



**STATE OF WISCONSIN  
Division of Hearings and Appeals**

In the Matter of  
  
(petitioner)

DECISION

FCP-40/61811

**PRELIMINARY RECITALS**

Pursuant to a petition filed February 9, 2004, under Wis. Stat. §49.45(5), to review a decision by the Milwaukee County Dept. on Aging to reduce services under the Family Care (FC) program, a hearing was held on July 14, 2004, at Milwaukee, Wisconsin. Hearings set for March 23, April 15, and June 16, 2004 were rescheduled at the petitioner’s request. The parties requested that the record be held open 28 days for submission of briefs; the briefs were received.

The issues for determination are whether the agency had bases for twice reducing petitioner’s home health hours, and whether petitioner should have received increased hours of services.

There appeared at that time and place the following persons:

**PARTIES IN INTEREST:**

Petitioner:  
  
(petitioner)

Represented by:  
  
Atty. Carol J. Wessels  
Senior Law  
230 West Wells Street, Rm. 800  
Milwaukee, WI 53203

Wisconsin Dept. of Health and Family Services  
Office of Strategic Finance/Center for Delivery Systems Development  
P.O. Box 1379  
Madison, WI 53701-1379

By: Nora Gomez, Grievance Committee Chair  
Milwaukee County Dept. on Aging  
235 W. Galena Street, Suite 180  
Milwaukee, WI 53212-3948

**ADMINISTRATIVE LAW JUDGE:**

Brian C. Schneider  
Division of Hearings and Appeals

**FINDINGS OF FACT**

1. Petitioner (SSN xxx-xx-xxxx, CARES #xxxxxxxxxx) is a 74-year-old resident of Milwaukee County. She lives in an apartment.
2. Petitioner became eligible for FC in August, 2002. Prior to the agency action in this case, petitioner received 73.5 hours per week home health services, all provided by adult family

- members and paid by the care management organization (CMO). The hours were broken down to 24.5 hours supportive home care (SHC), 28 hours personal care worker, and 21 hours overnight.
3. In August, 2003, a reassessment of petitioner's needs was conducted. The assessor recommended that petitioner continue to receive the 73.5 hours per week.
  4. By a notice dated October 3, 2003, the agency informed petitioner that it intended to reduce her service hours to 70 per week by reducing SHC by 3.5 hours to 21 hours per week. Exhibit 13.
  5. Petitioner filed a grievance with the CMO on November 10, 2003. A grievance hearing was conducted on December 22, 2003. During the grievance process petitioner requested that SHC hours be increased to 126 per week. The grievance committee denied the request for increased hours and upheld the reduction to 70 hours per week. Exhibit 2.
  6. In June, 2004, just before a hearing was scheduled in petitioner's appeal, the agency conducted a new assessment. The agency concluded that SHC should be reduced from 21 hours per week to one hour per week. The agency notified petitioner of the change by a letter dated June 25, 2004. The parties agreed that the new reduction could be heard as part of this appeal. The agency has continued the 70-hour-per-week services pending this decision.
  7. The sole reason for the June reduction in SHC hours was a change in policy by the agency that reduced eligibility for family members to receive FC payments for services. Exhibit 4. Petitioner's health has not improved and her care needs have not lessened.

### DISCUSSION

The Family Care program, which is supervised by the Department of Health and Family 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 HFS 10.

The process contemplated for an applicant is to test her functional eligibility, then her financial eligibility, and if she meets both standards, to certify her as eligible. Then she is referred to a CMO for enrollment. See Wis. Adm. Code, §§HFS 10.33 – 10.41. The CMO then drafts an Individual Service Plan (ISP) using CMO selected providers, designing a care system to meet the needs of the person, and the person executes the service plan. At that point the person's services may begin.

The CMO must develop the ISP in partnership with the client. Adm. Code, §HFS 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 CMO does not have to provide all services the client desires if there are less expensive alternatives to achieve the same results. Wis. Adm. Code, §HFS 10.44(1)(f); DHFS booklet, Being a Full Partner in Family Care, page 9. ISPs must be reviewed periodically. Adm. Code, §HFS 10.44(j)(5).

Wis. Stat., §46.287(2)(a)1 provides that a person may request a fair hearing to contest the reduction of services under the FCP program, among other things, directly to the Division of Hearings and Appeals. In addition, the participant can file a grievance with the CMO over any decision, omission, or action of the CMO. Wis. Stat., §46.287(2)(b). The grievance committee shall review and attempt to resolve the dispute. If the dispute is not resolved to the participant's satisfaction, she may then request a hearing with the Division of Hearings and Appeals.

There essentially are three issues in this case. First, did the agency have a basis for reducing SHC hours from 24.5 to 21 hours per week in October, 2003? Second, did the grievance committee correctly refuse to increase hours? Third, did the agency have a basis for reducing SHC hours again in June, 2004?

(1) The October, 2003 Reduction

The assessment done in August, 2003 recommended that SHC hours remain at 24.5 per week, with total hours at 73.5. The sole reason for the change was given as “Maximum hours of care authorized by MCDA [Milwaukee County Dept. on Aging] = 70 hr/wk.” Apparently a Milwaukee County guideline provides that if hours exceed 56 per week, the CMO should reconsider services. How that makes 70 hours per week the maximum remains unexplained. When asked during the hearing why the agency reduced the hours to 70 from the recommended 73.5, current case manager Bonnie Davis, who was not part of the decision, could only surmise that the care team decided that was all petitioner needed. However, there is no explanation anywhere in petitioner’s file as to why that determination was made.

