



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of



DECISION

FCP/165530

PRELIMINARY RECITALS

Pursuant to a petition filed April 17, 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 12, 2015, at Kenosha, Wisconsin.

The issue for determination is whether the time allowed for Petitioner’s Supportive Home Care Worker to provide assistance with laundry may be increased from 90 minutes, twice per week to 120 minutes, twice per week.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:



Petitioner's Representative:

Jean Trimble, Ombudsman
Disability Rights Wisconsin
6737 W. Washington St. Suite 3230
Milwaukee, WI 53214

Respondent:

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

ADMINISTRATIVE LAW JUDGE:

Mayumi M. Ishii
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # ) is a resident of Kenosha County.

2. On November 14, 2014, Community Care completed an in-home assessment tool (I-HAT) that allowed 90 minutes, twice per week for laundry. (Exhibit 8)
3. On February 25, 2015, Community Care completed another I-HAT that again allowed 90 minutes, twice per week for laundry. (Exhibit 9)
4. On March 13, 2015, Community Care issued a notice of action indicating that the overall number of hours allowed for Supportive Home Care services would be reduced from nine hours per week to six hours per week, effective March 28, 2015. (Exhibit 7)
5. The Petitioner filed a request for fair hearing that was received by the Division of Hearings and Appeals on April 17, 2015. (DHA file)
6. Petitioner lives on the first floor of his apartment building and laundry facilities are located on the third floor. (Testimony of Petitioner)
7. The washer takes 30 minutes to complete its cycle and the dryer takes 90 minutes to complete its cycle. (Exhibit 4; Testimony of Petitioner)
8. Petitioner's Supportive Home Care Worker completes other tasks while waiting for the washing machine and dryer to complete their cycles. (Testimony of Petitioner)

DISCUSSION

The Family Care Program is a subprogram of Wisconsin's Medical Assistance (MA) program and is intended to allow families to arrange for long-term community-based health care and support services for older or impaired family members without resort to institutionalization, *Wis. Stats.* §46.286; *Wis. Admin. Code* §DHS 10.11. It is, in short, a long-term care benefit for the elderly, people with physical disabilities and those with developmental disabilities. *Medicaid Eligibility Handbook (MEH)*, §29.1.

An individual, who meets the functional and financial requirements for Family Care, participates in Family Care by enrolling with a Care Management Organization (CMO), which, in turn, works with the participant and his/her family to develop an individualized plan of care. *See Wis. Stats.* §46.286(1) and *Wis. Admin. Code* §DHS 10.41. The CMO, in this case Community Care, implements the plan by contracting with one or more service providers.

Wis. Admin. Code DHS 10.41(2) states that:

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, Stats., the long-term support community options program under s. 46.27, Stats., and specified 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.

Emphasis added

The aforementioned administrative code further notes that personal care and supportive home care services are among the services that typically will be required to be available. *Id.*

It is a well-established principle that a moving party generally has the burden of proof, especially in administrative proceedings. State v. Hanson, 295 N.W.2d 209, 98 Wis. 2d 80 (Wis. App. 1980). In a case involving a request for new or additional services, the burden of proof falls upon the petitioner to show that the requested services meet approval criteria. Estate of Gonwa ex rel Gonwa v. DHFS, 265 Wis.2d 913, 668 N.W.2d 122, 2003 WI App. 152

The Petitioner does not contest the general reduction of his supportive home care hours. However, he would like the time allowed for laundry to be increased to from 90 minutes, twice per week to 120 minutes, twice per week. The 90 minutes allowed per episode was unchanged from 2014.

It is undisputed that the washing machine takes 30 minutes to run its cycle and that the dryer takes 60 minutes to run its cycle.

Petitioner broke down the task of doing laundry as follows:

- 10 minutes for the Supportive Home Care Worker (SHC) to take the laundry to the washing machine
- 30 minutes for the washing machine to run its cycle
- 10 minutes for the SHC Worker to switch the load from the washer to the dryer
- 60 minutes for the dryer to run its cycle
- 10 minutes for the SHC Worker to unload the dryer and take clothes down to Petitioner's apartment.

(See Exhibit 2)

Looking at this break down, the *active* SHC Worker time is actually 30 minutes. Consequently, there is no basis to increase the Petitioner's time for the task of completing laundry to 120 minutes per episode. If additional, active, SHC Worker time is needed to complete the task of doing laundry, there is 60 more minutes available.

The Petitioner argues that sometimes the SHC worker must wait for a washer or dryer to become available. If that is the case, the SHC Worker needs use that waiting time to complete other tasks. It is not cost-effective to pay for SHC Workers to just sit, wait, and do nothing. Indeed, the Petitioner testified that in the 90 minutes that the washer and dryer are running its cycle, the Supportive Home Care Worker is performing other tasks such as taking out his trash and cleaning his apartment, which is what the SHC Worker is supposed to do.

It should be noted that Petitioner also has 3 hours and 20 minutes per week allocated for the tasks of Basic Housekeeping, Grocery/Medical Shopping, and Linen changes. (See Exhibit 9)

CONCLUSIONS OF LAW

There is no basis upon which to increase the time allowed for Petitioner's SHC Worker to assist him with laundry from 90 minutes, twice per week, to 120 minutes, twice per week.

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 2nd day of June, 2015.

\sMayumi M. Ishii
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 2, 2015.

Community Care Inc.
Office of Family Care Expansion
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