



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

FCP/167088

PRELIMINARY RECITALS

Pursuant to a petition filed July 07, 2015, under Wis. Admin. Code § DHS 10.55, to review a decision by the Care Wisconsin First, Inc. in regard to Medical Assistance, a hearing was held on September 22, 2015, at Madison, Wisconsin.

The issue for determination is whether the agency erred in its reduction of supportive home care hours under the Family Care program effective 6/23/15.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]

Petitioner's Representative:

Chris L'Heureux
Disability Rights Wisconsin
131 W Wilson St Suite 700
Madison, WI 53703

Respondent:

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

By: Tayja Braun
Care Wisconsin, Inc.
2802 International Lane
Madison, WI 53704-3124

ADMINISTRATIVE LAW JUDGE:

John P. Tedesco
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner is a resident of Dane County.
2. Petitioner is a member of the Family Care Program.

3. Petitioner received supportive home care hours in the amount of 43.5 hours previously.
4. A review of need was performed and her SHC hours were reduced to 30.25 effective 6/23/15.
5. Petitioner appealed.

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. Whenever the local Family Care program decides that a person is ineligible for the program, or when the CMO discontinues an ongoing service in the service plan, the client is allowed to file a fair hearing request. Because a service reduction is sought here, the Petitioner appropriately sought a fair hearing for a further, de novo review of the CMO decision. Wis. Admin. Code §DHS 10.55(1). It is the agency's burden to prove by a preponderance of the evidence that the reduction in services and hours is appropriate.

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; adult day care; assessment and case planning; case management; communication aids and interpreter services; counseling and therapeutic resources; daily living skills training; day services and treatment; home health services; home modification; home delivered and congregate meal services; nursing services; nursing home services, including care in an intermediate care facility for the mentally retarded or in an institution for mental diseases; personal care services; personal emergency response system services; prevocational services; protective payment and guardianship services; residential services in an RCAC, CBRF or AFH; respite care; durable medical equipment and specialized medical supplies; outpatient speech; physical and occupational therapy; supported employment; supportive home care; transportation services; mental health and alcohol or other drug abuse services; and community support program services.

Wis. Admin. Code §DHS 10.41(2).

Supportive home care is included in the list of covered services in the statutory note above. Having established that SHC hours can be a covered service, the issue is whether the agency has appropriately determined the SHC hours that are essential to meeting the Petitioner's needs.

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:

HFS 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 and utilizes all enrollee strengths and informal supports identified in the comprehensive assessment under par. (e)1.
2. Reasonably and effectively addresses all of the enrollee's long-term care outcomes identified in the comprehensive assessment under par. (e)2 and assists the enrollee to be as self-reliant and autonomous as possible and desired by the enrollee.
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).

At hearing, petitioner stated that there is no dispute with regard to some issues such as skilled nursing exercise plan which amounts to 225 minutes per week, and the removal of 70 minutes per week for sponge bath as this is duplicative of the shower time. The only remaining disputes petitioner maintained at hearing related to: (1) shower/sponge bath, (2) skin care, (3) toileting, (4) dressing and undressing, (5) medication administration, and (6) blood sugar checks.

In applying the code service plan standards to the evidence adduced at hearing and through admitted exhibits, I conclude that the bulk of the reductions were not justified. Much of the argument of respondent is based on anecdotal reports and assumptions about petitioner's functional capacity. There are also assertions by respondent that petitioner forcefully denied, such as the respondent's evidence that petitioner is able to test her own blood sugar levels. Petitioner denies she ever said this. Respondent reported that petitioner maintains sufficient dexterity to administer her own medication. Petitioner denies that she is able to open the bottles. There remains a lack of clarity as to whether Care Wisconsin allows her direct access to her medication due to past theft of narcotics. Ms. L'Heureux convincingly refuted Care Wisconsin's justification of the reductions, and established that the reasons for reductions in most cases were not supported by substantial enough evidence to determine what the facts were. Care Wisconsin was unable to reliably refute the evidence and argument of petitioner including the clinical documentation and medical opinions. Given the lack of clarity, the burden was simply not met.

At the same time, petitioner asserts that some of the needs she has require *more* time than she has historically received (skin care, toileting, and medication administration). This is an appeal of a reduction of hours by the agency. The agency sought to alter the status quo from the 43.5 hours. The agency has the burden of supporting the reduction. If it does not, then the reduction can be reversed. This is, however, not an appeal of a denial of a request for an increase of SHC hours. In such a case, the burden would be on petitioner to present compelling evidence sufficient to support an increase. While petitioner undermined the agency's case for a reduction, she did not justify her own requested increases. I am not

convinced that any of the areas in which petitioner argues for an increase in time are supported based on this record. Frankly, petitioner did not present testimony of any home health professionals or others relating to the specific amount of time that is needed for specific tasks. Without such evidence or something specific and compelling, I have no reason to find the petitioner's calculation relating to increased need less arbitrary or unsupported than the agency's.

It is the burden of the provider to justify a reduction in services. The petitioner has previously received 43.5 hours and does not dispute two of the reductions which amount to a total of 4.9 hours per week (skilled nurse exercise plan at 225 minutes per week, and sponge bath at 70 minutes per week). Accordingly, based upon the above, I conclude that Care Wisconsin incorrectly reduced the petitioner's level of FCP-paid Supportive Home Care (SHC) hours from 43.5 to 30.25 per week. But, the record only supports the return to the status quo, or the return to the previous allotment of 43.5 hours minus the 4.9 hours per week that petitioner concedes are not needed. This results in a final calculation, by rounding up to the petitioner's benefit to the nearest half hour, of 39 hours.

CONCLUSIONS OF LAW

1. Care Wisconsin was unable to establish with reliable evidence that it correctly and accurately reduced the petitioner's Family Care Program supportive home care (SHC) worker hours from 43.5 to 30.25 effective 6/23/15.
2. The petitioner remains eligible for 39 hours weekly of Family Care Program Supportive Home Care (SHC) hours retroactive to 6/23/15.

THEREFORE, it is

ORDERED

The matter is remanded to Care Wisconsin, Inc. with instructions to take the necessary actions to restore 39 hours per week of petitioner's Family Care Program hours Supportive Home Care (SHC) hours retroactive to 6/23/15, 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 26th day of October, 2015

\sJohn P. Tedesco
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 October 26, 2015.

Care Wisconsin First, Inc
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Health Care Access and Accountability
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