



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

(petitioner)

DECISION

FCP-40/62410

PRELIMINARY RECITALS

Pursuant to a petition filed October 2, 2003, under Wis. Stat. §49.45(5) and Wis. Adm. Code §HA 3.03(1), to review a decision by the Office of Strategic Finance (OSF) in regard to Medical Assistance (MA) - Family Care Program, a hearing was held on May 3, 2004, at Milwaukee, Wisconsin.

The issue for determination is whether petitioner is eligible for payment for a power wheelchair via the Family Care Program.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:
(petitioner)

Wisconsin Department of Workforce Development
Bureau of Workforce Programs
201 East Washington Avenue
P.O. Box 7935
Madison, WI 53707-7935

By: Nora Gomez, Q.I. Coord.
Milwaukee Co Adult Services
235 W Galena Street
Milwaukee, WI 53212

ADMINISTRATIVE LAW JUDGE:

Peter D. Kafkas
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (SSN xxx-xx-xxxx, CARES #xxxxxxxxxx) is a resident of Milwaukee County.
2. Petitioner has been enrolled in the Family Care Program for some time.
3. Petitioner resides in a nursing home.
4. The nursing home provides petitioner with wheelchair transportation to and from nursing home activities.

5. Petitioner declines to eat in the nursing home cafeteria and instead a nursing home staff member brings her meals to her room for her consumption.
6. Petitioner filed the instant hearing request seeking to overturn a decision by the program declining to provide her with the personal power wheelchair.

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 under Wisconsin Statutes, § 46.286, and is described comprehensively in the Wisconsin Administrative Code, Chapter HFS 10.

Wis. Admin. Code § HFS 10.33(2) provides that an FCP applicant must have a functional capacity level of comprehensive or intermediate. As of October, 2001, if the person met either level, she was eligible for full services if she was financially eligible for MA. Wis. Admin. Code, § HFS 10.36(1); Bureau of Workforce Programs Operations Memo No. 01-65, dated October 12, 2001. 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. She is then referred to a CMO for enrollment in the CMO. See Wis. Admin. Code, §§ HFS 10.33 – 10.41.

The CMO then drafts a service plan 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 long term care services may begin. Family Care services encompass "long term care services" only, not basic medical procedures outside of long term care needs. Other basic medical procedures, like tooth extraction, may fall within MA coverage, if they are otherwise denominated by MA as "covered services".

An enrollee in the Family Care Program has the right to "contest a decision, omission or action of a care management organization." Wis. Stat. § 46.287(b). If the matter is not resolved at the level of the unit of the department that monitors the care management organizations, the individual has the right to a fair hearing pursuant to Wis. Stat. § 227.44. Wis. Stat. § 46.287(a).

The fact that petitioner has the right to a hearing does not mean that the petitioner will prevail. In determining whether the family care program has acted correctly, a review of relevant statutory and administrative code sections may be helpful. The Wisconsin Statutes, at § 49.45(6m), provide that nursing homes participating in the MA program are typically reimbursed according to a rate-setting methodology established annually by the legislature's Joint Finance Committee and the Governor. The Department's Methods of Implementation state, at § 5.162:

Durable medical equipment and wheelchairs reasonably associated with a patient's personal living needs in normal and routine nursing home operation are to be provided to Title XIX recipients without charge to the patient, the patient's family, or other interested persons. The cost of all wheelchairs, including geriatric but excluding motorized wheelchairs or vehicles, is **included in the nursing home payment rate.**

(Emphasis added).

The Wisconsin Administrative Code requires that skilled nursing and intermediate care facilities provide wheelchairs for their residents:

Wheelchairs *shall* be provided by skilled nursing and intermediate care facilities in sufficient quantity to meet the health needs of patients who are recipients. Nursing homes which specialize in providing rehabilitative services and treatment for the developmentally or physically disabled, or both, *shall* provide the special equipment, including commodes, elevated toilet seats, grab bars, *wheelchairs adapted to the recipient's disability*, and other adaptive prosthetics, orthotics and equipment necessary for the provision of these services. The facility *shall* provide *replacement wheelchairs for recipients who have changing wheelchair needs*.

(Italics added). Wis. Adm. Code, § HFS 107.09(4)(d); see, Wis. Adm. Code, § HFS 107.24(4)(c) (for exceptions).

The evidence in the record does not support a conclusion that petitioner meets any exception to the general requirement that petitioner's nursing home provide required wheelchair transportation services. Petitioner has not demonstrated that petitioner's nursing home is not providing such services. To the extent petitioner has not utilized such services, it is clearly due to petitioner's stated preference for eating meals in her room. Petitioner has not established the medical necessity for the requested personal power wheelchair.

CONCLUSIONS OF LAW

That the Family Care Program reasonably exercised its discretion when it denied petitioner's request for a power wheelchair for use inside petitioner's nursing home.

NOW, THEREFORE, it is ORDERED

That the petition for review be and the same is hereby denied.

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).

Appeals for benefits concerning Family Care Program must be served on 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
Milwaukee, Wisconsin, this 4th day of
June, 2004

/sPeter D. Kafkas
Administrative Law Judge
Division of Hearings and Appeals
427/PDK