



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of:

Redact
Redact
Redact

DECISION

FCP/158706

PRELIMINARY RECITALS

Pursuant to a petition filed June 27, 2014, under Wis. Admin. Code § DHS 10.55, to review a decision by the Community Care Inc. ["CCP"] in regard to Medical Assistance ["MA"], a Hearing was held via telephone on December 23, 2014.

The issue for determination is whether petitioner's outside day services may be reduced from 4 days per week to 3 days per week.

There appeared at that time via telephone the following persons:

PARTIES IN INTEREST:

Petitioner:

Redact (not present at December 23, 2014 Hearing)
Redact
Redact

Represented by:

Redact, petitioner's brother & guardian
Redact

Respondent:

Department of Health Services
1 West Wilson Street, Room 651
Madison, Wisconsin 53703
BY: Redact, Care Manager
Community Care Inc.
205 Bishops Way
Brookfield, WI 53005

ADMINISTRATIVE LAW JUDGE:

Sean P. Maloney
Division of Hearings and Appeals

**FINDINGS OF FACT**

1. Petitioner (CARES # Redact; 54 years old) is a resident of Outagamie County, Wisconsin.
2. Petitioner lives in a Community Based Residential Facility ["CBRF"] which is staffed 24 hours per day, has an Activity Coordinator, and provides in-home activities and socialization (clubs, presentations, Range Of Motion ["ROM"] exercises, playing cards, dice, tending plants, movies, speaking events, picnics, holiday parties, etc.)
3. The CBRF also provides 3 monthly community activities; in addition, the CBRF provides petitioner with off-site swimming 3 times per month.
4. At an additional cost petitioner is currently attending outside day services 4 days per week.
5. By a *Notice of Action* dated May 30, 2014 CCI reduced petitioner's outside day services from 4 days per week to 3 days per week.

**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 CCI reduced outside day services from 4 days per week to 3 days per week.

Services provided under FCP must be determined through individual assessment of enrollee needs and detailed in an individual service plan unique to each enrollee; services must be cost-effective. Wis. Admin. Code § DHS 10.41(2) (December 2013). The service plan must reasonably and effectively address all of long-term care needs and utilize all enrollee strengths and informal supports. Wis. Admin. Code § DHS 10.44(2)(f)1. (December 2013). A service plan for an FCP participant must be cost-effective compared to alternative services or supports that could meet the same needs and achieve similar outcomes. Wis. Admin. Code § DHS 10.44(2)(f)3. (December 2013); See also, Wis. Admin. Code § DHS 10.44(2)(f)5.c. (December 2013).

In this case it is clearly more cost-effective for petitioner to use the services available at his CBRF for an additional day than to pay for outside day services. Petitioner's guardian argues that the CBRF is not actually providing day services. However, the evidence in the record of this matter is that the CBRF is now providing days services (although prior to October 2013 they might not have been).

Petitioner's guardian argues that petitioner has been attending the outside day services for well over 20 years, that it gives him a sense of having a job, and that his anxiety will get worse if the outside day services are terminated. However, even after the reduction petitioner will still have outside day services 3 days per week.

**CONCLUSIONS OF LAW**

For the reasons discussed above, petitioner's outside day services may be reduced from 4 days per week to 3 days per week.

**NOW, 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 February, 2015

---

\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](mailto:DHAmail@wisconsin.gov)  
Internet: <http://dha.state.wi.us>

The preceding decision was sent to the following parties on February 13, 2015.

Community Care Inc.  
Office of Family Care Expansion