



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION ON MOTION TO DISMISS

FCP/161166

PRELIMINARY RECITALS

Pursuant to a petition filed October 08, 2014, under Wis. Admin. Code § DHS 10.55, to review a decision by the Community Care Inc. in regard to Medical Assistance, the Respondent has submitted a Motion to Dismiss for reasons described herein. No hearing has been conducted; this decision is based on documents and written submissions.

The issue for determination is whether Petitioner has submitted a hearing request for an issue that the Division of Hearings and Appeals has authority to decide.

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: Atty. W Patrick Sullivan
Siesennop & Sullivan
200 N. Jefferson St., Ste. 200
Milwaukee WI 53202-5900 on behalf of
Community Care Inc.
205 Bishops Way
Brookfield, WI 53005

ADMINISTRATIVE LAW JUDGE:

David D. Fleming
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Milwaukee County.

2. A Request for Fair Hearing form was submitted to the Division of Hearings and Appeals on October 8, 2014 requesting a hearing for the above Petitioner, [REDACTED] (believed by the undersigned to be the owner of [REDACTED]) and bears the signature of [REDACTED]. The tax ID number for [REDACTED] is used as opposed to the above Petitioner's Social Security number. Attached to the Request for Fair Hearing form is a letter signed by Petitioner.
3. The appeal noted at Finding # 2 requests that Community Care, Inc. pay [REDACTED] and [REDACTED] for care provided to Petitioner. Community Care, Inc. is a case management organization. (CMO).
4. Prior to the hearing scheduled for this matter, Community Care filed a Motion to Dismiss contending that Petitioner did not file this appeal and that [REDACTED] and [REDACTED] have no standing to appeal and because the request is untimely. It further notes that there is no supporting documentation for the claim that [REDACTED] is Petitioner's POA and that Petitioner has a guardian of the person in Illinois who was unaware of this appeal.
5. During time relevant here, Petitioner was in a nursing home or similar facility through May 21, 2014 and then returned home.
6. On November 28, 2014, the undersigned sent a copy of Respondent's Motion to Petitioner and provided an opportunity to provide a written response. The Division of Hearings and Appeals is authorized to seek clarification as to what an appeal is about and pursuant to that authority the letter also noted that this appeal seemed to be a dispute between a provider and the CMO and asked for clarification. A written answer was made and included a page from what appears to be discharge paperwork from the nursing home which indicated that [REDACTED] would care for Petitioner at home – this had been submitted with the original appeal.

DISCUSSION

In its argument that this appeal is for [REDACTED] and [REDACTED], Respondent relies on a provision in the Wis. Admin Code that states that: "A request for a hearing may be made by the applicant, recipient or former recipient, by an immediate family member, or someone with legal authority to act on their behalf. ...". *Wis. Admin. Code, §HA 3.05(2)*. Respondent's untimeliness argument is based *Wis. Admin. Code, §HA 3.05(3)* which requires that this type of an appeal be filed within 45 days.

I am dismissing the appeal though not precisely on grounds argued by Respondent. The hearing request was accompanied by a letter signed by Petitioner and so cannot be determined to have not been requested by Petitioner. Further, to find that an appeal is untimely requires that there be a showing of a timely and adequate notice; here it is not clear that there even was an agency action that generated as negative notice.

Nonetheless, as noted in the November 28, 2014 letter to Petitioner seeking a response to the Respondent's motion, Division of Hearings and Appeals authority is limited. It is not a court of general jurisdiction. It can only makes decisions as to denials of applications, discontinuances of benefits and reductions of benefits to individual benefit recipients. *With respect to Medicaid matters, see Wis. Stats, §49.45(5)*. This is spelled out with some specificity in the Family Care program.

The Family Care Long Term Care program (FCP) is a long-term care benefit for the elderly, people with physical disabilities and those with developmental disabilities. *Medicaid Eligibility Handbook (MEH), §29.1*. It is authorized in the Wisconsin Statutes, §46.286, and is described comprehensively in the Wisconsin Administrative Code at Chapter DHS 10. Also see *Medicaid Eligibility Handbook (MEH), §29.1*. The FCP has a standard contract (Contract) that further delineates the operation of the program by the agencies that implement the FCP. See <http://www.dhs.wisconsin.gov/mltc/2013/2013Contract.htm>.

The Division of Hearings and Appeals can only exercise authority that has been delegated to it. With respect to Family Care the Wisconsin Administrative Code delegates hearing authority where the appeal is directly to the Division of Hearings and Appeals as follows:

(1) RIGHT TO FAIR HEARING.

