



FH
[REDACTED]

**STATE OF WISCONSIN
Division of Hearings and Appeals**

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

FCP/161587

PRELIMINARY RECITALS

Pursuant to a petition filed October 29, 2014, under Wis. Admin. Code § DHS 10.55, to review a decision by Community Care Inc. in regard to Medical Assistance, a telephonic hearing was held on November 18, 2014, at Milwaukee, Wisconsin. At the request of the parties, the record was held open for the Family care Program to submit a written closing argument to DHA and to petitioner, and then for the petitioner to submit his responsive closing argument to DHA and the FCP. The FCP timely submitted its closing argument which is marked as Exhibit 4 and received into the hearing record. The petitioner timely submitted his closing argument to DHA which is marked as Exhibit 5, and received into the hearing record.

The issues for determination are: a) whether the Family Care Program (FCP) correctly denied petitioner's request for his wife to be paid as a Supportive Home Care (SHC) worker to administer his insulin injections; and b) whether FCP correctly determined that petitioner remains at the Non-Nursing Home Level of Care.

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: Mike Gallun, FCP supervisor
Community Care Inc./Family Care
3073 S. Chase Avenue, Suite 240
Milwaukee, WI 53207

ADMINISTRATIVE LAW JUDGE:

Gary M. Wolkstein
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a 60 year old resident of Milwaukee County who resides with his wife.
2. The petitioner is diagnosed with Type 2 Diabetes, and significant cardiac issues.
3. The petitioner has been enrolled in the Family Care Program (FCP) at the Non-Nursing Home Level of Care since February 1, 2013 through Community Care, Inc. of Milwaukee.
4. The petitioner was diagnosed with Diabetes on July 12, 2014, when he was hospitalized.
5. The Family Care team evaluated the petitioner, and found him able to manage his own diabetic care and complete his own insulin injections without assistance as of July, 2014.
6. The petitioner's Member-Centered Plan (MCP) did not include his wife as a paid caregiver or supportive home care (SHC) worker.
7. On October 7, 2014, petitioner requested that Community Care pay his wife, [REDACTED], as a supportive home care (SHC) worker to administer his insulin injections. Petitioner also requested that his level of care be changed from non-nursing home to nursing home level of care.
8. Community Care completed Long Term Care Functional screens of petitioner on August 7, 2014 and a re-screening on October 22, 2014. Both of those screens indicated that based upon his ADLs and IADLs, the petitioner remains at the non-nursing home level of care. Exhibit 3.
9. Community Care, Inc. (CCI) sent a November 3, 2014 Notice of Action to the petitioner. That notice stated that his request for CCI to pay his wife to inject his insulin was denied because on October 22, 2014, CCI completed a Long Term Care Function screen of the petitioner and determined that petitioner continued to not have any cognitive or physical limitations that would prevent him from continuing to administer his own insulin injections and that petitioner remained at the non-nursing home level of care. Exhibit 2.
10. The screener who conducted the October 22, 2014 re-screening determined that petitioner was able to administer his own insulin injections for the following specific reasons and that petitioner remained at the non-nursing home level of care: a) he is able to independently take a bath without assistance and is able to raise his arms based upon observing the petitioner during his review visits on August 4, 2014 and the rescreen on October 22, 2014; b) petitioner is able to check his own blood sugars and light his own cigarettes, and thus should physically be able to administer insulin injections in his upper arms, abdomen, and/or thighs without any particular difficulty; c) petitioner does not have any cognitive or physical deficits that would prevent him from administering his own insulin injections. Exhibits 4 and 3.
11. The petitioner has not been compliant in either checking his blood sugar levels, or administering his insulin injections.
12. The FCP nurses explained to petitioner options to reduce his itching by using other injection sites, (or using a different insulin), but petitioner refused to follow those instructions.
13. The petitioner has not established with any reliable medical documentation that he is "needle phobic."
14. During the hearing and in his written closing argument, petitioner was unable to refute with any reliable evidence that the Family Care Program correctly denied the hiring of his wife as his SHC or that the FCP correctly determined that petitioner remained at the non-nursing home level of care. Exhibit 5.

DISCUSSION

The Family Care program, which is supervised by the Department of Health Services (DHS), 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.

Wis. Admin. Code, §DHS 10.33(2) provides that an FCP applicant must have a functional capacity level of comprehensive or intermediate; I note here that Wis. Stat., §46.286, uses the terms “**nursing home**” and “**non-nursing home**” levels just as the agency in this case. If the person meets the comprehensive (nursing home) level, he is eligible for full services through a care management organization (CMO), including Medical Assistance (MA). Wis. Admin. Code, §DHS 10.36(1)(a). If the person meets the intermediate (non-nursing home) level, he is eligible for full services only if he is in need of adult protective services or he is financially eligible for MA. Wis. Admin. Code, §DHS 10.36(1)(b). A person eligible under the non-nursing home level is eligible for less FCP services.

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 denial, discontinuance, or 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 (DHA).

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 is whether the Family Care Program through its agent, Community Care, correctly denied petitioner’s request for his wife to be paid as a Supportive Home Care (SHC) worker to administer his insulin injections; and correctly determined that petitioner remains at the non-Nursing Home Level of Care. During the hearing and in its written closing argument (Exhibit 4), Community Care and its witnesses presented persuasive testimony and exhibits that petitioner has the cognitive and physical ability to continue administering his own insulin injections. While petitioner may want for his wife to be paid to administer the injections, petitioner failed to establish any medical or physical necessity for his wife to perform his injections. In addition, the petitioner’s history of non-compliance with both checking his blood sugar or administering his own insulin injections undermines petitioner’s credibility that suddenly as of about October, 2014 petitioner was no longer able to inject his own insulin which he has administered to himself since July, 2014.

Furthermore, petitioner was unable to provide any reliable evidence to refute the accuracy of his August 7, 2014 and October 22, 2014 long term care functional screening or re-screening. Those functional screens determined that based upon his ability to perform IADLs and ADLs, he was correctly assessed to remain at the non-nursing home level of care. The petitioner did not provide any medical evidence to

demonstrate that his health has declined resulting in a diminished ability to perform an specific ADLs and IADLs. Accordingly, based upon the above, I conclude that the Family Care Program correctly denied petitioner's request for his wife to be paid as a Supportive Home Care (SHC) worker to administer his insulin injections; and correctly determined that petitioner remains at the Non-Nursing Home Level of Care.

CONCLUSIONS OF LAW

The Family Care Program (FCP) correctly denied petitioner's request for his wife to be paid as a Supportive Home Care (SHC) worker to administer his insulin injections; and correctly determined that petitioner remains at the Non-Nursing Home Level of Care.

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 March, 2015

\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 March 3, 2015.

Community Care Inc.
Office of Family Care Expansion