



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of



DECISION
Case #: FCP - 176235

PRELIMINARY RECITALS

Pursuant to a petition filed on August 16, 2016, under Wis. Admin. Code § DHS 10.55, to review a decision by the Care Wisconsin First, Inc. regarding Medical Assistance (MA), a hearing was held on September 21, 2016, by telephone.

The issue for determination is whether the agency correctly denied coverage for petitioner's request for overnight supervision.

There appeared at that time the following persons:

PARTIES IN INTEREST:

Petitioner:



Respondent:

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

By: [Redacted]
Care Wisconsin First, Inc.
PO Box 14017
Madison, WI 53708-0017

ADMINISTRATIVE LAW JUDGE:

Kristin P. Fredrick
Division of Hearings and Appeals

FINDINGS OF FACT

- 1. Petitioner (CARES # [Redacted]) is a resident of Dane County.

2. The petitioner is sixty (60) years old and a recipient of long term care and health care services through Care Wisconsin, Inc., a managed care organization (MCO) through the Wisconsin Family Care Partnership Program. The petitioner qualifies for services based upon having a developmental disability and physical disability. Petitioner has been diagnosed with an intellectual disability, cerebral palsy and epilepsy (with history of seizures). He has documented substantial functional limitations with self-care, learning, self-direction, and capacity for independent living.
3. According to a long term care functional screening (LTC FS) of the petitioner completed on January 28, 2016, the petitioner requires overnight care or overnight supervision and the continuous presence of another person, in part, because he would need someone to direct him on appropriate response in case of emergency. (Exhibit 2, p. 26) The LTC FS also states petitioner lacks cognitive or physical abilities to use the phone independently (to dial out or call 911). (Exh. 2, p. 28) The LTC FS further states that the petitioner “cannot make decisions based on his values or lifestyle without causing serious harm to his health and safety.” Id.
4. The petitioner typically sleeps through the night and can utilize the bathroom independently, but requires assistance with self-cleaning following bowel movements.
5. Until a few months ago, the petitioner resided with his mother; however, she became ill, was hospitalized and has since passed away resulting in petitioner’s siblings stepping in to provide care for petitioner, including at least one brother who has temporarily resided with the petitioner but must return to Arizona, his state of residence.
6. Petitioner has been prescribed medication to address anxiety, which increased since his mother was no longer residing with him.
7. Petitioner has experienced toileting accidents at night since the passing of his mother.
8. Petitioner’s last seizure was under a year ago.
9. Petitioner’s guardian requested overnight supervision for the petitioner through Care Wisconsin.
10. On July 19, 2016, Care Wisconsin denied the request for overnight care because the request is not for life sustaining care and is only for a possible emergency situation. Instead, Care Wisconsin offered alternative solutions including: personal emergency response system (PERS), “nightowl” check in, informal family supports, placement in a facility with 24 hour supervision.

DISCUSSION

The Wisconsin Partnership Program (Program) is a type of managed healthcare delivery system. It is designed to save money for the federal and state governments by coordinating care provision under “one roof” under a “capitated” arrangement, *i.e.*, a uniform fee per person served by the system. The Department, operating under a federal waiver, must provide 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 USC § 1315; see also, 42 USC §§ 1396n(a) & (b); Wis. Stat. §49.45(32); *Medical Assistance Eligibility Handbook (Handbook)*, §§ 30.1 *et seq.*, online at <http://www.emhandbooks.wi.gov/meh/>. The target groups for such members are the “frail elderly” and persons “under 65 years of age with disabilities”. See, *Wisconsin Partnership Program Waiver*, Section IV, B, effective January, 1999. The Department performs this task by delegating service delivery to a private provider known as the “partnership organization” or a “managed care organization” (MCO). In Dane County, that organization is currently Care Wisconsin, Inc.

The partnership organization functions like a health management plan and is responsible for arranging and integrating all primary, acute, and long-term care services needed by an enrollee through the use of an interdisciplinary team comprised of a nurse practitioner, registered nurse, and social worker/social services coordinator. The partnership organization has many responsibilities that are delineated in the contract with the Department of Health Services (DHS). One such responsibility of the MCO is to complete long-term care functional screens prescribed by DHS to determine functional eligibility for services under Wis. Stat. § 46.286(1)(a) and (1m) and Wis. Admin. Code §§ DHS 10.32 and 10.33. In addition, the MCO is to follow the Department's service authorization policies and procedures in determining the necessity or appropriateness of services for the individual members. See, *2016 Family Care Programs Contract* (2016) (*Contract, Article V, §K.2*), online at <http://mltc.wisconsin.gov/2016/>. The MCO can offer reasonable alternative services that can meet a member's needs at less expense. See *Contract, Art. I.119* (defining Services Necessary to Support Outcomes).

