



FH
[REDACTED]

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

FCP/165333

PRELIMINARY RECITALS

Pursuant to a petition filed April 06, 2015, under Wis. Admin. Code § DHS 10.55, to review a decision by the iCare in regard to Medical Assistance, a hearing was held on May 06, 2015, at Milwaukee, Wisconsin.

The issue for determination is whether the agency properly reduced the Petitioner's personal care worker (PCW) services to 7.5 hours/week.

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: Liz Bartlett

iCare
1555 N. Rivercenter Drive
Suite 206
Milwaukee, WI 53212

ADMINISTRATIVE LAW JUDGE:

Debra Bursinger
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Milwaukee County. He lives with family. He has been enrolled in Family Care with iCare since November 11, 2011.
2. The Petitioner's primary diagnoses include arthritis, cervicgia, degenerative disc disease, bilateral ankle fractures, gout, low back pain, depression, anxiety, blindness in one eye and

hearing impairment. He has a history of injuries due to motor vehicle accidents which resulted in a neck fracture, pelvic fracture, crushed right leg and left foot/toe fractures. He has rods in his right leg and left arm. Due to neck and back injuries, he has significant limitations in ROM in his cervical and lumbar spine. He has numbness I his hands and feet. He has chronic pain.

3. On January 15, 2015, a Personal Care Screening Tool (PCST) was completed for the Petitioner. The assessor determined the Petitioner had the following needs:

Bathing – Level D – PCW to assist with in/out, assistance with washing legs/back due to decreased ROM, difficulty bending and pain. Takes 40 minutes to complete bathing.

Dressing – Level D – needs partial physical assistance from another person.

Grooming – Level E – PCW to provide oral care setup, ensure task completion. Petitioner requires hands on assistance with shaving, hair care and nail care due to decreased ROM in neck, upper extremities and numbness in hands.

Eating – Level A – PCW to provide meal preparation and setup.

Mobility – Level B – Petitioner uses a walker at all times when ambulating in the home and uses power scooter for long distances; is unsteady on his feet; occasionally needs hands-on assistance, especially in morning when pain is increased.

Toileting – Level B – Petitioner usually able to complete toileting independently with toilet riser and arm supports.

Transferring – Level C – PCW to be present and provide hands-on assist as needed when Petitioner rises from sitting position or lowers from standing position due to numbness I hands and feet and decreased ROM. Getting out of bed especially difficult.

Medication Assistance – Level A

4. On February 6, 2015, the agency completed a Long Term Care Functional Screen (LTCFS) assessment for the Petitioner. The assessor determined the Petitioner had the following needs:

Activities of Daily Living

Bathing – Level 1 – help needed (supervision, cueing, hands-on assistance) – helper need not be present. Petitioner uses a shower chair.

Dressing – Level 2 – help needed – helper must be present

Eating and Toileting - independent

Transferring – Level 1 – help needed – helper need not be present

The assessor noted that the Petitioner’s caregiver assists with shaving. Petitioner sits on a chair at the bathroom sink to perform grooming needs including washing hands, face and hair care. Petitioner needs assistance getting in/out of tub. Petitioner sits on shower chair and is able to wash his front. Caregiver helps with back. Petitioner needs assistance with dressing due to chronic pain. Petitioner uses a walker to get out of bed and a cane in the apartment. Uses a power scooter in the community.

Instrumental Activities of Daily Living

Meal Prep – Level 3 – needs help with every meal

Medication Assistance, money management, telephone – independent

Laundry – Level 1 – needs help weekly

Transportation – Level 3 – does not drive

The assessor noted that the Petitioner’s sister takes him shopping and puts food away. His caregiver prepares his meals and does cleaning/housekeeping and laundry. Because of Petitioner’s limited mobility, chronic pain and limited vision, he was noted to require assistance every day.

5. On February 17, 2015, the agency used the Resource Allocation Decision (RAD) tool in a discussion with the Petitioner regarding his need for PCW and SHC services. On February 17, 2015, the agency issued a notice of action to the Petitioner informing him that his approved level of PCW services would be reduced to 7.5 hours/week. The agency also notified him that it had increased his supportive home care hours to 12.5 hours/week of supportive home care services. His total hours The agency approved hours as follows:

Supportive Home Care

Cleaning – living room, bathroom, bedroom, kitchen – 250 minutes/week

Laundry – 60 minutes/week

Shopping – 60 minutes/week

Meal Preparation – 315 minutes/week

Errands – 60 minutes/week

Personal Cares

Grooming – 65 minutes/week

Dressing – 140 minutes/week

Bathing – 105 minutes/week

Transfers – 140 minutes/week

6. On February 27, 2015, the Petitioner filed an appeal with iCare. On March 23, 2015, the iCare Grievance and Appeal Committee heard the Petitioner’s appeal. On March 24, 2015, the agency informed the Petitioner that the Committee upheld the agency’s approval of 7.5 hours/week of PCW services and 12.5 hours/week of supportive home care services. His total hours for PCW services and SHC services were reduced from 38.5 hours/week to 20 hours/week.

