



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

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

DECISION
Case #: FCP - 173209

PRELIMINARY RECITALS

On March 25, 2016, the above petitioner filed a hearing request under Wis. Admin. Code § DHS 10.55, to challenge a decision by the Care Wisconsin regarding, Family Care (FC), a Medical Assistance – related program. The hearing was held on June 29, 2016, by telephone. Hearings set for May 10 and June 1, 2016, were rescheduled at the petitioner's request.

The issue for determination is whether the agency correctly denied additional miles for non-medical transportation reimbursement from February 26, 2016 forward.

There appeared at that time the following persons:

PARTIES IN INTEREST:

Petitioner:

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

Petitioner's Representative:

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

Respondent:

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

By: [REDACTED], Care Mgr.
Care Wisconsin
P.O. Box 14017
Madison, WI 53708-0017

ADMINISTRATIVE LAW JUDGE:

Nancy J. Gagnon
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Oconto County.
2. Petitioner is disabled and resides with her parents in a rural area. She is a participant in the FC program. Care Wisconsin is a CMO operating the FC program for the Department in the petitioner's geographical region.
3. Petitioner is unable to drive herself, and there is no public transportation in her area. She has a specially modified van. On February 26, 2016, the petitioner's guardian/mother requested mileage reimbursement for social activities/community outings for the petitioner. The CMO issued written notice of denial of that request on March 7, 2016. The petitioner appealed.
4. At the time of the request and thereafter, the CMO approved 320 miles monthly to take the petitioner to/from day programming at New View Industries. Time at New View is designed to promote pre-vocational skill building and socialization. The CMO denied the request for additional mileage reimbursement because it believed that the petitioner was already having a portion of her need for socialization met at New View. Further, the agency opined that there should not be mileage reimbursement when family members drive the petitioner to family gatherings and household errands.
5. This CMO has developed a policy document, *Supplementary RAD Guideline for FC and Partnership*. That document defines Non-medical Transportation as

Transportation to/from activities and programs includes: day services, adult day center, senior center, supported employment, activity therapies, and/or grocery shopping.

The CMO policy also tells the CMO team to consider whether the member has informal supports who are available to provide transportation. The CMO considered this policy as part of the denial decision.
6. The petitioner, age 30, suffered a traumatic brain injury in a 2006 auto accident. She suffers from quadriplegia, aphasia, contractures, constipation, and GERD. Her IQ is between 75 and 85. An electric wheelchair is used for all mobility. The petitioner requires physical assistance to perform any activity of daily living (ADL) – bathing, dressing, eating (supervision), some grooming, toileting (incontinent), taking medication, and transfers. She also requires help with IADLS, such as laundry and chores.
7. Other than to New View, the petitioner is driven 734 - 816 miles monthly for non-medical transportation (medical transportation is covered through a different funding source). Of the 734 - 816 miles, at least 200 miles monthly are driven by the petitioner's parents. At least 400 miles monthly are driven by a supportive home care (SHC) worker other than a parent. At hearing, the petitioner was requesting mileage reimbursement for 400 miles monthly, in addition to the New View mileage and medical mileage.
8. The requested 400 miles monthly are appropriate for meeting the petitioner's need for socialization and autonomy.

DISCUSSION

The Family Care program is supervised by the Wisconsin Department of Health Services, and is designed to provide appropriate long-term care services for elderly or disabled adults. It is authorized at Wis. Stat. § 46.286, and is further described at Wis. Admin. Code, ch. DHS 10. When a recipient requests a new or

increased FC service, the burden of proving the need for the service at hearing rests with the petitioner (preponderance of the credible evidence).

The Family Care CMO must develop an Individual Service Plan (ISP) in partnership with the client. Wis. Admin. Code § DHS 10.44(2)(f). The ISP must reasonably address all of the client's long-term needs to assist the client to be as autonomous as possible, while also being cost effective. While the client has input, the CMO does not have to provide all services the client desires if there are less expensive alternatives to achieve the same results. *Id.*, 10.44(1)(f). ISPs must be reviewed periodically. *Id.*, 10.44(j)(5).

The federal government has promulgated 42 C.F.R. §441.450 - .484 to provide general guidance for this program. Those regulations require that the Department's agent must assess the participant's needs and preferences (including health status) as a condition of IRIS participation. *Id.*, §441.466. The Department's agent must also develop a service plan based on the assessed needs. Further, "all of the State's applicable policies and procedures associated with service plan development must be carried out ..." *Id.* §441.468.

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., 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...; adult day care; assessment and case planning; ... personal care services; ... supportive home care; transportation services;

Wis. Admin. Code §DHS 10.41(2) (June, 2009). Transportation services are included in the list of covered services in the statutory note above.

The Department's CMO contract is viewable at <https://www.dhs.wisconsin.gov/familycare/mcos/cy2016mcocontract.pdf> . The contract does not limit covered transportation service to pre-vocational work sites only. Rather, the contract approves of a rather loose depiction of destinations for which mileage is reimbursable:

[Community transportation is] provision of transportation services or items that enable a member to gain access to waiver and other community services, activities and resources, as specified in the member's care plan. This service may consist of items such as tickets, fare cards, or other fare media or services where the common carrier, specialized medical vehicle or other provider directly conveys a member ...

Contract, p. 308, item 26. The petitioner's care plan calls for socialization activity, so transportation to her social activities without her parents is appropriately reimbursed. The petitioner's mother also testified that the socialization that occurs for the petitioner at New View is *de minimus*, so additional socialization is needed.

I do agree with the CMO that mileage reimbursement to parents who were going to a family activity anyway is not necessary, as the parents are a natural support in that situation. However, the requested 400 miles are driven by a non-parent SHC worker, taking the petitioner to a destination to which the parents are not going. Accordingly, reimbursement for the 400 additional monthly miles is appropriate here.

CONCLUSIONS OF LAW

1. The requested 400 miles monthly are appropriate for meeting this rural petitioner's need for socialization and autonomy.

THEREFORE, it is

ORDERED

That the matter be remanded to the agency with instructions to amend the petitioner's ISP to allow provision of mileage reimbursement for an additional 400 miles monthly for non-medical activities. The amendment shall be effective February 26, 2016. The agency shall take the action within 10 days of this decision.

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, **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 21st day of July, 2016

\s _____
Nancy J. Gagnon
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 July 21, 2016.

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

