



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[Redacted]
[Redacted]
c/o [Redacted]
[Redacted]
[Redacted]

DECISION

FCP/169013

PRELIMINARY RECITALS

Pursuant to a petition filed September 24, 2015, under Wis. Admin. Code § DHS 10.55, to review a decision by the Family Care agency, iCare, in regard to Medical Assistance, a telephonic hearing was held on October 28, 2015, at Milwaukee, Wisconsin. At the request of the parties, the record was held open for the petitioner's submission of new evidence to DHA and to iCare, for a supplemental response by iCare, and then for petitioners' reply by November 18, 2015. The petitioner submitted some new evidence to DHA and iCare. iCare counsel submitted a November 11, 2015 supplemental response to DHA and to petitioner's representative and daughter, [Redacted] [Redacted]. Ms. [Redacted] failed to submit any response to DHA regarding the November 11, 2015 supplemental response by November 18, 2015 or even by the date of this decision.

The issue for determination is whether the Family Care Program (FCP) agency, iCare, correctly reduced the petitioner's Personal Care Worker (PCW) hours from 31.5 to 4.75 hours per week and her Supportive Home Care (SHC) from 14 to 2.25 hours per week effective September 1, 2015.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[Redacted]
[Redacted]
c/o [Redacted]
[Redacted]
[Redacted]

Respondent:

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

By: Attorney [Redacted] [Redacted]
iCare
1555 N. Rivercenter Drive
Suite 206
Milwaukee, WI 53212

ADMINISTRATIVE LAW JUDGE:

Gary M. Wolkstein
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Milwaukee County who has been recently enrolled in the Family Care Program (FCP) since August 1, 2015. Independent Care Health Plan (iCare) is her managed care organization (MCO) for the FC program.
2. Petitioner resides with her daughter, [REDACTED], and her three grandchildren. Exhibit 5.
3. [REDACTED] is her mother's (petitioner's) personal care worker (PCW) and supportive home care (SHC) worker.
4. Prior to the evaluation by the FCP during August, 2015, petitioner was receiving 31.5 hours per week of PCW hours and 14 hours per week of SHC hours for the care by her daughter.
5. On August 7, 2015, iCare RN [REDACTED] and her FC team went to the petitioner's home to conduct the assessment to determine petitioner's functional abilities and her needs for assistance with ADLs and IADLs through PCW and SHC services. See Exhibit 4. During that assessment, Ms. [REDACTED] determined that petitioner is able to perform her grooming tasks independently, but needs assistance getting in and out of the tub and washing her lower body due to pain. She uses a shower chair/bench for stability. Petitioner can dress her upper body, but needs assistance with her lower body. She is independent with eating. She uses her walker to ambulate within the home. She needs some assistance with toileting, and uses a raised toilet seat. Exhibit 4, pp. 4-5.
6. During that August 7, 2015 assessment regarding IADLs, petitioner is able to use the stove and microwave to heat meals. Petitioner can assist with meal preparation from a seated position. Her daughter does the grocery shopping and cooking for the household. Petitioner is able to use a scooter at the grocery store, but needs help reaching items, bringing them home, and putting them away. Petitioner generally manages her own medication, but receives reminders from her daughter. She is independent with money management, but needs assistance with laundry and chores. See Exhibit 4, pp. 3-6.
7. The FC team had "Resource Allocation Decision" (RAD) discussion with the petitioner regarding her needs for personal and supportive services. Exhibit 6. In those discussions, the FC team discussed with petitioner what aspects of her personal care for which she needs assistance and how often such care is needed. The petitioner's daughter provides assistance with the following ADLs of daily assistance: bathing, dressing, assisting with mobility to the bathroom. In addition, petitioner's daughter provides assistance with the following IADLs: medication reminders, laundry, changing bed linens, shopping, and cooking. See Exhibits 6 and 7.
8. Based upon the Personal Care and Supportive Care Tool time allocations, the FC interdisciplinary team (IDT) determined that the petitioner's FC services should be reduced for Personal Care Worker (PCW) hours from 31.5 to 4.75 hours per week and her Supportive Home Care (SHC) from 14 to 2.25 hours per week. See Exhibits 7 and 8.
9. The petitioner did not contest that she does not need a special diet, that her daughter lives in the home with her, cooks for the entire family, and cleans the communal areas of the home. The FC team explained to petitioner that although petitioner and her daughter would like her daughter to receive more paid hours, only certain types of supportive tasks by family members living in the same household can be approved as paid time. See Exhibit 9.
10. The Family Care Program sent an August 18, 2015 Notice to the petitioner stating that effective September 1, 2015 the following petitioner FC services would be reduced: a) Personal Care Worker (PCW) hours from 31.5 to 4.75 hours per week; and b) Supportive Home Care (SHC) from 14 to 2.25 hours per week.

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 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 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, he may then request a hearing with the Division of Hearings and Appeals.

As has been noted many times in the past, there are no standards written in the law or policy on how to make such a determination in an FCP case. It comes down to the general criteria for determining authorization for services – medical appropriateness and necessity, cost effectiveness, statutory and rule limitations, and effectiveness of the service. See Wis. Admin. Code, §DHS 107.02(3)(e).

However, for SHC services, there are additional guidelines within the FCP program. See page 31 of the agency's hearing submission. Specifically, the guidelines provide that SHC services are to be provided only for areas belonging solely to the member. Services that are typically assumed to be the responsibility of persons living in the same household are routine laundry, meal preparation, shopping, usual cleaning, general non-medical supervision, and transportation. Maintenance and upkeep of shared areas are the responsibility of household members, not a paid caregiver.

The agency showed clearly the areas in which SHC and PCW hours were reduced directly as a result of petitioner enrolling in the FC program as of August 1, 2015 and the resultant FC comprehensive assessment. The petitioner's representative was unable to provide any reliable, specific testimony or evidence to refute that the FC correctly reduced the petitioner's SHC and PC hours, as explained in Findings of Fact #4 - #10 above. Basically, the petitioner receives 1 hour per day of combined SHC and PC services from her daughter. The petitioner explained very honestly that she wanted to provide more income to her daughter from her PCW and SHC services, because her daughter is not otherwise employed. However, as explained by the FC representative, the petitioner must establish with reliable evidence that she needed more PCW and SHC hours and petitioner failed to meet such burden of proof.

While the record was held open, the petitioner submitted some new evidence to DHA and iCare. iCare counsel submitted a November 11, 2015 supplemental response to DHA and to petitioner's representative and daughter, [REDACTED]. See above Preliminary Recitals. In that November 11th supplemental submission, Attorney [REDACTED] correctly responded that the petitioner's September 17, 2015 and October 14, 2015 office visit notes and do not establish an evidentiary basis for increasing petitioner's SHC or PCW hours. Furthermore, Ms. [REDACTED] failed to submit any response to DHA to refute the November 11, 2015 supplemental response by November 18, 2015 or even by the date of this decision. Accordingly,

based upon the above, I conclude that the Family Care Program (FCP) agency, iCare, correctly reduced the petitioner's Personal Care Worker (PCW) hours from 31.5 to 4.75 hours per week and her Supportive Home Care (SHC) from 14 to 2.25 hours per week effective September 1, 2015.

CONCLUSIONS OF LAW

The Family Care Program (FCP) agency, iCare, correctly reduced the petitioner's Personal Care Worker (PCW) hours from 31.5 to 4.75 hours per week and her Supportive Home Care (SHC) from 14 to 2.25 hours per week effective September 1, 2015.

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 7th 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 7, 2015.

iCare
Office of Family Care Expansion
Health Care Access and Accountability