



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of



DECISION
Case #: FCP - 175659

PRELIMINARY RECITALS

Pursuant to a petition filed July 20, 2016, under Wis. Admin. Code, §DHS 10.55, to review a decision by Care Wisconsin First, Inc. to deny a service request under the Wisconsin Partnership Program (WPP), a hearing was held on September 7, 2016, by telephone.

The issue for determination is whether the agency correctly denied a request for a second weekly acupuncture treatment.

PARTIES IN INTEREST:

Petitioner:



Respondent:

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

By: 
Care Wisconsin First, Inc.
P.O. Box 14017
Madison, WI 53708-0017

ADMINISTRATIVE LAW JUDGE:

Brian C. Schneider
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # ) is a resident of Dane County.
2. Petitioner is enrolled in the WPP with Care Wisconsin as the partnership organization (MCO). Petitioner has chronic pain from fibromyalgia and degenerative joint disease, Thoracic Outlet Syndrome, and other disorders.

3. In September, 2015 petitioner started to receive weekly acupuncture treatment approved by the MCO. Then in March, 2016 she started to attend warm water physical therapy, also approved by the MCO.
4. On June 3, 2016, petitioner requested a second weekly acupuncture session.
5. The MCO denied the request by a letter dated June 7, 2016. The denial was because petitioner already was receiving two alternative therapies, and Care Wisconsin typically does not allow more than one alternative therapy. Although not stated in the letter, MCO staff were concerned that the acupuncture provider's plans appeared to be inconsistent.
6. Petitioner grieved the denial but the grievance committee upheld it on July 13, 2016.
7. The acupuncture provider reports that the positive pain relief has been wearing off by the end of the week, so the second session would be to keep petitioner stable. Petitioner believes that being pain free will help her in her water therapy sessions. Two doctors have recommended the twice weekly acupuncture along with the water therapy, with the acupuncture intended to be an alternative to pain medications, from which the medical team is trying to taper off.

DISCUSSION

The Wisconsin Partnership Program is a demonstration project authorized by the United States Department of Health & Human Services under a waiver of the Social Security Act. See 42 U.S.C. §§ 1396n(a), (b). The project is designed to save money for the federal and state governments by integrating long-term care and acute care services under one roof. In essence, the Department of Health Services will pre-pay a uniform fee per person served by the WPP organization, and the organization will provide all Medicaid and Medicare covered medical services each individual is determined to need. It is also designed to maximize the ability of enrolled members to live in a setting of their own choice, to participate in community life, and to participate in making decisions regarding their own care.

The department, operating under a federal waiver, must provide or arrange for all Medicaid *and* Medicare covered services required by participating recipients, i.e., "*members*," including nursing facility, primary, acute, and long-term care services utilizing Medicaid and Medicare certified providers. See 42 U.S.C. §1315. The target group for such members is the "frail elderly" and persons "under 65 years of age with disabilities". Wisconsin Partnership Program Waiver, Section IV, B, effective January, 1999. The department performs this task by delegating the responsibility of service delivery to a private provider known as the "partnership organization," also called an MCO.

The WPP members' rights and the MCO responsibilities are set out in a contract with the Department, found at www.dhs.wisconsin.gov/sites/default/files/legacy/LTCare/StateFedReqs/cy2014mcocontract-amendmnt1.pdf. The appeal process essentially follows that of the Family Care Program under Wis. Admin. Code, §DHS 10.55. See Contract, Article XI, Section H. A WPP member who files a grievance concerning a service can appeal to the Division of Hearings and Appeals if the grievance committee rules against her.

As noted in the findings, the MCO has a problem with the request because it typically does not allow more than one alternative therapy at a time. The problem, of course, is that the MCO already has allowed petitioner two alternative therapies at the same time. I also question why the water therapy is considered to be alternative. It appears to be regular physical therapy conducted in a pool setting instead of an office. The purpose is to improve petitioner's body mechanics and posture awareness with the goal of decreasing stress on the spine. See July 22, 2016 letter from [REDACTED], PT.

The MCO representatives expressed a concern with the acupuncture provider's reports, but did not include the reports in the record. Petitioner provided a report from February, 2016 that sets out the reasoning and goals of the twice weekly acupuncture succinctly, in my opinion.

Finally, two doctors wrote letters supporting the request for twice weekly acupuncture. See April 24, 2016 letter from Dr. [REDACTED] and June 17, 2016 letter from Dr. [REDACTED]. Both stress that the acupuncture is an alternative to heavy doses of medication, and that it allows petitioner to participate in the physical therapy better. Petitioner testified that when she does the therapy soon after acupuncture the therapy is more effective, and she has experienced a decrease in pain, numbness, and tingling.

I conclude that the MCO erred in not allowing the second weekly acupuncture treatment. Medical evidence is that it is a compliment to the water therapy, not an alternative to it. Given that the MCO already has allowed what it describes as two alternative treatments in spite of its policy to allow only one at a time, it makes sense to maximize the effectiveness of the treatments as recommended by petitioner's medical professionals.

CONCLUSIONS OF LAW

The request for a second weekly acupuncture treatment for petitioner should be granted because it is recommended by petitioner's doctors and physical therapist as a necessary compliment to her ongoing physical therapy.

THEREFORE, it is

ORDERED

That the matter be remanded to the agency with instructions to approve petitioner's request for a second weekly acupuncture treatment. The agency shall do so 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 19th day of September, 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 September 19, 2016.

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