Under the DHS contract with the MCO, services are to be provided "in the most integrated residential setting consistent with the member's long term care outcomes, and identified needs, and that is cost-effective when compared to alternative services that could meet the same needs and support similar outcomes." (*Contract, Art. V, §K.2.c*). Services shall not be denied "that are necessary to reasonably and effectively support the member's long term care outcomes identified in the comprehensive assessment as well as those necessary to assist the member to be as self-reliant and autonomous as possible." (*Contract, Art. V, §K.2.a*)

The Wisconsin LTC FS instructions for determining overnight care or supervision state that an "individual must have a physical or cognitive limitation impairing their ability to independently complete overnight care tasks or have a limitation requiring overnight care or overnight supervision." *Wisconsin Long Term Care Functional Screen Instructions*, DHS, Div. of Long Term Care, §4.19 (Oct. 2015). The instructions define overnight care and overnight supervision as follows:

Overnight Care is defined as the need for hands-on assistance or verbal cuing from another person, to complete an ADL or Health Related Services task, during the overnight hours.

Overnight Supervision is defined as the need for someone to be present to prevent, oversee, manage, direct or respond to a person's disruptive, risky, or harmful behaviors, during the overnight hours. Overnight Supervision is indicated for a person unable to respond appropriately in an emergency (e.g., a vulnerable adult).

Overnight Supervision is not indicated for a person without a physical or cognitive limitation who is uneasy being alone at night.

Wisconsin Long Term Care Functional Screen Instructions, §4.19.

Petitioner's guardian sought overnight supervision due to concern for the petitioner's safety and well-being if he were to be left alone at night. Petitioner's guardian, who is his sister, also expressed concern that the petitioner is more likely to experience increased anxiety if no one is present with him overnight and that with increased anxiety from being left overnight alone, the petitioner may be more prone to seizures. Petitioner's guardian testified that petitioner has recently had an increase in toileting accidents, which she believes are related to his increased anxiety.

Care Wisconsin suggested numerous alternative services to address the petitioner's needs during overnight hours, including a personal emergency response system (PERS) or video-PERS; however, the

petitioner's guardian rejected that option because the petitioner would not likely be capable of utilizing the PERS, especially if he experienced a seizure. Care Wisconsin also suggested using a "night owl" check in service; but again, the petitioner's guardian rejected this option as not viable. Finally, Care Wisconsin suggested a residential placement capable of providing 24 hour supervision. The petitioner's guardian also rejected this option out of concern that the petitioner might be bullied or teased by other residents due to his disabilities. There was no testimony or evidence presented by the agency as to the relative cost of each of the suggested alternatives, particularly as compared to the cost effectiveness of petitioner's request for overnight supervision.

The record supports the need for overnight supervision. The petitioner's care plan includes a long term care outcome of remaining in his home. Care Wisconsin's own LTC functional screening confirms a need for overnight supervision. (Exh. 2, pp. 26-28) In the past, overnight supervision was provided by the petitioner's mother. However, the petitioner's family is unable to continue to provide overnight supervision now that petitioner's mother has passed away. Without supervision, petitioner's health and safety is jeopardized due to his physical and cognitive limitations. Petitioner is not capable of independently using a phone to call for help in case of flood, fire or tornado and would be physically unable to call for help if he had a seizure. Overnight supervision is therefore necessary to assist the member to be as self-reliant and autonomous as possible and to meet the long term care outcome identified in the petitioner's present care plan. However, it is apparent that based upon the passing of the petitioner's mother, who acted as his primary caregiver, the petitioner will require a higher level of care and potentially residential services in the future. Therefore, it will be necessary to reevaluate the petitioner's long term care outcomes as outlined in his care plan.

CONCLUSIONS OF LAW

1. Overnight supervision is medically necessary and appropriate for the petitioner based upon the petitioner's last completed long term care functional screening and care plan;
2. The agency incorrectly denied the petitioner's request for overnight supervision.

THEREFORE, it is

ORDERED

That this case is remanded to the agency with instructions that the agency approve the petitioner's request for overnight supervision for a period of six (6) months while the agency conducts a new functional screening and develops a new care plan. The agency shall comply with this order within 10 days of the date of 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 28th day of September, 2016

\s _____
Kristin P. Fredrick
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

Brian Hayes, Administrator
Suite 201
5005 University Avenue
Madison, WI 53705-5400

Telephone: (608) 266-3096
FAX: (608) 264-9885
email: DHAmail@wisconsin.gov
Internet: <http://dha.state.wi.us>

The preceding decision was sent to the following parties on September 28, 2016.

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