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. A dis-satisfied FC client may file a grievance with his CMO under Wis. Admin. Code §DHS 10.53, request a state-level review by the Wisconsin Department of Health Services under § DHS 10.54, and/or request a fair hearing under § DHS 10.55.

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;... home delivered and congregate meal services; personal care services; ... supportive home care;

Wis. Admin. Code §DHS 10.41(2). Personal care services (PCW services) are included in the list of covered services in the statutory note above. 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:

DHS 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...
2. Reasonably and effectively addresses all of the enrollee’s long-term care outcomes identified in the comprehensive assessment
....
3. Is cost-effective compared to alternative services or supports that could meet the same needs and achieve similar outcomes.

...

Wis. Admin. Code §DHS 10.44(2)(f).

The Petitioner and his caregivers asserted at the hearing that the Petitioner’s condition has not changed since his last assessment. The agency did not dispute that the Petitioner’s condition has not changed. The only difference in the current LTCFS from the LTCFS that was completed in 2014 was a change in the level of assistance needed for transfers. The 2014 LTCFS assessed Petitioner’s need as a Level 2 while the current LTCFS assessed a Level 1. Otherwise, the LTCFS assessments are the same.

With regard to bathing, the agency approved 15 minutes/day based on its assessment that Petitioner only requires assistance getting in/out of the tub. The PCST and the testimony of the Petitioner and his caregivers demonstrate that the Petitioner also requires hands-on assistance with washing certain areas of his body due to chronic back pain and significant limitations in ROM in his back and shoulders. I conclude, based on the evidence, that the Petitioner requires 30 minutes/day for bathing.

For dressing, the agency approved 20 minutes/day for upper and lower dressing. The evidence demonstrates that the Petitioner requires complete assistance with all dressing tasks and that, due to his chronic pain and rods in his leg and arm, resulting in significant limitations in ROM, the dressing task takes a significant time to complete. I conclude that it is reasonable to allow 40 minutes/day (20 minutes x 2 dressings) for upper and lower body dressing.

With regard to grooming, the agency approved 65 minutes/week. The agency noted that the Petitioner is able to sit at the sink to perform grooming tasks. The evidence indicates that the only grooming tasks the Petitioner is able to complete without assistance is washing his hands and face. The evidence and testimony demonstrate that he needs complete assistance with shaving, hair care, lotion application and nail care. Therefore, I conclude it is reasonable to allow for 30 minutes/day for grooming tasks.

For transfers, the evidence demonstrates that the Petitioner requires assistance getting out of bed in the mornings and limited assistance with transfers throughout the day. I conclude that the agency's approval of 20 minutes/day is reasonable to meet the Petitioner's need for assistance with transfers.

There was no evidence that the Petitioner needs PCW assistance with mobility, toileting, eating or medication administration/management. The Petitioner does need assistance with meal preparation, cleaning/housekeeping, laundry and shopping. The agency increased the Petitioner's supportive home care hours to 12.5 hours/week to accommodate these needs.

Based on the evidence, I conclude that the Petitioner requires 14 hours/week (840 minutes) of PCW services. With supportive home care services, the total hours of assistance required by the Petitioner is 26.5 hours/week.

CONCLUSIONS OF LAW

The Petitioner requires 14 hours/week of PCW services in addition to the 12.5 hours/week approved by the agency for supportive home care services.

THEREFORE, it is

ORDERED

That the agency shall take all administrative steps necessary to revise the Petitioner's care plan to include 14 hours/week of PCW services in addition to the 12.5 hours/week of supportive home care services approved by the agency. This shall be completed as soon as possible but no later than 10 days from the date of this decision.

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 29th day of June, 2015

\sDebra Bursinger
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

Brian Hayes, Administrator
Suite 201
5005 University Avenue
Madison, WI 53705-5400

Telephone: (608) 266-3096
FAX: (608) 264-9885
email: DHAmail@wisconsin.gov
Internet: <http://dha.state.wi.us>

The preceding decision was sent to the following parties on June 29, 2015.

iCare
Office of Family Care Expansion