

FH  
[REDACTED]

STATE OF WISCONSIN  
Division of Hearings and Appeals

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In the Matter of

[REDACTED]  
[REDACTED]  
[REDACTED]

DECISION

FCP/160877

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PRELIMINARY RECITALS

Pursuant to a petition filed November 05, 2014, under Wis. Admin. Code § DHS 10.55, to review a decision by Care Wisconsin Inc. in regard to Medical Assistance, a hearing was held on May 07, 2015, at Madison, Wisconsin. At the request of petitioner's father and representative, [REDACTED] [REDACTED], hearings set for November 18, 2014, December 16, 2014, January 20, 2015, February 11, 2015, and March 18, 2015 were rescheduled. The March 18, 2015 hearing was begun but needed to be rescheduled because Care Wisconsin legitimately requested a reschedule due to petitioner not sending to the agency a copy of 50 pages of documents to review prior to that hearing.

From the May 7, 2015 evidentiary hearing, the following were the general issues in the petitioner's two DHA appeals: 1) **FCP/161729** - Whether Care WI correctly determined in its 9-5-2014 notice to petitioner that petitioner no longer met the nursing home level of care, and discontinued petitioner's Partnership Program eligibility and benefits effective 9-26-2014; and 2)) **FCP/160877** - Whether Care WI correctly reduced the petitioner's Supportive Home Care (SHC) hours from 16.25 to 3.25 hours per week effective October 1, 2014 (in its 09-16-2014 notice).

At the conclusion of the May 7, 2015 hearing for the above two cases, this ALJ agreed to hold the record open for the following to take place: a) On May 14, 2015, [REDACTED] confirmed in his e mail that "Po ([REDACTED] [REDACTED]) will not disenroll and agrees to be re-screened;" b) [REDACTED] sent a May 15, 2015 letter to DHA stating that petitioner has decided not to disenroll from Care Wisconsin, and has chosen to have his care team complete a new functional screen. Care Wisconsin will have the results of the new screen to you within 1 month;" c) Based upon the completion of that new screen by Care Wisconsin of petitioner, Care Wisconsin sent to me (with a copy to [REDACTED]) by June 16, 2015 a complete copy of the re-screening, and a detailed statement regarding the results of that re-screening. By June 23, 2015, [REDACTED] had the opportunity to send to me (with a copy to [REDACTED]) his written response to Care WI's re-screening and detailed statement or summary.

Care Wisconsin submitted on June 16, 2015 a copy of the completed June 15, 2015 functional rescreening of petitioner and its written closing argument to DHA and to petitioner's representative. [REDACTED] failed to submit any responsive closing argument by June 23, 2015 or even by the date of this decision. Based upon careful review of the new June 15, 2015 functional screen and that the decision in this case has been delayed for almost one year (five petitioner reschedules and then a June 5, 2015 re-screening), no further written arguments are needed from the parties. The record is complete and sufficient to provide reliable information and evidence on which to make a decision.

The issue for determination in the instant appeal (FCP/160877) is whether the petitioner's appeal of the October 1, 2014 reduction of his Partnership Program (PP) Supportive Home Care (SHC) hours is moot because Care Wisconsin correctly discontinued the petitioner's Family Care/Partnership Program eligibility prior to the October 1, 2014 SHC reduction, as concluded in petitioner's other decision in DHA Case No. FCP/161729.

There appeared at that time and place the following persons:

**PARTIES IN INTEREST:**

Petitioner:

[REDACTED]

Respondent:

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

By: Liz Wesolek, member rights specialist  
Care Wisconsin First, Inc  
2802 International Lane  
Madison, WI 53704-3124

**ADMINISTRATIVE LAW JUDGE:**

Gary M. Wolkstein  
Division of Hearings and Appeals

**FINDINGS OF FACT**

1. Petitioner (a/k/a "Po") (CARES # [REDACTED]) is a 26 year old resident of Dane County who resides with his father.
2. The petitioner has been a recipient of benefits from the Family Care (FC)/Partnership Program (PP) since about December 27, 2013.
3. To remain eligible, the recipient must periodically undergo long term care functional screenings (LTC) to determine whether he continues to have functional care needs at the requisite level of care. The petitioner underwent such functional screenings on August 25, 2014.
4. As a result of that functional screening, the FC/PP program determined on September 5, 2014 that the petitioner was no longer functionally eligible for continuation in the Family Care (FC)/Partnership Programs.
5. The Family Care/Partnership Program sent a September 16, 2014 notice to the petitioner stating that his Supportive Home Care (SHC) services were reduced from 16.25 hours per week to 3.25 hours per week **effective October 1, 2014**.
6. On September 5, 2014, the agency issued notice to the petitioner advising him that he was no longer eligible for "nursing home level" FC/Partnership benefits **effective September 26, 2014**, due to his failure to satisfy the nursing home related functional eligibility requirements of the program.

