also notes that patient compliance is a barrier to rehabilitation.
10. The FCP denied the request for wheelchair repairs by notice dated May 28, 2014.
11. Petitioner appealed.

DISCUSSION

The Family Care program (FC), 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 Wis. Stat. §46.286, and is described comprehensively in the Wisconsin Administrative Code, Chapter DHS 10.

In the FCP, the CMO (a/k/a MCO) must develop an Individual Service Plan (ISP) in partnership with the client. Wis. Adm. Code, §DHS 10.44(2)(f). The ISP must reasonably and effectively address all of the client's long-term needs and outcomes to assist the client to be as self-reliant and autonomous as possible, but nevertheless must be cost effective. While the client has input, the CMO does not have to provide all services the client desires if there are less expensive alternatives to achieve the same results. Wis. Adm. Code, §DHS 10.44(1)(f).

Whenever the local FCP 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 so here, 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.

The issue in this case is whether the FCP agency acted appropriately in denying Petitioner's request for repairs to his electric wheelchair. The chair was provided to petitioner before he became a member of Family Care. Family Care presented the argument that petitioner does not need the wheelchair at all. FC argued that petitioner can ambulate in his home without the wheelchair and can ambulate outside of his home at some level without it. There is some dispute about whether petitioner can ambulate two blocks with the use of his cane, or whether he can go farther. FCP also provides transportation services for petitioner outside the home. The issue for petitioner is really the independence of getting around his neighborhood. The FCP argues that a physical therapy assessment from February (see ex. #2) recommended at least six weeks of PT to develop improved balance and strength. At least one previous period of PT was not completed due to withdrawal of petitioner because he was too busy.

In order to support the request for repairs of the wheelchair, there must first be established a medical need for the wheelchair in the first place. I am not convinced that such a need exists. No medical

professional testified or provided documentation supporting such a need. It is not clear that there has been a thorough assessment of such need. But, certainly, petitioner should cooperate with a recommended course of PT before such a need can be shown. On this record, I have no reason to believe that extended physical therapy will not make petitioner more independent than his current wheelchair could.

CONCLUSIONS OF LAW

The FCP did not err in its denial of the request for repairs to petitioner's existing wheelchair.

THEREFORE, it is ORDERED

That this appeal is 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 5th day of November, 2014

\sJohn P. Tedesco
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 5, 2014.

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