



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]
[REDACTED]
c/o [REDACTED]
[REDACTED]
[REDACTED]

DECISION

FCP/163338

PRELIMINARY RECITALS

Pursuant to a petition filed January 17, 2015, under Wis. Admin. Code, §DHS 10.55, to review a decision by Community Care Inc. in regard to the Family Care Program (FCP), a hearing was held on February 25, 2015, by telephone.

The issue for determination is whether the agency correctly denied a request to increase staffing at petitioner's adult family home.

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
c/o [REDACTED]
[REDACTED]
[REDACTED]

Respondent:

Department of Health Services
1 West Wilson Street, Room 651
Madison, Wisconsin 53703
By: Aaron Schmitz
Community Care Inc.
205 Bishops Way
Brookfield, WI 53005

ADMINISTRATIVE LAW JUDGE:

Brian C. Schneider
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner is a 29-year-old resident of Brown County who receives services under the FCP. Community Care is the Managed Care Organization (MCO) in charge of petitioner's case.
2. Petitioner has pervasive developmental disorder and mental retardation with autistic-like features. He also has Type 1 diabetes with reflux, chronic constipation, and urinary retention. Petitioner lives in the REM adult family with three other individuals.

3. In October, 2014, petitioner's mother, who also is his guardian, requested that the program pay for an additional staff member at the home during overnight hours. Currently the home has at least two staff members present from 6 a.m. to 8 p.m. daily, but after 8 p.m. only one staff is present. The other three residents typically go to bed at approximately 8 p.m. and sleep through the night; petitioner tends to be sleep sporadically during the night and often gets up during overnight hours.
4. Following the request the MCO did a full review petitioner's care plan. It determined that there was no need for additional staff, noting that this staffing pattern has been in place for several years without incident. The MCO denied the request.

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 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, he may then request a hearing with the Division of Hearings and Appeals. Wis. Admin. Code, §DHS 10.55(2).

It is unclear if a formal grievance in this matter was held. Petitioner's mother noted on the appeal form that she filed a grievance, but neither side mentioned a formal grievance proceeding during the hearing. It is evident, however, that the agency did a full case review after the request was made.

I conclude that the agency's denial of the request was warranted. Petitioner's mother presented no evidence to support her request other than her own opinion that petitioner deserved to have a staff member available to support him during overnight hours, in particular in the evening hours between 8 p.m. and approximately 11 p.m. when petitioner might want to go outside. The MCO had a number of professionals review the request and concluded that an additional staff member was not cost effective, and petitioner's mother provided no professional evidence to contradict those findings. In fact, this appeal appears to be no different than one that was filed in 2012, case no. FCP-142113, in which petitioner's mother requested 24-hour 1:1 staffing for petitioner. That request was denied and the denial upheld by the Division of Hearings and Appeals for essentially the same reasons as in this appeal. Petitioner's mother has not provided any evidence to support her request.

CONCLUSIONS OF LAW

The MCO correctly denied the request for additional overnight staffing because no need for the additional staffing was shown.

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 2nd day of March, 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 March 2, 2015.

Community Care Inc.
Office of Family Care Expansion