



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

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

FCP/170259

PRELIMINARY RECITALS

Pursuant to a petition filed November 23, 2015, under Wis. Admin. Code § DHS 10.55, to review a decision by the Care Wisconsin First, Inc in regard to Medical Assistance (MA), a hearing was held on February 8, 2016 with continued testimony on March 16, 2016, by telephone at Green Bay, Wisconsin.

The issue for determination is whether the agency erred in its reduction of supportive home care hours from 18 hours per week to 7 hours per week.

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: [REDACTED]
Care Wisconsin First, 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 Brown County.
2. Petitioner had been a member of a waiver program with another agency. On July 1, 2015, petitioner's services and case management were shifted to Care Wisconsin, a Wisconsin agent for

the Family Care Program. At the time of the transfer of enrollment, Care Wisconsin maintained the SHC hours at the 18 hour level as had been granted by the previous agency [REDACTED].

3. Care Wisconsin assessed petitioner's needs, in part, by the use of the long-Term Care Functional Screen tool ("LTCFS") completed on November 13, 2015 (see ex. #1). At the time of the completion of that screen, petitioner represented to the screener that she was independent in all activities of daily living including bathing, dressing, eating, mobility, toileting and transferring. The areas of need for petitioner, as determined by the agency by use of the LTCFS included meal preparation, medication administration, money management, laundry and chores, and transportation.
4. The agency also determined needs through the use of the supportive home care tool (see ex. #3).
5. On November 12, 2016 the Agency sent a Notice of action informing petitioner that it would be reducing her supportive home care hours from 18 hours to 7 hours per week. The effective date per the notice was November 27, 2016.
6. 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.

SHC services are permitted as follows:

Supportive Home Care (SHC) is the provision of a range of services for participants who require assistance to meet their daily living needs, ensure adequate functioning in their home and permit safe access to the community.

Supportive home care services include:

1. Personal Services

- a. Assistance with activities of daily living such as eating, bathing, grooming, personal hygiene, dressing, exercising, transferring and ambulating;
- b. Assistance in the use of adaptive equipment, mobility and communication aids;
- c. Accompaniment of a participant to community activities;
- d. Assistance with medications that are ordinarily self-administered;
- e. Attendant care;
- f. Supervision and monitoring of participants in their homes, during transportation (if not done by the transportation provider) and in community settings;
- g. Reporting of observed changes in the participant's condition and needs; and
- h. Extension of therapy services. "Extension of therapy services" means activities by the SHC worker that assist the participant with a PT/OT or other therapy/treatment plan. Examples of these activities include assistance with exercise routines, range of motion exercises, standing by during therapies for safety reasons, having the SHC worker read the therapist's directions, helping the participant remember and follow the steps of the exercise plan or hands on assistance with equipment/devices used in the therapy routine. It does not include the actual service the therapist provides.

2. Household Services

- a. Performance of household tasks and home maintenance activities, such as meal preparation, shopping, laundry, house cleaning, simple home repairs, snow shoveling, lawn mowing and running errands;
- b. Assistance with packing/unpacking and household cleaning/organizing when a participant moves.

3. Room and board costs for SHC providers who "live in" are allowable under this SPC.

Application for a §1915(c) Home and Community-Based Services Waiver, Waiver Number WI.0485.R01.00, Effective January 1, 2011 (emphasis added).

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 was represented by her caregiver. Her representative based his argument primarily on conclusory and vague statements such as his statement that the agency's entries on the supportive home care tool are "ridiculous" or that petitioner's need for dishwashing "obviously...takes more than three minutes." Petitioner's caregiver took issue with the 45 minutes granted per week for meal preparation but did not state how much time the task actually takes. He did state that he likes to cook for petitioner and "if you want to make healthy food obviously it takes more than 15 minutes."

Petitioner's representative in a rambling monologue discussed that petitioner loses her bearings sometimes and often misses her paratransit company trips, that she has had two fires, and that she has had "cat litter on her toothbrush because she tries to clean her bathroom." But none of this translates into a specific or supported argument. Much of what the representative discussed was how he does things for petitioner, or what he likes to do for her such as "I do really like to cook well for [petitioner]"... such as baking and baked or roasted chicken. The caregiver also explained that petitioner calls him two or three times a day with immediate needs for emotional support and rides and needs for explanation on how to do something. But, the question is what petitioner **needs**, not what the caregiver likes to do. It may be that the existing level of services and care are simply not practical, cost-effective or necessary. It also strikes me that a different caregiver may be more efficient in completion of tasks.

The caregiver also made general observations about challenges in dealing with Care Wisconsin, seemingly as part of an argument that more responsibility falls on the caregiver. But, oddly, the example

provided actually pertained to another member served by Care Wisconsin. The caregiver did not allege such a difficulty on any occasion with petitioner's care team.

Critically, petitioner's caregiver explained that he had to leave the screening early and was not present for the administration of the long-term care functional screen. He explained that petitioner was not forthright when speaking with Care Wisconsin and that her needs are actually greater than she explained to the Care Wisconsin care team. The caregiver explained that petitioner "likes to brag." This is not the fault of Care Wisconsin. It would be wise for petitioner to be candid with the care team as it is the care team that determines the needs. Nothing is gained by misrepresentation of petitioner's abilities.

CONCLUSIONS OF LAW

The agency did not err in its reduction of SHC hours.

THEREFORE, it is **ORDERED**

This appeal 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 Madison,
Wisconsin, this 16th day of May, 2016

\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 May 16, 2016.

Care Wisconsin First, Inc
Office of Family Care Expansion
Health Care Access and Accountability