FH

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[redacted]

DECISION

FCP/165945

PRELIMINARY RECITALS

Pursuant to a petition filed May 11, 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 reduced petitioner's Supportive Home Care and Attendant Care (SHC-AC) services.

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: Jefferlyn Harper-Harris
Milw Cty Dept Family Care - MCO
901 N 9th St
Milwaukee, WI 53233

ADMINISTRATIVE LAW JUDGE:
Peter McCombs
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner is an 83-year-old resident of Milwaukee County who receives services under the Family Care Program (FCP). His ex-wife is his caregiver, and she is employed through [redacted]

2. Petitioner has a history of abuse from the former USSR and came to the United States as a refugee. He has a history of hip fracture, bilateral shoulder fracture and spinal cord injury. He suffers from chronic pain. Exhibit 6.

3. Petitioner's diagnoses include Diabetes Mellitus, gout, torn rotator cuff, coronary artery disease, peripheral vascular disease, hypertension, arthritis, BPH, male hypogonadism, anemia, irritable bowel disease, neuropathy, and psoriasis. Exhibit 6.

4. On April 6, 2015, after doing an annual recertification and discussing the matter with petitioner, the respondent notified petitioner that his SHC hours would be reduced from 13 hours per week to 11.75 hours per week, and that his AC hours would be reduced from 27 hours per week to 16 hours per week. Exhibit 6, pp. 2-4.

5. Petitioner grieved the decision, but the agency's grievance committee upheld the determination on May 6, 2015.

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. It is authorized in the Wisconsin Statutes, §46.286, and is described comprehensively in the Wisconsin Administrative Code, Chapter DHS 10.

The Managed Care Organization (MCO) must develop an Individual Service Plan (ISP) in partnership with the client. Wis. Admin. Code, §DHS 10.44(2)(f). The ISP must reasonably and effectively address all of the client's long-term needs and outcomes to assist the client to be as self-reliant and autonomous as possible, but nevertheless must be cost effective. While the client has input, the MCO does not have to provide all services the client desires if there are less expensive alternatives to achieve the same results. Wis. Admin. Code, §DHS 10.44(1)(f); DHS booklet, Being a Full Partner in Family Care, page 9. ISPs must be reviewed periodically. Admin. Code, §DHS 10.44(j)(5).

Wis. Stat., §46.287(2)(a)1 provides that a person may request a fair hearing to contest the denial of eligibility for the program and the reduction of services under the FCP program, among other things, directly to the Division of Hearings and Appeals. In addition, the participant can file a grievance with the MCO over any decision, omission, or action of the MCO. The grievance committee shall review and attempt to resolve the dispute. If the dispute is not resolved to the participant's satisfaction, as was the case here, he may then request a hearing with the Division of Hearings and Appeals. Admin. Code, §DHS 10.55(2).

Family Care is a program of public assistance; it is designed to provide a basic level of care consistent with the notion of conserving taxpayer dollars. There is nothing wrong with a caregiver providing an extra level of care, or taking additional time to complete tasks, as is commonly seen in cases where the paid caregiver is also a family member. However, that level of care and/or additional time may be beyond what the Legislature has decided to cover. It is petitioner's burden to establish the necessity of the requested time. At the time of hearing, petitioner did not offer testimony by the caregiver to explain why the Department's calculation of need under the recertification assessment was flawed. Petitioner did not articulate what quantity of additional time is needed for each task or identify any specific behaviors that would justify more time. Nothing was quantified.

Petitioner testified at hearing that he has been determined disabled by both the USSR and the United States. However, whether or not he is disabled is not the issue here. It is because of his disability that he qualifies for the FCP services. The sufficiency of those services is what is at issue here. The petitioner also argues that his allotted hours have continually decreased, but this appeal must focus on the present reduction only. He further testified that he cannot undress or dress himself, cannot clean his home or replace bedsheets,

cannot shower or shave himself, and he needs assistance with standing in the morning. While I see that services in these regards have been reduced, I also note that they have not been deleted. For instance, dressing was reduced by 5 minutes per day specifically regarding assistance with petitioner's specialized stockings. Bedroom cleaning was not modified at all, and five minutes was removed from cleaning time for the living room and kitchen each, based upon the size of petitioner's home.

The respondent's analysis of petitioner's needs is the most thorough and credible determination in the record. I note that the respondent included a chart indicating the changes in time, along with its rationale for the change. See, Exhibit 6, pp. 9-10. Petitioner received a copy of the respondent's Exhibit 6 prior to the hearing, yet petitioner offered no specific rebuttal to any of the points or time calculations offered by the respondent. Petitioner must offer some specificity and evidence to support the requested time. Without a better way to quantify the time for services, I have no basis upon which to find in favor of the petitioner's request for SHC-AC hours in addition to those approved by the respondent.

After thorough consideration, I conclude that the agency's action to reduce the SHC-AC time was reasonable. The respondent has the duty to review services to determine whether they remain cost effective.

Furthermore, this decision is not a lifetime one. If petitioner finds that he absolutely is unable to accomplish the affected activities within the new time constraints, he can document his procedure and the time it takes and present his case to the respondent again. I thus will affirm the agency's determination; petitioner and his care provider at least should attempt to complete the tasks at the lower time amount.

CONCLUSIONS OF LAW

The agency had a reasonable basis for reducing petitioner's SHC-AC time based upon the recertification determination.

THEREFORE, it is **ORDERED**

That the petition for review herein be and the same is hereby 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 24th day of July, 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 July 24, 2015.

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