



**STATE OF WISCONSIN
Division of Hearings and Appeals**

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

FCP/166263

PRELIMINARY RECITALS

Pursuant to a petition filed May 26, 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 June 17, 2015, at Milwaukee, Wisconsin.

The issue for determination is whether iCare correctly denied the Petitioner's request to provide an additional 24 hours (4 hours per week for six weeks) of supportive home care to help her declutter her home.

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, General Counsel

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

ADMINISTRATIVE LAW JUDGE:

Mayumi M. Ishii
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner is a resident of Milwaukee County.

2. On January 27, 2015, iCare completed a Supportive Care Tool and allocated one hour per week for decluttering of Petitioner's home. (Exhibit R5)
3. Petitioner lives in a one bedroom apartment. (Exhibit P9)
4. On April 16, 2015, iCare completed a Resource Allocation Decision (RAD) tool, in response to the Petitioner's request for additional supportive home care hours. (Exhibit R4)
5. Upon completing the RAD tool, iCare increased the Petitioner's supportive home care services by 45 minutes a week, but that increase in time did not include time for decluttering Petitioner's home. Time for decluttering remained at one hour per week. (Exhibits R4 and R5)
6. On April 23, 2015, iCare sent the Petitioner a notice, advising her that it was denying her request for 24 hours of additional supportive home care services for decluttering. (Exhibit R6)
7. The Petitioner filed a request for fair hearing that was received by the Division of Hearings and Appeals on May 26, 2015. (Exhibit P1)

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 iCare, 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 the reduction of services, the agency bears the burden to prove it correctly reduced the services. However, in the case of a request for new or additional services, the Petitioner bears the burden to prove 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.

In the case at hand, the Petitioner was approved to receive 1 hour a week for 52 weeks for decluttering her home. The Petitioner seeks an additional four hours per week for six weeks for a total of 24 additional hours.

In order to prove she needs the additional services, the Petitioner provided photographs of her home in Exhibit P9. Looking at the state of the Petitioner's home in the photos, it is difficult to believe that the Petitioner's supportive home care worker would not be able to clear out and organize Petitioner's belongings, in 52 hours over the course of a year.

The Petitioner also provided the testimony of personal care / supportive home care worker, [REDACTED]. [REDACTED] testified that she has been able to declutter the Petitioner's bathroom and that they were currently working on decluttering the Petitioner's kitchen. [REDACTED] testified that she does not always use the one hour a week for decluttering, because Petitioner's other needs take more time. However, [REDACTED] testified that she thought that the decluttering could be completed in a total of 24 hours. Because Petitioner has been given a total of 52 hours at a rate of one hour per week for decluttering over the course of the year, it is found that iCare correctly denied the Petitioner's request for additional time.

CONCLUSIONS OF LAW

iCare correctly denied Petitioner's request for additional supportive home care hours for decluttering her home.

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 14th day of July,
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 July 14, 2015.

iCare
Office of Family Care Expansion