



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

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

FCP/164159

PRELIMINARY RECITALS

Pursuant to a petition filed February 24, 2015, under Wis. Admin. Code §DHS 10.55, to review a decision by the Milw Cty Dept Family Care - MCO in regard to Medical Assistance (MA), specifically the Family Care Program (FCP), a hearing was held on June 04, 2015, at Milwaukee, Wisconsin.

The issue for determination is whether the FCP correctly denied reimbursement of petitioner’s moving costs from her residence in early 2015.

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: Jefferlyn Harper-Harris, QI Coordinator
Milw Cty Dept Family Care - MCO
901 N 9th St
Milwaukee, WI 53233

ADMINISTRATIVE LAW JUDGE:

Kelly Cochrane
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Milwaukee County.
2. In August 2014, petitioner moved from her residence due to a bedbug infestation. The Family Care Program (FCP) paid for petitioner’s moving expenses.

3. On or about January 16, 2015 petitioner requested that the FCP pay for the moving expenses she incurred from moving to another residence. Petitioner paid her friend ██████ to move her.
4. On January 27, 2015 the FCP issued a notice to petitioner stating that it was denying her request for payment of her moving expenses because it was not cost effective to do so. See Exhibit 1.
5. On February 25, 2015 the agency issued another notice to petitioner stating that it was denying her request for payment of her moving expenses because it was not a covered FCP benefit. See Exhibit 5.

DISCUSSION

The Family Care Program (FCP), 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.

In the FCP, the CMO must develop an Individual Service Plan (ISP) in partnership with the client. Wis. Adm. 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 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(1)(f).

The issue in this case is whether the CMO acted appropriately in denying petitioner's request for reimbursement of petitioner's moving costs from her residence in early 2015. It essentially comes down to the general MA criteria for determining authorization for services – medical appropriateness and necessity, cost effectiveness, statutory and rule limitations, and effectiveness of the service – with the member's outcomes paramount in the consideration. See Wis. Adm. Code, §DHS 107.02(3)(e).

"Medically necessary" means a medical assistance service under ch. DHS 107 that is:

- (a) Required to prevent, identify or treat a recipient's illness, injury or disability; and
- (b) Meets the following standards:
 1. Is consistent with the recipient's symptoms or with prevention, diagnosis or treatment of the recipient's illness, injury or disability;
 2. Is provided consistent with standards of acceptable quality of care applicable to the type of service, the type of provider and the setting in which the service is provided;
 3. Is appropriate with regard to generally accepted standards of medical practice;
 4. Is not medically contraindicated with regard to the recipient's diagnoses, the recipient's symptoms or other medically necessary services being provided to the recipient;
 5. Is of proven medical value or usefulness and, consistent with s. DHS 107.035, is not experimental in nature;
 6. Is not duplicative with respect to other services being provided to the recipient;
 7. Is not solely for the convenience of the recipient, the recipient's family or a provider;
 8. With respect to prior authorization of a service and to other prospective coverage determinations made by the department, is cost-effective compared to an alternative medically necessary service which is reasonably accessible to the recipient; and
 9. Is the most appropriate supply or level of service that can safely and effectively be provided to the recipient.

Wis. Adm. Code §101.03(96m).

The MCO, through its contract with the State, is required to follow these rules. It determined that the requested moving costs were not cost effective, nor was it covered under the FCP benefit package. I must agree.

Each CMO signs a contract with the State of Wisconsin that sets forth exactly what services it must render. The contract is available online at <http://mltc.wisconsin.gov/2015>, and has previous years' versions as well. The FCP Benefit Package indeed does *not* include moving costs as requested here. The closest service provided is relocation services, which states:

Relocation services are services and essential items needed to establish a community living arrangement for persons who are relocating from an institution or who are moving from a family home to establish an independent living arrangement. This service includes person-specific services, supports or goods that will be put in place in preparation for the member's relocation to a safe, accessible and affordable community living arrangement. Services or items covered by this service may not be purchased more than 180 days prior to the date the member relocates to the new community living arrangement. Relocation services may include the purchase of necessary furniture, telephone(s), cooking/serving utensils, basic cleaning equipment, household supplies, bathroom and bedroom furnishings and kitchen appliances not otherwise included in a rental arrangement if applicable. Relocation services may include the payment of a security deposit, utility connection costs and telephone installation charges. This service includes payment for moving the member's personal belongings to the new community living arrangement and general cleaning and household organization services needed to prepare the selected community living arrangement for occupancy. Relocation services exclude home modifications necessary to address safety and accessibility in the member's living arrangement, which may be provided as the waiver service home modifications. Excludes housekeeping services provided after occupancy which are considered the waiver service supportive home care. Excludes the purchase of food, the payment of rent, or the purchase of leisure or recreational devices or services (e.g., television or video equipment, cable or satellite service, etc.). Providers must be reputable contractors or companies.

The petitioner is not eligible for her moving costs under the "relocation service" as she was not relocating from an institution or moving from a family home to establish an independent living arrangement. Additionally, her friend [REDACTED] has not been shown to be a reputable contractor or company providing the moving service.

There is also no evidence in the record to show me that the moving costs were medically necessary. Petitioner argues that the apartment she moved from was unsafe due to smell, because the apartment manager/leasing agent had entered her apartment without her permission, and because there was an issue with her wheelchair ramp. The FCP representatives have credibly rebutted that testimony. Explanation was given and provided repeatedly to petitioner that the first move's costs were reimbursed as a one-time deal in light of the fact that she had the bedbug infestation. There is no credible evidence to support the smell, entrance without permission, and ramp issues. It appears that petitioner moved in January, without notification to her MCO, because of a personal preference. Based on the foregoing, I find the FCP correctly denied her request to pay for her moving costs.

While petitioner may believe this to be an unfair decision, it is the long-standing position of the Division of Hearings & Appeals that the Division's hearing examiners lack the authority to render a decision on constitutional or equitable arguments. See, Wisconsin Socialist Workers 1976 Campaign Committee v. McCann, 433 F.Supp. 540, 545 (E.D. Wis.1977). This office must limit its review to the law as set forth in statutes, federal regulations, and administrative code provisions.

CONCLUSIONS OF LAW

The Family Care Program correctly denied reimbursement of petitioner's moving costs from her residence in early 2015.

THEREFORE, it is

ORDERED

The petition for review herein 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 20th day of July, 2015

\sKelly Cochrane
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 July 20, 2015.

Milw Cty Dept Family Care - MCO
Office of Family Care Expansion
williamc@drwi.org