7. The petitioner, age 26, has diagnoses of Psychotic disorder NOS, depersonalization disorder, anxiety, and aggressive behavior.
8. In petitioner's other FC/PP appeal in FCP/161729, DHA issued a July 31, 2015 decision in which the ALJ concluded that Care Wisconsin correctly determined that petitioner no longer met the level of care functional eligibility requirements for the Family Care (FC)/Partnership Program (PP), and correctly discontinued petitioner's eligibility and benefits effective September 26, 2014.

### 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. It is authorized in the Wisconsin Statutes, §46.286, and is described comprehensively in the Wisconsin Administrative Code, Chapter DHS 10.

The MCO must develop an Individual Service Plan (ISP) in partnership with the client. Wis. Admin. 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 MCO does not have to provide all services the client desires if there are less expensive alternatives to achieve the same results. Wis. Admin. Code, §DHS 10.44(1)(f); DHS booklet, Being a Full Partner in Family Care, page 9. ISPs must be reviewed periodically. Admin. Code, §DHS 10.44(j)(5).

Wis. Stat., §46.287(2)(a)1 provides that a person may request a fair hearing to contest the reduction of services under the FCP program, among other things, directly to the Division of Hearings and Appeals. In addition, the participant can file a grievance with the MCO over any decision, omission, or action of the MCO. The grievance committee shall review and attempt to resolve the dispute. If the dispute is not resolved to the participant's satisfaction, s/he may then request a hearing with the Division of Hearings and Appeals.

As has been noted many times in the past, there are no standards written in the law or policy on how to make such a determination in an FCP case. It comes down to the general criteria for determining authorization for services – medical appropriateness and necessity, cost effectiveness, statutory and rule limitations, and effectiveness of the service. See Wis. Admin. Code, §DHS 107.02(3)(e).

In the instant case, the issue was whether the Family Care/Partnership Program through its agent, Care Wisconsin, correctly reduced the petitioner's Supportive Home Care (SHC) hours from 16.25 to 3.25 hours per week effective October 1, 2014. During the May 7, 2015 hearing, testimony and evidence was presented and received into the hearing record. However, prior to the decision in the instant case (FCP/160877), this ALJ issued a July 31, 2015 decision in FCP/161729 which concluded that Care Wisconsin correctly determined that petitioner no longer met the level of care functional eligibility requirements for the Family Care (FC)/Partnership Program (PP), and correctly discontinued petitioner's eligibility and benefits effective September 26, 2014. As a result, the petitioner was not eligible for any benefits through the Family Care (FC)/Partnership Program (PP) as of September 26, 2014. Thus, the issue in the instant case is moot because if petitioner was not eligible for any benefits then the reduction of his SHC hours effective October 1, 2014 was also moot as a matter of fact and law. Accordingly, based upon the above, I conclude that petitioner's appeal of the October 1, 2014 reduction of his Partnership Program (PP) Supportive Home Care (SHC) hours is moot because Care Wisconsin correctly discontinued the petitioner's Family Care/Partnership Program eligibility prior to the October 1, 2014 SHC reduction, as concluded in petitioner's other decision in DHA Case No. FCP/161729.

**CONCLUSIONS OF LAW**

1. The petitioner's appeal of the October 1, 2014 reduction of his Family Care/Partnership Program Supportive Home Care (SHC) hours (FCP/160877) is moot because Care Wisconsin correctly discontinued the petitioner's Partnership Program eligibility prior to October 1, 2014, as concluded in petitioner's other decision in DHA Case No. FCP/161729.
2. The petitioner's appeal is dismissed as moot in Case No. FCP/160877 for the reasons stated in Conclusion of Law #1 above.

**THEREFORE, it is**

**ORDERED**

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 3rd day of August, 2015

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\sGary M. Wolkstein  
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 August 3, 2015.

Care Wisconsin First, Inc  
Office of Family Care Expansion