



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

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

FCP/171928

PRELIMINARY RECITALS

Pursuant to a petition filed February 5, 2016, under Wis. Admin. Code, §DHS 10.55, to review a decision by Care Wisconsin First, Inc. to deny a request for additional employment support hours under the Family Care Program (FCP), a hearing was held on April 21, 2016, at Madison, Wisconsin, with the parties appearing by telephone. A hearing set for March 22, 2016 was rescheduled at the petitioner’s request.

The issue for determination is whether the agency correctly denied a request for additional supported employment hours.

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]

Petitioner's Representative:

[REDACTED] [REDACTED]
Disability Rights Wisconsin
[REDACTED]
[REDACTED]

Respondent:

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

By: [REDACTED] [REDACTED]
Care Wisconsin First, Inc.
2802 International Lane
Madison, WI 53704-3124

ADMINISTRATIVE LAW JUDGE:

Brian C. Schneider
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner is a 28-year-old resident of Columbia County who is eligible for the FCP. Care Wisconsin is his Managed Care Organization (MCO).
2. Petitioner is diagnosed with autism and intellectual disability.

3. For some time petitioner has been authorized by the MCO for three hours per week supported employment, specifically art work training at [REDACTED] [REDACTED] [REDACTED] [REDACTED] (WORC). It has become apparent that he is a talented artist, and he was referred to the [REDACTED] [REDACTED] (DVR). After a DVR referral, [REDACTED] put together a Supported Self-Employment Service Plan and feasibility study for a proposed business. Exhibits P-5 and P-6. It is in the DVR approval process at present.
4. In December, 2015 petitioner requested an additional three hours per week at WORC to hone his art skills. The MCO denied the request by a notice dated January 5, 2016.
5. MCO staff do not disagree that the additional three hours per week would be useful for petitioner but take the position that it is vocational in nature and therefore should be under DVR jurisdiction. In addition, MCO staff concluded that petitioner could get the same benefit by painting at home.
6. Petitioner formerly spent 28 hours per week at REM day services. In late 2015 the REM time was cut from 28 to 14 hours per week primarily because petitioner was bored and uncooperative with REM staff.
7. After informal grievance review by the MCO the determination to deny the additional WORC hours was upheld.

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 denial of eligibility for the program and 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. Wis. Admin. Code, §DHS 10.55(2).

As noted during the hearing I am taking jurisdiction. One of the avenues of direct appeal is that the care plan is unacceptable because the support items are insufficient to meet the enrollee's needs. Wis. Admin. Code, §DHS 10.55(1)(f)2. Although I believe that provision refers to the development of the care plan and not a request to change the care plan, essentially petitioner is arguing that the care plan as it stands fails to provide sufficient support to meet his needs. In addition, Care Wisconsin staff at the hearing agree that at least an informal grievance review was conducted with supervisory and administrative staff.

On the merits, therefore, while I agree with Care Wisconsin that the work with WORC is more the jurisdiction of DVR than the FCP, it is clear that the FCP provides supported employment as an FCP service

and that DVR services are not yet in place to cover the service. Petitioner wants the additional three hours only until DVR takes over (it is anticipated that it will do so later this summer), and if DVR denies the plan, the MCO can review the WORC hours again at that point. Petitioner believes that the hands-on assistance at WORC is much more valuable than working alone at home. Finally, petitioner has had service hours at REM cut by 14 hours per week, so the additional 3 hours per week at WORC would appear to be cost effective in a cost/benefit analysis of petitioner's FCP budget.

I conclude that the MCO should approve petitioner's request for the additional three hours per week supported employment, to begin immediately (as soon as it can be arranged between petitioner and WORC) and to run until petitioner's DVR employment plan takes over.

CONCLUSIONS OF LAW

The request for three additional supported employment hours per week covered by the FCP is reasonable because petitioner does not yet have DVR funding for supported employment in place and because the cost essentially is offset by a reduction in other FCP funding previously allowed on petitioner's care plan.

THEREFORE, it is

ORDERED

That the matter be remanded to the MCO with instructions to approve petitioner's request for three additional WORC hours per week to begin immediately and to run until petitioner's DVR employment plan takes over.

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 25th day of April, 2016

\sBrian C. Schneider
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 April 25, 2016.

Care Wisconsin First, Inc
Office of Family Care Expansion
Health Care Access and Accountability
[REDACTED]@drwi.org