



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

Redact
Redact
Redact

DECISION

FCP/165885

PRELIMINARY RECITALS

Pursuant to a petition filed May 08, 2015, under Wis. Admin. Code § DHS 10.55, to review a decision by the Milwaukee County Department of Family Care - MCO in regard to Medical Assistance, a hearing was held on June 09, 2015, at Milwaukee, Wisconsin.

The issue for determination is whether the respondent correctly denied petitioner's request for repair of her motorized scooter.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

Redact (telephonically)
Redact
Redact

Petitioner's Representative:

Redact
Redact
Redact

Respondent:

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

By: Redact
Milw Cty Dept Family Care - MCO
901 N 9th St
Milwaukee, WI 53233

ADMINISTRATIVE LAW JUDGE:

Peter McCombs (telephonically)
Division of Hearings and Appeals

FINDINGS OF FACT

- 1. Petitioner (CARES # Redact) is a 62 year old resident of Milwaukee County who resides independently in her own apartment.
2. The petitioner has diagnoses of diabetes mellitus, non-alcoholic cirrhosis, non-alcoholic steatohepatitis, GERD, irritable bowel disease, hyperlipidemia, congestive heart failure, hypertension, osteoarthritis, osteopenia, TMJ, torn rotator cuff, chronic pain, fibromyalgia, degenerative disc disease, neuropathy, COPD, chronic bronchitis, cataracts, partial hearing

- deficit, conjunctivitis, and insomnia. Exhibit 6. The petitioner needs to use a cane for mobility in her home. Petitioner has a history of falls.
3. The petitioner has been enrolled in Family Care, and her present motorized scooter, as well as a prior motorized scooter, were purchased by Family Care.
  4. Petitioner is able to use the scooter within her apartment, and within the apartment building where she resides. Petitioner has used the scooter to get to mass in her apartment building, and has used the scooter to do laundry in her apartment building.
  5. On April 14, 2015, the Milwaukee County Department of Family Care (Department) sent a Notice of Action to the petitioner stating that it was denying the petitioner’s request for repairs to her scooter. The basis for the denial was that the petitioner does not need this service (the scooter) and that the service was not the most cost-effective way to support her outcomes. See Exhibit 5, p.4.
  6. The petitioner “has a medical history of ...recurrent falls resulting in fractures. ... She has pain walking a few steps and is at high risk for another fall resulting in fractures. She has chronic shoulder and arm pain for her humerus fracture, which makes using a walker difficult as well” according to her physician, Sumi D. Jones, MD. Exhibit 2.
  7. Petitioner’s physician recommended that she use her scooter within and outside her home. Exhibit 2.

**DISCUSSION**

The Family Care (FC) program, which is supervised by the Department of Health Services, is designed to provide appropriate long-term care services for elderly or disabled adults. Whenever the local Family Care program decides that a person is ineligible for the program, the client is allowed to file a local grievance and/or a fair hearing request.

I conclude that the Family Care Program (FCP) incorrectly denied the petitioner’s request for repair of her power operated Scooter. 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.

Wis. Admin. Code §DHS 10.41(2).

The general 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:

- (a) The CMO's case management personnel shall meet staff qualification standards contained in its contract with the department.
- (b) The CMO shall designate for each enrollee a case management team that includes at least a social service coordinator and a registered nurse. The CMO shall designate additional members of the team as necessary to ensure that expertise needed to assess and plan for meeting each member's needs is available.
- (c) The CMO shall employ or contract with a sufficient number of case management personnel to ensure that enrollees' services continue to meet their needs.
- (d) The CMO shall provide the opportunity for enrollees to manage service and support funds, as provided under sub. (6). For enrollees managing service funding under sub. (6), the role of the case management team in providing assistance in planning, arranging, managing and monitoring the enrollee's budget and services shall be negotiated between the enrollee and the case management team and at a level tailored to the enrollee's need and desire for assistance. At a minimum, the case management team's role shall include:
1. An initial assessment sufficient to provide information necessary to establish an individual budget amount and to identify health and safety issues.
  2. Monitoring the enrollee's use of the individual budget amount for purchase of services or support items.
  3. Monitoring the health and safety of the enrollee.
  4. Monitoring to ensure the enrollee reports service utilization adequately to allow the CMO to meet federal and state reporting requirements.

Wis. Admin. Code §DHS 10.44(2)(f).

At hearing, the Department representative testified that the Family Care Program was denying the petitioner's request for scooter repair because it basically determined that petitioner does not qualify for a scooter. This is an interesting position, since the Family Care Program has previously purchased not one, but two, scooters for the petitioner. Now, citing Medicare scooter guidelines, the respondent has changed its mind, despite the fact that many of the petitioner's medical conditions have apparently worsened. On cross examination the respondent's representative testified that the Medicare scooter guidelines are not policy or law. That document at most indicated only suggestions for consideration, not binding, mandatory criteria for scooter approval. Petitioner's representative noted that the Medicare, Medicaid, and Family Care programs each have different procedures and apply different criteria when determining whether coverage for a scooter will be approved. I also note that the respondent's representative conceded that the Department did not work through all of the 10 RAD considerations listed on the RAD Consideration Form.

Petitioner and her representative provided credible testimony and evidence to establish that the requested scooter would maintain the petitioner's self-reliance and independence. Petitioner's representative argued convincingly that the Family Care Program incorrectly denied the scooter as such motorized scooter would maintain petitioner's self-reliance and independence which are both clearly stated goals of the Family Care Program as confirmed above in Wis. Admin. Code §DHS 10.44(2)(f). The Department was unable to refute that testimony or evidence, except to present testimony indicating that petitioner is able to ambulate with her cane, and asserting that she is not able to use the scooter in her apartment. The petitioner's physician provided a written statement refuting the efficacy and safety of petitioner's use of a walker, which is arguably more safe than a cane, and petitioner herself testified that she has always used her scooter in her apartment.

Accordingly, based upon the entire hearing record, I conclude that the Family Care Program (FCP) incorrectly denied the petitioner's request for repairs to her power operated scooter.

**CONCLUSIONS OF LAW**

The Family Care Program incorrectly denied the petitioner's request for repair of her power operated scooter.

**THEREFORE, it is**

**ORDERED**

The matter is remanded to the Department with instructions to approve the repairs to petitioner's motorized scooter for the petitioner, within 10 days of 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 Madison,  
Wisconsin, this 12th day of June, 2015.

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\sPeter McCombs  
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 12, 2015.

Milw Cty Dept Family Care - MCO  
Office of Family Care Expansion