



FH
[REDACTED]

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION
Case #: FCP - 173949

PRELIMINARY RECITALS

On April 28, 2016, the above petitioner filed a hearing request under Wis. Admin. Code § DHS 10.55, to challenge a decision by the Western Wisconsin Cares-FCP regarding Medical Assistance. The hearing was held on June 14, 2016, by telephone.

The issue for determination is whether the agency had a basis to reduce petitioner's supportive home care (SHC) time from 5 hours per week to 2 hours per week.

There appeared at that time the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]

Respondent:

Department of Health Services
1 West Wilson Street, Room 651
Madison, WI53703

By: [REDACTED]
Western Wisconsin Cares-FCP

ADMINISTRATIVE LAW JUDGE:

Peter McCombs
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of La Crosse County who has received services under FCP for approximately 9 years.

2. Petitioner has a history of back problems, and underwent surgery to address these problems in February, 2015. Following surgery, petitioner's recovery went well and petitioner was moved from assisted living to independent living.
3. The respondent, after assessing petitioner's improvement following surgery, reduced her supportive home hours to 2 hours weekly effective April 1, 2016.
4. Petitioner appealed the reduction on April 28, 2016.

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 Managed Care Organization (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.

There is little in the way of policy or rules for supportive home care, and neither party provided me any policy for allocating time for house cleaning. Respondent's WWC appeal hearing minutes state:

...Feb 2015 [petitioner] had surgery and lost her husband. She had PT/OT at RCAC, and per her MD, reached maximum potential. The MD evaluated ROM, limitations, etc. [Petitioner] was discharged in February, 2015. Plan was to have SHC one hour every day of the week. The team assessed health and safety of member. MCP was scheduled for March, 2015. The needs and preferences of [petitioner] were evaluated at the MCP....no lifting of heavy objects, no bending at the waist. Team had discussions with Dr.'s nurse....Team can set up deep cleaning a couple of times each year, but right now we're talking about week to week needs.

Exhibit R-1.

At hearing on the issue of reduction of supportive home care services, it is the burden of petitioner to establish the need and appropriateness of the requested services. Petitioner has done neither based on this record. Petitioner did not provide specific times necessary for providing the supportive home care services, but instead testified that more time was needed than allotted because of petitioner's unique circumstances and needs. Nothing was quantified. Without a better way to quantify the time for services, however, I find it difficult to add more time. The agency has the duty to review services to determine whether they remain cost effective, and petitioner must specifically demonstrate that the allotted services were incorrectly determined.

Furthermore, this decision is not a lifetime one. If petitioner finds that she absolutely is unable to accomplish the home cleaning within the time constraints, she can document the specific time it takes and present her case to the respondent again.

CONCLUSIONS OF LAW

The agency had a reasonable basis for reducing petitioner's SHC time based upon the finding that 2 hours weekly minutes, rather than 5 hours weekly, was an appropriate amount of time for supportive home services.

THEREFORE, it is

ORDERED

That 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

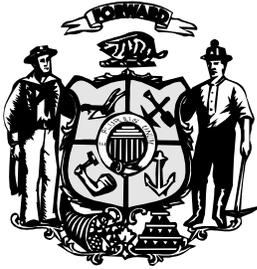
You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Health Services, 1 West Wilson Street, Room 651, **and** on those identified in this decision 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 _____ day of July, 2016

\s _____
Peter McCombs
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 18, 2016.

Western Wisconsin Cares-FCP
Office of Family Care Expansion
Health Care Access and Accountability