



FH
[REDACTED]

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

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

DECISION

CWA/168854

PRELIMINARY RECITALS

Pursuant to a petition filed September 21, 2015, under Wis. Admin. Code § HA 3.03, to review a decision by the Rock County Department of Social Services in regard to Medical Assistance, a telephonic hearing was held on October 13, 2015, at Janesville, Wisconsin. At the request of the parties, the record was held open until October 27, 2015 for the submission of written closing arguments to DHA (with a copy to the other party). The county agency timely submitted its closing argument to DHA. Petitioner failed to submit any closing argument to DHA by October 27, 2015, or even by the date of this decision.

The issue for determination is whether the county agency correctly discontinued the petitioner's COP Waiver benefits effective September 24, 2015, due to all contracted county home health agencies have refused to provide care for her due primarily to her history of abusive behavior resulting in an unsafe residence for petitioner without home health services.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

Respondent:

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

By: [REDACTED] [REDACTED], social worker
Rock County Department of Social Services
1900 Center Avenue
PO Box 1649
Janesville, WI 53546

ADMINISTRATIVE LAW JUDGE:

Gary M. Wolkstein
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Adams County who is a quadriplegic.
2. The petitioner has received COP Waiver funding from the county agency for long term support since 1995. The petitioner has lived in her own apartment with services provided to her in her home (personal and supportive home care workers, specialized medical and adaptive aids).
3. Over the years, numerous home health agencies have been used for petitioner, and those agencies have terminated their services due to the petitioner being too difficult with which to work.
4. Due to her quadriplegia and other serious medical problems, the petitioner requires assistance to reside safely in her own home, as she is unable to meet her own needs.
5. As of September, 2015, all 16 home health contracted agencies in Rock County have all declined or refused to provide home health services for the petitioner in her home. In addition, Rock County CBRFs and nursing home have refused to accept the admissions of petitioner as a resident/patient. See Exhibit 3.
6. Prior to the October 13, 2015 hearing, petitioner refused to consider assisted living, adult family home, or a CBRF, as she wanted to remain in her home.
7. The county agency sent a September 14, 2015 notice to the petitioner stating that her COP Waiver services for home health care would discontinue effective September 24, 2015 because it was not safe for petitioner to reside in her home without home health services for the following reasons: a) petitioner needs to have a personal care agency in her home daily to assist petitioner with her activities of daily living (ADLs); b) the county agency has contracts to work with 16 Rock County home health agencies and other CBRFs, assisted living and nursing homes. All agencies or residence agencies have either declined to accept petitioner's admission, or refused to provide home health services to petitioner due to her abusive behavior, alcoholism or throwing feces at home health workers. The agency offered to assist the petitioner to move to a nursing home. See Exhibits 1 - 3.
8. On September 16, 2015, petitioner was taken to the hospital for treatment. After discharge from the hospital, petitioner was taken to the [REDACTED] in Friendship, WI as an inpatient.

DISCUSSION

During the October 13, 2015 hearing, the county agency presented three persuasive witnesses (social workers [REDACTED], [REDACTED], [REDACTED], and [REDACTED]) who testified with documentation that the county agency correctly discontinued the petitioner's COP Waiver benefits effective September 24, 2015, due to all contracted county home health agencies have refused to provide care for her due primarily to her history of abusive behavior resulting in an unsafe residence for petitioner without home health services. The agency provided documentation that all 16 home health agencies and other residences (Rock County CBRFs, assisted living and nursing homes) have either refused or declined to provide home health services to petitioner for abusive behavior, alcoholism or throwing feces at home health workers. See Exhibit 3. A COP Wavier recipient who is unable to care for herself does result in an unsafe plan of care if all home health providers refuse to work with petitioner. As a result, the county agency correctly determined it needed to terminate petitioner's COP Waiver services due to an unsafe plan of care pursuant to the COP Waiver Manual, Chapter 2.10 and Chapter 9.

During the October 13, 2015 hearing, the petitioner was assisted by social worker, [REDACTED]. Neither Ms. [REDACTED] nor the petitioner were able to provide any reliable testimony or any documentation to refute the county agency's case or the facts as set forth in the above Findings of Fact. Accordingly, based

upon the above, I must conclude that the correctly discontinued the petitioner's COP Waiver benefits effective September 24, 2015, due to all contracted county home health agencies refusing to provide care for her due primarily to her history of abusive behavior resulting in an unsafe residence for petitioner without home health services.

CONCLUSIONS OF LAW

The county agency correctly discontinued the petitioner's COP Waiver benefits effective September 24, 2015, due to all contracted county home health agencies have refused to provide care for her due primarily to her history of abusive behavior resulting in an unsafe residence for petitioner without home health services.

THEREFORE, it is ORDERED

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 4th day of December, 2015

\sGary M. Wolkstein
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 December 4, 2015.

Rock County Department of Social Services
Bureau of Long-Term Support