FH

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[redacted]

DECISION

FCP/165059

PRELIMINARY RECITALS

Pursuant to a petition filed March 30, 2015, under Wis. Admin. Code § DHS 10.55, to review a decision by the Community Care Inc. in regard to Medical Assistance, a hearing was held on May 26, 2015, at Milwaukee, Wisconsin.

The issue for determination is whether the Family Care Program (FCP) correctly denied the petitioner's request to repair or replace her 17 year old electric scooter not currently in use.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:
Petitioner:

[redacted]

Respondent:

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

ADMINISTRATIVE LAW JUDGE:
Corinne Balter
Division of Hearings and Appeals

FINDINGS OF FACT

1. The petitioner is a resident of Milwaukee County.
2. On February 11, 2015 the petitioner requested that the Family Care Program (FCP) repair her electric scooter.

3. On February 23, 2015 the FCP sent the petitioner a notice stating that they denied her request to repair her electric scooter.

4. The petitioner is able to ambulate within her home, and walk short distances. The FCP currently provides unlimited transportation service to the petitioner.

5. On April 1, 2015 the Division of Hearings and Appeals received the petitioner's request for fair hearing.

DISCUSSION

The petitioner requests a power wheelchair from the Family Care Program (FCP). When determining whether a service is necessary, the FCP must review, among other things, the medical necessity of the service, the appropriateness of the service, the cost of the service, the extent to which less expensive alternative services are available, and whether the service is an effective and appropriate use of available services. Wis. Adm. Code, § DHS 107.02(3)(e)1.,2.,3.,6. and 7. "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. HFS 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, § DHS 101.03(96m).

In addition, the FCP cannot deny services that are "necessary to assist the member to be as self-reliant and autonomous as possible." *Contract between Wisconsin Department of Health Services and Community Health Partnership, pp. 61-62.*

In this case the FCP denied the petitioner's request for repair or replacement of her 17 year old power scooter. The petitioner maintains that she needs this scooter to be more independent in the community. The FCP maintains that they provide unlimited transportation services, and that the petitioner can ambulate in her home. Further, the denial of this scooter will not impact the petitioner's independence.

I agree with the FC team's assessment of this case. The petitioner submitted medical records, letters from doctors, and a physical therapist (PT) stating that she would benefit from a power scooter. The PT writes, "[the petitioner] may benefit from a power wheelchair for long distance community ambulation for increased independence." The FCP provides transportation services for long distance community ambulation. The PT also acknowledged that the petitioner could walk 300 feet. If the petitioner's goal is

to be able to go to Walmart or do other shopping, then the transportation service meets this need. This service drops the petitioner off at the door. The petitioner can then walk into the store, and get a motorized scooter with a basket. The petitioner maintains that her Walmart does not have motorized scooters available. I find this testimony self-serving and not credible. I further note that the petitioner refuses to try a rollator walker. She has grip problems with her hands. She was unable to use the particular rollator walker available at the PT's office. However, the FC team testified that there are adaptive devices available for rollator walkers that the petitioner refuses to try.

I further note that the petitioner's doctor believes an electric wheelchair or scooter is medically necessary for the petitioner in many situations. The doctor does not state the particular situations where it would be medically necessary, nor does he state what standard he is employing to determine the medical necessity of the power scooter. The doctor does not state the petitioner's capabilities or how specifically a motorized scooter would help her. He does not address whether a walker with adaptive equipment for the grab bars would be sufficient.

I reviewed the additional medical records and information submitted by the petitioner and the FCP. I agree with the FCP's assessment of this case. The petitioner has transportation services. She is able to ambulate in her home. She can walk short distances. She also has personal care worker services provided to her. I do not see the medical need for a very expensive electric scooter given the petitioner's abilities and the services already provided.

CONCLUSIONS OF LAW

The FCP correctly denied the petitioner's request to repair or replace her 17 year old electric scooter not currently in use.

THEREFORE, it is **ORDERED**

That the petition 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 1st day of June, 2015

\sCorinne Balter
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 June 1, 2015.

Community Care Inc.
Office of Family Care Expansion