



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[Redacted]
Redact

DECISION

FCP/161237

PRELIMINARY RECITALS

Pursuant to a petition filed October 14, 2014, under Wis. Admin. Code § DHS 10.55, to review a decision by the Lakeland Care District in regard to Family Care (FC) benefits (a Medical Assistance-related program), a hearing was held on December 4, 2014, by telephone.

The issue for determination is whether the petitioner's FC Care Management Organization (CMO) has correctly declined to add the cost of additional (above 21.5 weekly) personal care worker hours to her individual service plan.

There appeared at that time the following persons:

PARTIES IN INTEREST:

Petitioner:

[Redacted]
Redact

Respondent:

Department of Health Services
1 West Wilson Street, Room 651
Madison, Wisconsin 53703
By: Barb Sotelo, RN
Lakeland Care District

ADMINISTRATIVE LAW JUDGE:

Nancy J. Gagnon
Division of Hearings and Appeals

FINDINGS OF FACT

- 1. Petitioner (CARES # [Redacted]) is a resident of Fond du Lac County.
2. The petitioner, age R..., has diagnoses of rheumatoid arthritis with deformity of both wrists, hands, and fingers in both hands, plus insomnia, asthma, hypertension, history of right shoulder

replacement, and gout/hyperuricemia (an abnormally high level of uric acid in the blood, often related to renal insufficiency). She ambulates within her residence with a four-wheeled walker.

3. The petitioner is enrolled in the FC program and has had an individualized service plan (Plan) since September 2010. Prior to May 2014, her Plan included SHC (housekeeping) services of 15 hours weekly, and 29 hours weekly of personal care worker (PCW) services. The CMO reduced that service level to 9 SHC hours and 20 PCW hours weekly effective May 1, 2014. The CMO’s rationale was that the petitioner’s condition had improved due to cataract surgery and elimination of narcotic prescriptions. The petitioner challenged this reduction in a fair hearing. The resulting Decision #157276 by Judge Tedesco of this office was to uphold the CMO’s reduction. See, DHA Decision no. 157276 (Wis. Div. of Hearings & Appeals July 16, 2014)(DHS).
4. On August 11, 2014, the petitioner asked the CMO to increase her PCW hours to 25.25 weekly. The CMO reviewed her case, and issued written notice of denial to the petitioner on September 15, 2014. The CMO did increase the petitioner’s *PCW hours from 20 to 21.5 weekly*.
5. The CMO increased the PCW time because the petitioner made a new request (1) for help with nail care and (2) additional help with increased dressing/undressing related to increased incontinence.
6. The petitioner currently requires 21.5 hours weekly of PCW care.

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. A dis-satisfied FC client may file a grievance with his CMO under Wis. Admin. Code §DHS 10.53, request a state-level review by the Wisconsin Department of Health Services under § DHS 10.54, and/or request a fair hearing under § DHS 10.55.

The state code language on the scope of permissible services through FC includes personal care worker and supportive home care worker hours. Wis. Admin. Code § DHS 10.41(2), Note. Having established that PC hours can be a covered service, the question that remains is, how many PC hours are essential to meeting the petitioner’s needs?

The petitioner’s Plan includes supportive home care worker time to perform grocery shopping, on-site laundry, dishes, apartment housekeeping, twice daily meal preparation (one meal is through meals on wheels), and miscellaneous medical errands. The existing level (21.5) of PC hours was authorized to assist the petitioner with bathing, dressing/undressing, eye drops, nail care, application of skin lotion, positioning, and nebulizer assistance. The petitioner disagrees with the CMO’s existing service plan because it provides, in her view, insufficient PC hours. She asserts that she needs more hours of service because she needs three hours to get dressed, and her worker does not have enough time to finish her twice weekly laundry.

The skeletal 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:

HFS 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).

Although the petitioner argued for more hours, her generic testimony did not adequately support her argument. She has the burden of proving, by a preponderance of the credible evidence, that her hours need to be increased. Additionally, the petitioner's condition and care needs seem minimally changed from the time of Judge Tedesco's decision. The judicial efficiency doctrine of "claim preclusion" also points me toward reaching the same results as Judge Tedesco--upholding an award of PCW hours that is close to 20 hours weekly.

CONCLUSIONS OF LAW

1. The CMO correctly determined that the petitioner's care needs can be met with 21.5 PCW and 9.0 SHC hours weekly, at this time.

THEREFORE, it is

ORDERED

That the petition 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 December, 2014

\sNancy J. Gagnon
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.

Lakeland Care District
Office of Family Care Expansion