Absolutely no reason was given for reducing petitioner’s hours in October, 2003. “That’s just the way we do it” is not an acceptable reason.

(2) The Refusal to Increase Hours

I conclude that there was no basis to increase home health hours. There is evidence concerning petitioner’s needs and a letter from her doctor that she needs help with activities of daily living and 24-hour “supervision.” See Exhibit 15. However, the only objective home health assessment done at the time of the grievance hearing was the August, 2003 one that recommended 73.5 hours per week. Petitioner has not provided any new or contradictory assessment to contest those recommendations.

(3) The June, 2004 Reduction

In November, 2003, the Department of Health and Family Services issued a document called “Guidelines for Paying Family Caregivers.” Exhibit 17. The guidelines are intended to assist CMOs in determining how and when to pay family members. Concerns mentioned in the guidelines were that family members were not necessarily competent to provide cares, they were often unaccountable for whether they actually were providing the cares, and they were sometimes paid for services that family members typically provide for even healthy elderly relatives. At hearing the guidelines were described by agency personnel as a mandate by the DHFS to cut back on family payments. I read the guidelines. There is nothing in the guidelines mandating that CMOs cut back on paying relatives. There are simply suggestions for determining whether family members are competently providing necessary services.

The county agency took that document and ran. It drafted Exhibit 4 as a policy document. Under the new policy, several types of services will never be covered by FC, including laundry, meal preparation, shopping, cleaning, supervision, assisting with mobility, companionship, and transportation.

First, the DHFS guidelines do not recommend refusing to pay for all such services. The DHFS guidelines provide that a CMO should pay for family members only if the services exceed normal responsibilities for a person in a similar family relationship *who does not have a disability*. Exhibit 17, page 4, III.B.4.a. In other words, if my 75-year-old mother is healthy, I would not do her grocery shopping or housecleaning. That is not the case here. Petitioner is not healthy by any means; she requires extraordinary cares.

Second, I can find no logical reason for implementing this policy with ongoing cases. Although I do not have jurisdiction over these issues, the county would have a real problem with arguments that family members relied on the former agreements to their detriment, or even that the county is interfering with their property rights. For example, a family member may have reduced work hours at another job or even turned

down other work because he or she was being paid to care for the FC client. If the county wants to implement a policy cutting back payments to family members, it might do so for new clients, but I see no legal basis for doing so in ongoing cases.

I conclude that the agency overstepped its authority on reducing petitioner's SHC hours because of a change in policy that has no legal basis.

### **CONCLUSIONS OF LAW**

1. The agency had no basis for reducing petitioner's SHC services by 3.5 hours per week in October, 2003.
2. Petitioner has not provided an assessment that documents a need for more than 73.5 hours of services per week.
3. The agency incorrectly reduced petitioner's SHC hours in June, 2004 because its change of policy had no legal basis or mandate, particularly for ongoing cases where the agency previously agreed to pay family members for necessary services.

**NOW, THEREFORE, it is ORDERED**

That the matter be remanded to the agency with instructions to pay for 24.5 hours per week SHC hours, and thus 73.5 hours per week total home health services, retroactive to October 22, 2003. Petitioner's caregivers shall submit claims for the 3.5 hours per week that the agency has not paid while this matter has been pending, and the agency shall issue payments for the claimed hours as it would normally process payments for such claims.

### **REQUEST FOR A NEW HEARING**

This is a final fair hearing decision. If you think this decision is based on a serious mistake in the facts or the law, you may request a new hearing. You may also ask for a new hearing if you have found new evidence which would change the decision. To ask for a new hearing, send a written request to the Division of Hearings and Appeals, P.O. Box 7875, Madison, WI 53707-7875.

Send a copy of your request to the other people named in this decision as "PARTIES IN INTEREST."

Your request must explain what mistake the examiner made and why it is important or you must describe your new evidence and tell why you did not have it at your first hearing. If you do not explain these things, your request will have to be denied.

Your request for a new hearing must be received no later than twenty (20) days after the date of this decision. Late requests cannot be granted. The process for asking for a new hearing is in sec. 227.49 of the state statutes. A copy of the statutes can found 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 no more than thirty (30) days after the date of this hearing decision (or 30 days after a denial of rehearing, if you ask for one). The appeal must be served on the Department of Health and Family Services, P.O. Box 7850, Madison, WI, 53707-7850, as respondent.

The appeal must also be served on the other "PARTIES IN INTEREST" named in this decision. The process for Court appeals is in sec. 227.53 of the statutes.

Given under my hand at the City of  
Madison, Wisconsin, this 20th day of  
August, 2004

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/s/Brian C. Schneider  
Administrative Law Judge  
Division of Hearings and Appeals  
0817/bcs

cc: Ann Blewett - Milw. Cty - e-mail  
Nora Gomez - Milw. Co. - e-mail  
Lois Greene For Jackson -Milw. Cty - e-mail  
Marnita Hall-Community/milw - e-mail  
Jenifer Harrison-Metastar - e-mail  
April Hayes-DHFS/Metastar - e-mail  
Ruby Jackson - e-mail  
Charles Jones, OSF/CDS - e-mail  
Chester Kuzminski - Dept On Aging - e-mail  
Cheryl McIlquham - BHCE  
Ann Marie Ott - DHFS - e-mail  
Felice RILEY - MILW CTY  
Teresa Smith - MILW. CO. - e-mail  
Lydia Torres-Community/Milw Cty - e-mail  
Carol J. Wessels-Senior Law, Legal Action of Wisconsin