



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of



DECISION
Case #: FCP - 175125

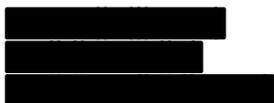
PRELIMINARY RECITALS

Pursuant to a petition filed June 22, 2016, under Wis. Admin. Code, §DHS 10.55, to review a decision by ContinuUs to deny a service under the Family Care Program (FCP), a hearing was held on October 12, 2016, by telephone. Hearings set for July 27, August 23, and September 7, 2016 were rescheduled at the petitioner's request.

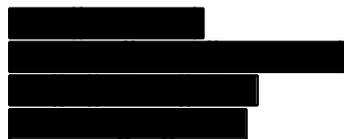
The issue for determination is whether petitioner has a "service dog" for FCP purposes.

PARTIES IN INTEREST:

Petitioner:



Petitioner's Representative:



Respondent:

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

By: ContinuUs
28526 US Hwy 14
Lone Rock, WI 53556

ADMINISTRATIVE LAW JUDGE:

Brian C. Schneider
Division of Hearings and Appeals

FINDINGS OF FACT

- 1. Petitioner (CARES # [redacted]) is a resident of Sauk County who is eligible for the FCP. Her managed care organization (MCO) is ContinuUs.
2. On April 8, 2016, petitioner requested that the program pay for veterinarian expenses for her dog, Jewell. By a letter dated May 2, 2016 ContinuUs denied the request because Jewell did not meet

the criteria for being considered a service dog, specifically Jewell had no specialized training to work as a service dog.

3. Petitioner has had Jewell since February, 2009. Petitioner did not claim that Jewell was a service dog prior to April, 2016. Petitioner uses Jewell for balance when she is ambulating, particularly on stairs. Jewell has received “personal behavior training” from petitioner’s veterinarian. See petitioner’s submission, page 29.

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).

It is acknowledged by the MCO that it will cover the expenses for an annual veterinary exam and shots for a service dog. The issue is whether Jewel is a service dog as defined by program policy.

ContinuUs defines “service dog” by following the definition under the Americans with Disability Act (ADA). See Attachment 6 to the ContinuUs submission. According to Attachment 6, the key components of the definition are that the dog must be trained to do work or perform tasks for the benefit of the disabled person, the dog must be a working animal and not a pet, and the work/task the dog is trained to provide must be directly related to the person’s disability. Provision of emotional support, comfort, and companionship are not considered service dog tasks. See also Attachment 7, which is a definition taken from the Disability Rights Section of the U.S. Department of Justice.

I have reviewed the submissions of both sides and heard the testimony and arguments, and I conclude that the agency determination is correct. Jewel had what essentially was obedience training from Dr. [REDACTED] and petitioner has learned to utilize Jewell for balance when ambulating, but Jewell was not trained as or acts as a service dog. Jewell is not performing a task when petitioner ambulates; Jewell is simply walking along obediently. That petitioner has had Jewell for almost eight years and has been in the FCP for a number of years without the issue ever rising before suggests to me that the idea of Jewell as a service dog is very recent. Jewell first is petitioner’s pet. Jewell provides emotional support and comfort as any beloved dog does, and petitioner’s use of Jewell for balance is a secondary benefit.

CONCLUSIONS OF LAW

The MCO correctly denied petitioner’s request for payment of veterinary bills for her dog because the dog is not a service dog as defined for FCP purposes.

THEREFORE, it is

ORDERED

That the petition for review 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 24th day of October, 2016

\s _____
Brian 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 October 24, 2016.

Continuus
Office of Family Care Expansion
Health Care Access and Accountability