Except as limited in subs. (1m), (2) and (3) and s. DHS 10.62 (4), a client has a right to a fair hearing under s. 46.287, Stats. The contested matter may be a decision or action by the department, a resource center, county agency or CMO, or the failure of the department, a resource center, county agency or CMO to act on the contested matter within timeframes specified in this chapter or in the contract with the department. The following matters may be contested through a fair hearing:

- (a) Denial of eligibility under s. DHS 10.31 (6) or 10.32 (4).
- (b) Determination of cost sharing requirements under s. DHS 10.34.
- (c) Determination of entitlement under s. DHS 10.36.
- (d) Failure of a CMO to provide timely services and support items that are included in the plan of care.
- (e) Reduction of services or support items in the enrollee's individualized service plan, except in accordance with a change agreed to by the enrollee.
- (f) An individualized service plan that is unacceptable to the enrollee because any of the following apply:
 - 1. The plan is contrary to an enrollee's wishes insofar as it requires the enrollee to live in a place that is unacceptable to the enrollee.
 - 2. The plan does not provide sufficient care, treatment or support to meet the enrollee's needs and identified family care outcomes.
 - 3. The plan requires the enrollee to accept care, treatment or support items that are unnecessarily restrictive or unwanted by the enrollee.
- (g) Termination of the family care benefit or involuntary disenrollment from a CMO.
- (h) Determinations of protection of income and resources of a couple for maintenance of a community spouse under s. DHS 10.35 to the extent a hearing would be available under s. 49.455 (8) (a), Stats.
- (i) Recovery of incorrectly paid family care benefit payments as provided under s. DHS 108.03 (3).
- (j) Hardship waivers, as provided in s. DHS 108.02 (12) (e), and placement of liens as provided in ch. HA 3.
- (k) Determination of temporary ineligibility for the family care benefit resulting from divestment of assets under s. DHS 10.32 (1) (i).

...

- (2) LIMITED RIGHT TO FAIR HEARING.** An enrollee may contest, through fair hearing, any decision, omission or action of a CMO other than those specified under sub. (1) (d) to (f) only if a CMO grievance decision under s. DHS 10.53 (2) (a) or a CMO grievance decision under s. DHS 10.53 (2) (a) or a department review under s. DHS 10.54 has failed to resolve the matter to the satisfaction of the enrollee within the time period approved by the department in s. DHS 10.53 (2) (b) or specified under s. DHS 10.54 (2).

...

Wis. Admin. Code, § DHS 10.55(1) and (2); also see Stats., §46.287.

The hearing right lies with the client; the Division of Hearings and Appeals does not have authority to resolve disputes between providers and the CMOs. Further, there is nothing here to indicate that this request has anything to do with any of the matters noted in §DHS 10.55(1)a-k. The broader appeal right under *sub (2)* is still a client right, not a provider right. And even then, there is nothing here to indicate that there has been the required CMO grievance or Department review.

Here Petitioner's hearing request and response to the Motion to Dismiss seeks payment from Community Care to [REDACTED]. Petitioner's response to the Motion to Dismiss includes a page from a Letter of

Agreement Between Community Care, Inc. and [REDACTED] that calls for [REDACTED] to bill Community Care for supportive services provided to Petitioner during the period from May 21, 2014 through July 8, 2014 at a rate of \$180.00 per day. See Petitioner's response to Motion to Dismiss; attachment G. Whatever happened between the CMO and the contractor is not an issue over which the Division of Hearings and Appeals has authority.

Finally, it is worth noting some general Family Care Program structure. In the FCP, an agency Case Management Organization (CMO) develops an Individual Service Plan (ISP) in partnership with the client. *Wis. Adm. Code, §DHS 10.44(2)(f)*. The ISP is to 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(2)(f); DHS booklet, Being a Full Partner in Family Care, page 9*. ISPs must be reviewed periodically. *Wis. Adm. Code, §DHS 10.44(j)(5)*. The FCP participant's status is reassessed annually or more often when an agency has information indicating that a change has occurred in an enrollee's circumstances that would affect his or her eligibility or cost sharing requirements. *Wis. Adm. Code, §DHS 10.32(4)*.

Here, Petitioner was apparently residing in a skilled nursing facility until May 21, 2014 and when he went home, [REDACTED] provided care for him. There is nothing here to indicate that an individual service plan was created or that there was any agreement to provide services after July 8, 2014 or that that there was a FCP/CMO action created a hearing right for Petitioner under *Wis. Adm. Code, §DHS 10.55*.

CONCLUSIONS OF LAW

That Petitioner has not demonstrated a claim for which the Division of Hearings and Appeals has authority to make a decision; the issue here is between the CMO and [REDACTED].

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 Milwaukee,
Wisconsin, this 16th day of January, 2015

\sDavid D. Fleming
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 January 16, 2015.

Community Care Inc.
Office of Family Care Expansion