



FH

[REDACTED]

STATE OF WISCONSIN  
Division of Hearings and Appeals

In the Matter of

[REDACTED]  
[REDACTED]  
[REDACTED]

DECISION

[REDACTED]

PRELIMINARY RECITALS

Pursuant to a petition filed April 3, 2015, under Wis. Admin. Code § DHS 10.55, to review a decision by the ContinuUs in regard to Family Care Program (FCP, an MA-related program) benefits, a hearing was held on July 14, 2015, by telephone. Hearings set for May 19 and June 18, 2015, were rescheduled at the petitioner’s request.

The issue for determination is whether the agency correctly reduced the number of the petitioner’s supportive home care (SHC) hours.

There appeared at that time the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]  
[REDACTED]  
[REDACTED]

Petitioner's Representative:

[REDACTED]  
[REDACTED]  
[REDACTED]

Respondent:

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

By: [REDACTED]-Baraboo unit  
ContinuUs  
28526 US Hwy 14  
Lone Rock, WI 53556

ADMINISTRATIVE LAW JUDGE:

Nancy J. Gagnon  
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Sauk County.

- [REDACTED]
1. The petitioner has been eligible for participation in FC as a physically disabled person for at least a year. FC services are furnished through a local care management organization (CMO), which is under contract with the FC program.
  2. The petitioner, age [REDACTED], resides alone in a two-bedroom apartment. She has diagnoses of multiple sclerosis, diabetes mellitus, bowel incontinence, osteoarthritis, compression fracture of a thoracic vertebra, high cholesterol, high blood pressure, fibromyalgia (low back pain), depression, PTSD, and migraines. The petitioner requires physical assistance to bathe, dress, groom, and use the toilet. A cane is used for in-home ambulation; in the community she uses either a walker or a manual wheelchair for longer distances. She also requires physical help with meal preparation and laundry/household chores. The petitioner does not wander, and is not dangerous to self or others.
  3. The CMO previously determined that the petitioner required 20 hours of SHC weekly to cost-effectively meet her care needs. Her 2014 screening preceded her neck surgery and ensuing physical therapy. At that time (2014) the agency determined that 20 hours weekly was needed for bathing, dressing, nail care, bedpan assistance and chore assistance.
  4. On February 17, 2014, the CMO issued a Notice of Action to the petitioner, advising that her SHC hours would be reduced to 13.5 hours weekly, effective March 4, 2015. The petitioner then filed a fair hearing request; benefit continuation at the prior level was not requested.
  5. The reduced 13.5 SHC weekly hours were apportioned by the CMO as follows:

Bathing assistance: 88 minutes weekly (22 minutes daily x 4 days)

Dressing assistance: 119 minutes weekly (17 minutes daily x 7 days)

Skin care: 9 minutes weekly (9 minutes x 1 day)

Shaving: 14 minutes weekly (14 minutes x 1 day)

Assist w/ urinal: 49 minutes weekly (7 minutes x 7 days)

Assist w/ meds: 14 minutes weekly (7 minutes x 2 days)

Clean bathroom: 16 minutes weekly (16 minutes x 1 day)

Meal preparation: 189 minutes weekly (27 minutes x 7 days)

Wash dishes: 15 minutes weekly (15 minutes x 1 day)

Clean counters: 18 minutes weekly (6 minutes x 3 days)

Clean up spills: 21 minutes weekly (7 minutes x 3 days)

Linen change: 13 minutes weekly (13 minutes x 1 day)

Vacuum: 32 minutes weekly (32 minutes x 1 day)

In-home Laundry: 20 minutes weekly (20 minutes x 1 day)

Grocery shopping: 132 minutes weekly (66 minutes x 2 days)

Home organization/pickup for safety: 60 minutes weekly

These amounts total 809 minutes weekly. Following notification of this reduction, the petitioner is requesting 27.12 hours of weekly SHC.

[REDACTED]

**DISCUSSION**

The Family Care program is supervised by the Wisconsin Department of Health Services, and is designed to provide appropriate long-term care services for elderly or disabled adults. It is authorized at Wis. Stat. § 46.286, and is further described at Wis. Admin. Code, ch. DHS 10.

The CMO must develop an Individual Service Plan (ISP) in partnership with the client. Wis. Admin. Code § DHS 10.44(2)(f). The ISP must reasonably address all of the client's long-term needs to assist the client to be as autonomous as possible, while also being 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. *Id.*, 10.44(1)(f). ISPs must be reviewed periodically. *Id.*, 10.44(j)(5).

