



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

(petitioner)

DECISION

FCP-40/64131

PRELIMINARY RECITALS

Pursuant to a petition filed July 7, 2004, under Wis. Stat. §49.45(5) (2001-02), Wis. Admin. Code § HFS 104.01(5) (February 2002), Wis. Stat. § 46.287 (2001-02), Wis. Adm. Code § HFS 10.55 (October 2000), and Wis. Adm. Code § HA 3.03(1) (September 2001) to review a decision by the Milwaukee County Department of Human Services (County) concerning the Family Care Program (FCP), a hearing was held on October 19, 2004 at 235 West Galena Street in Milwaukee, Wisconsin. At petitioner's request a hearing scheduled for August 24, 2004 was rescheduled.

The issues for determination are:

- (I) whether the amount of personal care hours and supportive care hours provided to petitioner by FCP is adequate; and,
- (II) whether the Division of Hearings and Appeals (DHA) has jurisdiction to consider the issue of which service provider will provide care hours to petitioner.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

(petitioner)

Wisconsin Department of Health and Family Services

P.O. Box 7850

Madison, Wisconsin 53707-7850

BY: Nora Gomez, Quality Improvement Coordinator

Milwaukee County Department of Human Services

235 West Galena Street

Milwaukee, Wisconsin 53110

OTHER PERSONS PRESENT:

Rickki Fields, Case Manager

(redacted), caregiver for petitioner

Sharon Murphy, Contract Specialist

ADMINISTRATIVE LAW JUDGE:

FINDINGS OF FACT

1. Petitioner (SSNxxx-xx-xxxx, CARES # xxxxxxxxxx; DOB (redacted)) is a resident of Milwaukee County.
2. Petitioner suffers from various ailments including lupus, mental health issues (dissociative personality disorder), chronic pain, chronic fatigue syndrome, degenerative disc disease, osteoarthritis, fibromyalgia, visual impairments, and TMJ. She has many limitations (including forgetfulness) but is able to toilet herself, feed herself, communicate in English, and use the telephone.
3. Petitioner was receiving between 60-70 hours of care per week from Adult Services; she then left the Adult Services program and entered FCP; FCP had 2 different detailed written assessments of petitioner completed by 2 different Registered Nurses (RNs), one dated April 21, 2004 and a second dated July 28, 2004; both of these assessments considered all of petitioner's ailments and limitations; based on these assessments FCP concluded that petitioner needed 35 personal care hours per week and 12 supportive care hours per week for a total of 47 hours of care per week.
4. Petitioner has not asked for or completed a review by the Wisconsin Department of Health and Family Services (DHFS) to consider the issue of which service provider will provide care hours to petitioner.

DISCUSSION

FCP is available to eligible persons only through enrollment in a Care Management Organization (CMO) under contract with the Wisconsin Department of Health and Family Services (DHFS). Wis. Admin. Code § HFS 10.41(1) (October 2000). A person may be eligible for FCP, but yet not entitled to enroll in a CMO. Wis. Admin. Code § HFS 10.36(1) (October 2000). A person who is found eligible for FCP but who does not meet certain conditions is not entitled to FCP benefits. Wis. Admin. Code § HFS 10.36(3) (October 2000). Such persons may pay privately for CMO services. Wis. Admin. Code §§ HFS 10.36(3) & 10.37 (October 2000).

(I) PERSONAL CARE WORKER HOURS AND SUPPORTIVE HOME CARE HOURS

In this case petitioner is eligible for FCP, is enrolled in a CMO, and is receiving FCP benefits. Petitioner appeals, in part, because she was receiving between 60-70 hours per week of care from Adult Services but left the Adult Services program and is now receiving a total of only 47 hours per week of care from FCP.

I must conclude, based on the evidence in the record of this matter, that the 47 hours of care provided by FCP is adequate to meet petitioner's needs. The 47 hours is supported by detailed assessments conducted by 2 different RNs. More to the point, petitioner has offered little in the way of concrete evidence to demonstrate that she needs more hours. It is true that she was receiving between 60-70 hours of care from Adult Services -- but there is no evidence to show why Adult Services concluded that 60-70 hours were needed. Petitioner testified at the October 19th hearing that she was "getting worse" and it was "getting hard for [her] to walk" but offered no details or documentation concerning these claims. Finally, petitioner did submit 2 short notes from medical doctors written on prescription pads. One note stated:

"Needs caregiver due to multiple medical problems." The other note stated: "Patient will need caregiver for 10 hrs/d 7 days a week." Petitioner offered no evidence to support either of these statements.

(II) PROVIDER OF SERVICES

Petitioner requests that Independence First, instead of Supportive Home Care Options (SHO), be her care hours provider. DHA does not have jurisdiction to consider this issue unless petitioner first completes a review with DHFS concerning it. Wis. Stat. § 46.287(2)(b) (2001-02); Wis. Admin. Code § HFS 10.55(2) (October 2000). Petitioner may request a hearing before DHA only after she has requested a review from DHFS and received a Decision (or after she has requested a review from DHFS and DHFS has failed to complete its review in the time allowed).

CONCLUSIONS OF LAW

For the reasons discussed above:

- (I) the amount of personal care hours and supportive care hours provided to petitioner by FCP is adequate; and,
- (II) DHA does not have jurisdiction to consider the issue of which service provider will provide care hours to petitioner.

NOW, THEREFORE, it is

ORDERED

That the petition for review herein be and the same is hereby DISMISSED.

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
Madison, Wisconsin, this 26th day of
November, 2004

/sSean P. Maloney
Administrative Law Judge
Division of Hearings and Appeals
427/SPM