



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

Redacted case name

DECISION

FCP/161641

PRELIMINARY RECITALS

Pursuant to a petition filed October 31, 2014, under Wis. Admin. Code § DHS 10.55, to review a decision by the Milwaukee County Dept. of Family Care to reduce Family Care Program (FCP) services, a hearing was held on January 20, 2015, by telephone. The hearing was a rehearing granted by the Division of Hearings and Appeals on January 6, 2015.

The issue for determination is whether the agency had a basis to reduce petitioner's supportive home care (SHC) time for bathing from 50 minutes per day to 30 minutes per day.

PARTIES IN INTEREST:

Petitioner:

Redacted petitioner name

Petitioner's Representative:

Atty. Redacted
SeniorLaw
230 W Wells St RM 800
Milwaukee, WI 53203

Respondent:

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

By: Redacted
Milwaukee County Dept. of Family Care
901 N 9th St
Milwaukee, WI 53233

ADMINISTRATIVE LAW JUDGE:

Brian C. Schneider
Division of Hearings and Appeals

FINDINGS OF FACT

- 1. Petitioner (CARES # Redacted) is a 68-year-old resident of Milwaukee County who receives services under the FCP.
2. Petitioner has a history of a stroke that left her with right-side hemiparesis. In addition she has chronic arthritis and shortness of breath that also affect her ability to do activities of daily living.

Her supportive home caregiver is her husband, from whom she has been separated for a number of years.

3. Petitioner's home health agency switched to **Redact** in 2014, and **Redact** did an assessment in August. Petitioner's old agency, **Redact**, had allowed 50 minutes per day SHC time for bathing, along with 10 minutes per day for an evening sponge bath. Her total daily SHC time was approximately 3.4 hours, for 24 hours per week.
4. The **Redact** assessor, after doing a home visit and discussing the matter with petitioner, concluded that 50 minutes was too much time for bathing. Petitioner told the assessor that bathing takes 30 minutes or less each day. The bathing time was reduced to 30 minutes per day, bringing petitioner's weekly SHC hours down to 21.75 hours. Sponge bath time was not changed. Petitioner was informed by a notice dated August 25, 2014.
5. Petitioner grieved the decision, but the agency's grievance committee upheld the determination on October 20, 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 Managed Care Organization (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 of eligibility for the program and 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, she may then request a hearing with the Division of Hearings and Appeals. Admin. Code, §DHS 10.55(2).

There is little in the way of policy or rules for supportive home care, and neither party provided me any policy for allocating time for bathing. I am aware that the Department of Health Services, in its personal care worker policy, allocates a maximum of 30 minutes per day for bathing unless bathing is the only service a caregiver provides. See the Prior Authorization: Personal Care Screening Tool Allocation Chart at <https://www.forwardhealth.wi.gov/WIPortal/Online%20Handbooks/Display/tabid/152/Default.aspx?ia=1&p=1&sa=47&s=3&c=565&nt=Allocation+Based+on+Frequencies+Indicated+in+the+Personal+Care+Screening+Tool>. Thus there is a policy basis for the agency's determination that 30 minutes per day for bathing should be sufficient.

Petitioner's husband testified that bathing takes more than 30 minutes because petitioner requires full assistance into and out of the tub (she weighs 250 pounds and as noted above has right side hemiparesis), and it takes a long time to dry her and to apply baby oil to prevent skin breakdown. Agency staff counter that long baths are likely a cause of petitioner's skin breakdown; an initial note concerning petitioner when

Redact took over her case inquired “Why would member require such extensive bathing as this could dry out member’s skin and cause irritation?” See 3/7/2014 Best Practice Team Review, page 28 of the agency’s exhibit; also page 1 of petitioner’s exhibit.

After thorough consideration, I conclude that the agency’s action to reduce the bathing time was reasonable. In the end, I find that petitioner’s statement to the assessor at the in-home visit in August, that bathing took no more than 30 minutes, was probably the most accurate statement on the matter. Petitioner’s opinion changed later when it became apparent that her husband’s work hours would be reduced. Given that Department policy limits bathing to 30 minutes maximum, and there is a medical basis for limiting bath time as too much exposure to bath water can lead to skin dryness and irritation, the reduction to a maximum of 30 minutes is reasonable. I am unconvinced by petitioner’s argument that there has been no change in her condition; the agency has the duty to review services to determine whether they remain cost effective.

Furthermore, this decision is not a lifetime one. If petitioner’s husband finds that he absolutely is unable to accomplish the bathing activity within the time constraint, he can document his procedure and the time it takes and present his case to **Redact** again. My experience, however, particularly when a relative is the caregiver, is that the longer time necessary to complete care tasks is related more to inefficiency than medical reasons. I thus will affirm the agency’s determination; petitioner and her care provider at least should attempt to complete the task at the lower time amount.

CONCLUSIONS OF LAW

The agency had a reasonable basis for reducing petitioner’s SHC time based upon the finding that 30 minutes per day, rather than 50 minutes, was an appropriate amount of time for bathing.

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 29th day of January, 2015

\sBrian C. Schneider
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 29, 2015.

Milw Cty Dept Family Care - MCO

Office of Family Care Expansion

Attorney Redact