



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of



DECISION

FCP/168354

PRELIMINARY RECITALS

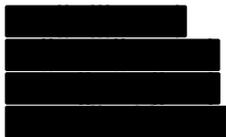
Pursuant to a petition filed August 28, 2015, under Wis. Admin. Code § DHS 10.55, to review a decision by the Continuum in regard to Medical Assistance, a hearing was held on September 23, 2015, at Chippewa Falls, Wisconsin.

The issue for determination is whether the petitioner is entitled to additional prevocational services.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:



Respondent:

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

By: [Redacted]
Continuum
28526 US Hwy 14
Lone Rock, WI 53556

ADMINISTRATIVE LAW JUDGE:

Michael D. O'Brien
Division of Hearings and Appeals

FINDINGS OF FACT

- 1. The petitioner (CARES # [Redacted]) is a resident of Chippewa County.
2. The petitioner receives Family Care medical assistance benefits through her managed care organization, Continuum. She is a 52-year-old woman diagnosed with a developmental disability. Her IQ is 61. She has lived in an adult family home for approximately 15 years.

3. The petitioner had been receiving four days of prevocational services per week, but those services were reduced to one day a week in September 2014 when she began working at the [REDACTED]. Last spring, Continuus sought to end the final day of prevocational services because she was capable of working at regular employment. The Division of Hearings and Appeals determined that she was not capable of working at regular employment and ordered Continuus to continue funding one day of prevocational services per week. She uses these services to work at [REDACTED], a sheltered workshop. She now seeks to increase this service to two days a week.
4. While working at the [REDACTED], the petitioner folded sheets and towels. She had little contact with other workers other than those who briefly came in and out to grab laundry. She quit because she found the job too stressful, she was scared most of time, she was always tired, and she went home with sore shoulders, back, and hips.
5. The petitioner has little stress at [REDACTED]. Her work there allows her to socialize with other workers. She earns enough money there to meet her financial needs.
6. [REDACTED] charges Continuus \$50 for each day the petitioner attends its sheltered workshop. Continuus also pays \$37 a day to transport her to the workshop.

DISCUSSION

The petitioner receives Family Care medical assistance through her care maintenance organization (CMO), Continuus. This program provides appropriate long-term care services for elderly or disabled adults. *See Wis. Stat. § 46.286 and Wis. Admin. Code, Chapter DHS 10.* Applicants who meet the functional and financial eligibility standards are certified for eligibility and referred to a CMO. The CMO then works with the enrollee and her family and representatives to draft an individual service plan that cost-effectively addresses all of her long-term needs and outcomes:

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).

The petitioner is a developmentally disabled woman who lives in an adult family home. For about a decade, she worked for [REDACTED], a sheltered workshop that Continuus paid for with the prevocational funds. About a year ago she was hired to fold towels and sheets in the laundry room at a [REDACTED]. While at CRI, she had received prevocational services four days a week. She agreed to a reduction to once a week when she began working at the [REDACTED]. Continuus sought to eliminate the final day, which was used to provide her with a job coach, contending that her employment at the [REDACTED] shows she no longer needs this service. But she found the job too stressful and tiring, so she quit. The Division of Hearings and Appeals determined in *DHA Decision No. FCP/163504*, a decision issued earlier this year, that she was entitled to continue receiving prevocational services once a week. She now seeks to increase that to twice a week.

Prevocational services are meant to prepare a person for employment, teach her general skills, and promote the most integrated setting that will lead to employment. *2015 Family Care Programs Contract, Addendum X, § A.14.* Continuus still believes that the petitioner can carry on regular employment because she did the work at [REDACTED] for several months. Everyone who dealt with her there indicated that she was happy and that she could perform the work satisfactorily. The evidence then and now is that although she may be able to physically perform this type job—and even mentally perform it for a while—she could not hold up for any extended period. Quitting a job without providing notice, as she did at the [REDACTED], is irresponsible, but it is consistent with her general situation and diagnosis. Her IQ is 61, she is 52 years old, and she still does things like darting in front of cars. If she did not have these problems, the medical assistance program would not be paying Continuus to provide care to her.

A major part of the problem the petitioner faced at the [REDACTED] was that she was isolated from any meaningful human contact after she had worked side by side with others at CRI for over a decade. Prevocational services are meant to lead to jobs that pay at least minimum wage, but they are also meant to lead to jobs that “maximize community inclusion and integration.” *OFCE Memo 10-04.* The petitioner’s prevocational services did lead to a job that paid at least minimum wage, but this came at the cost of losing inclusion and integration into the community. The petitioner’s current work at the sheltered workshop does a better job of integrating her into the community because she has social interaction with friends throughout the day. Furthermore, she testified that the income she earns there meets her needs. The question is whether her Family Care services can include more time at CRI when that employment is considered a prevocational service and is supposed to lead to regular employment.

It can. The Family Care Program is meant to allow a person to receive all of her medical assistance needs through a single provider. This requires some flexibility. The petitioner has not only employment needs but also social needs. When I asked Continuus’s representatives how these needs were meant, they testified that she was sometimes taken for walks at Wal-Mart and that she was taken twice a month to [REDACTED], a social network. I doubt there is much social interaction with friends while walking at Wal-Mart, and twice monthly visits to [REDACTED] leaves her isolated most of the month. Moreover, friendships and bonds rarely form at these events to the same extent they do between people who work side by side at a job, especially one that causes little stress. Thus, although employment at CRI may not lead to regular employment, a goal of prevocational services, it is the most effective way to meet her social needs. At the same time, it provides her with adequate income.

When determining whether the Family Care program should fund a service, one should look not only at the label put on it but also at what that service actually accomplishes. Although employment at CRI may be labeled a prevocational program, if it is a cost-effective means to meet the recipient’s overall objectives, it should be provided, even if it falls short of accomplishing all of the usual goals of a prevocational program.

The petitioner currently works one 6 ½ hour shift a week at CRI. During weeks she does not go to Wal-Mart or [REDACTED], this is the only interaction she has during the week with those outside of her household. This is not enough. An additional day there may not lead to regular employment, but Continuus has offered no alternative that meets her overall needs nearly as well: It provides her enough spending money, and it allows her a reasonable amount of time to socialize and be included in and integrated into the community. Based upon this and the fact that the Family Care program is meant to provide a flexible means of meeting her needs, she is entitled to a second day of employment at CRI, regardless of what that service is called.

CONCLUSIONS OF LAW

Continuus must provide the petitioner with additional prevocational services in the form of a second day of employment at [REDACTED] because those services are medically necessary.

THEREFORE, it is

ORDERED

That this matter is remanded to Continuous with instructions that within 10 days of the date of this decision it add a second day each week to the petitioner's once-weekly prevocational services.

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 2nd day of November, 2015

\sMichael D. O'Brien
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 November 2, 2015.

Continuus
Office of Family Care Expansion
Health Care Access and Accountability