



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

FCP/172125

PRELIMINARY RECITALS

Pursuant to a petition filed February 18, 2016, under Wis. Admin. Code § DHS 10.55, to review a decision by the Continuum in regard to Medical Assistance, a hearing was held on March 23, 2016, at Eau Claire, Wisconsin.

The issue for determination is whether the petitioner's CMO correctly determined the number of supportive home care hours she requires to meet her medical needs each 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]
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 Eau Claire County.
2. The petitioner has received Family Care Medical Assistance benefits through her care maintenance organization, Continuum, since at least July 2008.

3. The petitioner is a 79-year-old woman diagnosed with various heart and respiratory diseases, diabetes, kidney disease, obesity, digestive disorders, and chronic pain and fatigue.
4. The petitioner bathes and eats independently. She requires some help dressing her lower body.
5. The petitioner can move about but hangs onto furniture and walls when doing so.
6. The petitioner requires help preparing meals twice a day. She also requires help shopping for food.
7. The petitioner requires help changing her linen and with laundry.
8. The petitioner requires weekly help with general cleaning.
9. The petitioner can take her own medication, but she sometimes forgets to do so. She takes medication twice a day.

DISCUSSION

The Family Care Program provides appropriate long-term care services for elderly or disabled adults. It is supervised by the Department of Health and Family Services, authorized by Wis. Stat. § 46.286, and comprehensively described in Chapter DHS 10 of the Wisconsin Administrative Code. The process contemplated for an applicant is to test functional eligibility, then financial eligibility, and if both standards are met, to certify eligibility. The applicant is then referred for enrollment in a Care Management Organization (CMO), which drafts a service plan that meets her needs. Wis. Admin. Code § DHS 10.44(2)(f).

The petitioner's CMO, Continuous, seeks to reduce the supportive home care she receives under her service plan from 28.5 to 17.5 hours per week. Because Continuous seeks to change the present circumstances by reducing his care, it has the burden of proof. *State v. Hanson*, 295 N.W.2d 209, 98 Wis. 2d 80 (Wis. App. 1980); *see also DHA Final Decision ATI-40/87198*. But that burden is only by the preponderance of the credible evidence, a fairly low burden.

Supportive Home Care consist of:

- a. Hands-on assistance with activities of daily living such as dressing/undressing, bathing, feeding, managing medications and treatments that are normally self-administered, toileting, assistance with ambulation (including the use of a walker, cane, etc.), carrying out professional therapeutic treatment plans, grooming such as care of hair, teeth or dentures. This may also include preparation and cleaning of areas used during provision of personal assistance such as the bathroom and kitchen.
- b. Direct assistance with instrumental activities of daily living, as well as observation or cueing of the member to safely and appropriately complete activities of daily living and instrumental activities of daily living. Providing supervision necessary for member safety at home and in the community. This may include observation to assure appropriate self-administration of medications, assistance with bill paying and other aspects of money management, assistance with communication, arranging and using transportation and personal assistance at a job site and in non-employment related community activities.
- c. Routine housekeeping and cleaning activities performed for a member consisting of tasks that take place on a daily, weekly or other regular basis. These may include: washing dishes, laundry, dusting, vacuuming, meal preparation, shopping and similar activities that do not involve hands-on care of the member.
- d. Intermittent major household tasks that must be performed seasonally or in response to some natural or other periodic event for reasons of health and safety or the need to assure the

member's continued community living. These may include: outdoor activities such as yard work and snow removal; indoor activities such as window washing; cleaning of attics and basements; cleaning of carpets, rugs and drapery; refrigerator/freezer defrosting; the necessary cleaning of vehicles, wheelchairs and other adaptive equipment and home modifications such as ramps. This also may include assistance with packing/unpacking and household cleaning/organizing when a member moves.

2016 Contract Between Continuous and Department. Addendum, § IX.A.24.

State regulations require when determining whether any medical assistance service is necessary, an agency must review, among other things, the medical necessity of the service, the appropriateness of the service, the cost of the service, the extent to which less expensive alternative services are available, and whether the service is an effective and appropriate use of available services. Wis. Admin. Code, § DHS 107.02(3)(e)1.,2.,3.,6., and 7. "Medically necessary" means a medical assistance service under ch. DHS 107 that is:

- (a) Required to prevent, identify or treat a recipient's illness, injury or disability; and
- (b) Meets the following standards:
 1. Is consistent with the recipient's symptoms or with prevention, diagnosis or treatment of the recipient's illness, injury or disability;
 2. Is provided consistent with standards of acceptable quality of care applicable to the type of service, the type of provider, and the setting in which the service is provided;
 3. Is appropriate with regard to generally accepted standards of medical practice;
 4. Is not medically contraindicated with regard to the recipient's diagnoses, the recipient's symptoms or other medically necessary services being provided to the recipient;
 5. Is of proven medical value or usefulness and, consistent with s. HFS 107.035, is not experimental in nature;
 6. Is not duplicative with respect to other services being provided to the recipient;
 7. Is not solely for the convenience of the recipient, the recipient's family, or a provider;
 8. With respect to prior authorization of a service and to other prospective coverage determinations made by the department, is cost-effective compared to an alternative medically necessary service which is reasonably accessible to the recipient; and
 9. Is the most appropriate supply or level of service that can safely and effectively be provided to the recipient.

Wis. Admin. Code, § DHS 101.03(96m).

Continuous contends that the petitioner requires the help listed in *Findings of Fact 4-9*. It used the Personal Care Screening Tool, a computer program that assigns a standard time for each task and determined that she required 13.41 hours of care each week. It then added a little over three hours to this to reach 17.5 hours per week. The petitioner contends that these tasks take somewhat longer, but the testimony those speaking on her behalf gave indicates that the tasks should not take more than the 17.5 hours proposed by Continuous. Information in the appeal indicated that the petitioner likes the company of her workers and they need the hours. Although socialization is necessary, it is not one of the tasks listed for supportive home care workers. Based upon this, I uphold Continuous's decision.

CONCLUSIONS OF LAW

The petitioner requires 17.5 hours of supportive home care each month to meet her medical needs.

THEREFORE, it is **ORDERED**

The petitioner's 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 10th day of May, 2016

\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 May 10, 2016.

Continuus
Office of Family Care Expansion
Health Care Access and Accountability