The state code language on the scope of permissible services for the FC reads as follows:

**DHS 10.41 Family care services. ...**

(2) SERVICES. Services provided under the family care benefit shall be determined through individual assessment of enrollee needs and values and detailed in an individual service plan unique to each enrollee. As appropriate to its target population and as specified in the department's contract, each CMO shall have available at least the services and support items covered under the home and community-based waivers under 42 USC 1396n(c) and ss.46.275, 46.277 and 46.278, Stat., the long-term support services and support items under the state's plan for medical assistance. In addition, a CMO may provide other services that substitute for or augment the specified services if these services are cost-effective and meet the needs of enrollees as identified through the individual assessment and service plan.

**Note: The services that typically will be required to be available include adaptive aids; ... residential services in an RCAC, CBRF or AFH; ... supportive home care; ...**

Wis. Admin. Code §DHS 10.41(2). Supportive home care (SHC) services are included in the list of covered services in the statutory note above.

Having established that SHC hours can be a covered service, the remaining question is, how many SHC hours are essential to meeting the petitioner's needs? The petitioner disagrees with the CMO's service plan because it provides only 13.5 hours per week of supportive home care.

The skeletal legal guidance that pertains to determining the type and quantity of daily care services that must be placed in an individualized service plan (ISP) is as follows:

**HFS 10.44 Standards for performance by CMOs.**

...

(2) CASE MANAGEMENT STANDARDS. The CMO shall provide case management services that meet all of the following standards:

...

(f) The CMO, in partnership with the enrollee, shall develop an individual service plan for each enrollee, with the full participation of the enrollee and any family members or other representatives that the enrollee wishes to participate. ... The service plan shall meet all of the following conditions:

1. *Reasonably and effectively addresses all of the long-term care needs* and utilizes all enrollee strengths and informal supports identified in the comprehensive assessment under par. (e)1.

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2. *Reasonably and effectively addresses all of the enrollee's long-term care outcomes* identified in the comprehensive assessment under par. (e)2 and assists the enrollee to be as self-reliant and autonomous as possible and desired by the enrollee.
  3. *Is cost-effective compared to alternative services* or supports that could meet the same needs and achieve similar outcomes.

...

*(emphasis added)*

Wis. Admin. Code §DHS 10.44(2)(f).

The petitioner's documentation persuades me that her need for services has not been reduced by any appreciable amount; her MS is not going to get better. Therefore, I am inserting the Medicaid program state standard for PCW showering time, which is 30 minutes per shower. There is no basis for significant deviation from the state standard here. See, <https://www.forwardhealth.wi.gov/WIPortal/Default.aspx>, at online handbooks-Medicaid-Personal Care- covered services-topic #4621. That is not inclusive of shaving and skin care. I adopt the petitioner's time requests (Exhibit 2) for dressing, skin care, incontinence care, linen changes, additional laundry episodes due to incontinence, and extra bathroom cleaning. I do not adopt the petitioner's request for more time for meal preparation, general cleaning or cleaning the commode. The commode cleaning can be done "as needed" during the extra bathroom cleaning days.

The CMO approved 132 minutes weekly for grocery shopping. The petitioner's "actual times" chart states that she needs 150 minutes, because she prefers to go to multiple stores to obtain the best deals. The petitioner has the burden of proof by a preponderance of the evidence. Her justification for more time was not compelling; the CMO's position is upheld.

After tallying the time allotments that I have determined, in my discretion, to be "reasonable" and "cost-effective," a weekly average of 1,270 minutes or 21.25 weekly hours of service time results.

### **CONCLUSIONS OF LAW**

1. To meet the petitioner's credible care needs, the petitioner reasonably requires 21.25 hours of SHC service time weekly from the Family Care program.

**THEREFORE, it is**

**ORDERED**

That the petition herein be remanded to the CMO with instructions to enter **21.25** weekly SHC hours into the petitioner's current ISP, effective with the date of this Decision, and to report this accomplishment to DHA within 10 days of the date of this Decision. In all other respects, 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 Madison,  
Wisconsin, this 17th day of August, 2015

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\sNancy J. Gagnon  
Administrative Law Judge  
Division of Hearings and Appeals



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## State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

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The preceding decision was sent to the following parties on August 17, 2015.

Continuus  
Office of Family Care Expansion  
Health Care Access and Accountability  
[REDACTED]