



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

Redact

DECISION

FCP/161427

PRELIMINARY RECITALS

Pursuant to a petition filed October 23, 2014, under Wis. Admin. Code § DHS 10.55, to review a decision by the Western Wisconsin Cares-FCP in regard to Medical Assistance, a hearing was held on January 07, 2015, at La Crosse, Wisconsin.

The issue for determination is whether the agency met its burden to prove that the reduction in Companion Cares from 9.75 hours to 5 hours per week effective 9/14/14.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

Redact

Respondent:

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

By: Redact

Western Wisconsin Cares-FCP

, WI

ADMINISTRATIVE LAW JUDGE:

John P. Tedesco
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner is a resident of La Crosse County.
2. On 8/28/14 the FC agency, WWC, issued a notice of action informing petitioner that her Companion Care supports would be reduced from 9.75 hours to 5 hours per week.
3. Petitioner appealed.

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. Whenever the local Family Care program decides that a person is ineligible for the program, or when the CMO discontinues an ongoing service in the service plan, the client is allowed to file a fair hearing request. Because a service reduction is sought here, the Petitioner appropriately sought a fair hearing for a further, de novo review of the CMO decision. Wis. Admin. Code §DHS 10.55(1). It is the agency's burden to prove by a preponderance of the evidence that the reduction in services and hours is appropriate.

This matter must be decided by the preponderance of the credible evidence. Wis. Admin. Code § HA 3.09(4). It must be concluded, based on the preponderance of the evidence in the record of this matter, that the hours being reduced are not necessary to meet petitioner's FCP outcomes.

It is notable that the reduction in this case is a reduction from 9.75 hours to only 5 hours per week. The agency presented its evidence as to its assessment that 5 hours is sufficient. But, the agency was wholly unprepared to explain why the reduction is necessary. The agency could not present any information as to how a previous team had determined that nearly twice the amount of time was medically needed. The agency was simply unprepared for the most obvious questions and the reliability of its instant determination was not demonstrated. It is as likely to me that the previous team was more qualified and more correct than this current team and its assessment. It appeared as though the agency representative simply wanted me to find that the current determination is correct because she said it was. Of five people appearing for WWC, none could explain why the needs of petitioner had changed. The agency conceded that all the information from previous screens would have been available but it did not look for any of it.

The agency failed to provide a long-term care functional screen prior to the hearing. The screen, completed in July 2014 was submitted after the hearing. Despite my specific request, no prior screen was submitted which might have shown a reason for a change. Or, it may have shown a deterioration of petitioner's condition as petitioner testified has occurred. This might have caused me even more doubt of the current reduction. But, none was offered so that query is academic at this point.

It is the agency's burden to show the appropriateness of the reduction. It failed to do so by a very, very large margin.

CONCLUSIONS OF LAW

The agency failed to meet its burden to justify the reduction in services.

THEREFORE, it is

ORDERED

That this matter is remanded to the agency with the direction to reverse the action to reduce services and reinstate the previously granted 9.75 hours. This action must be completed within 10 days of this decision.

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 11th day of February, 2015

\sJohn P. Tedesco
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
Internet: <http://dha.state.wi.us>

The preceding decision was sent to the following parties on February 11, 2015.

Western Wisconsin Cares-FCP
Office of Family Care Expansion