



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

In the Matter of

(petitioner)

DECISION

FCP-20/64293

PRELIMINARY RECITALS

Pursuant to a petition filed July 12, 2004, 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 Family Care Program, a hearing was held on August 24, 2004, at Fond Du Lac, Wisconsin. During the hearing, the parties requested that the record be held open for the submission of written closing arguments. Such arguments were submitted to the Division of Hearings and Appeals (DHA) and will be received into the record.

The issue for determination is whether the county agency correctly discontinued petitioner's Family Care Program eligibility effective August 1, 2004, due to level of care reassessment.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:
(petitioner)

Representative:
Marty Kloehn, CSW
Aging & Disability Resource Center of
Fond du Lac County
87 Vincent Street
P.O. Box 1196
Fond du Lac, WI 54936-1196

Department of Health and Family Services
Office of Strategic Finance
1 West Wilson Street, Room 631
Madison, WI 53701

Sheri Lund, RN
Creative Care Options
50 North Portland Ave
Fond Du Lac, WI 54935

ADMINISTRATIVE LAW JUDGE:

Gary M. Wolkstein
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (SSN xxx-xx-xxxx, CARES #xxxxxxxxxx) is a resident of Fond du Lac County who is developmentally disabled.

2. Petitioner has been approved for and received benefits through the Family Care Program (FCP) since July, 2001.
3. During June, 2004, petitioner's FCP determination was referred to the Creative Care Options (CMO) for a level of care review determination.
4. On June 15, 2004 and June 21, 2004, CCO worker Sheri Lund and her supervisor completed petitioner's Long Term Care functional eligibility screens. See Exhibit 1 and 1A. Petitioner was determined functionally ineligible based upon those screens.
5. The petitioner's Family Care Individual Service Plan indicated petitioner requires services in three areas: 1) supportive employment/job coaching; 2) mental health needs and marriage counseling; and 3) meal preparation. See Exhibit 2.
6. Creative Care Options sent a June 30, 2004 negative notice to the petitioner stating that effective August 1, 2004, his Family Care eligibility would discontinue due to being found functionally ineligible. See Exhibit 3.
7. On August 17, 2004, Aging and Disability social worker Amy Lacasse redetermined petitioner's level of care functional screen and determined that petitioner was functionally eligible for the Family Care program at the Intermediate level of care. See Exhibit 4.
8. The county agency sent a July 12, 2004 Notice of Decision to the petitioner stating that petitioner's Family Care eligibility would discontinue effective August 1, 2004 due to lack of functional eligibility. See Exhibit 5.

DISCUSSION

The Family Care Program provides financial assistance for long-term care and support. Wis. Stat. § 46.2805(4) (1999-00); Wis. Admin. Code § HFS 10.13(21) (October 2000). The Family Care Benefit is available to eligible persons only through enrollment in a CMO. See Wis. Admin. Code § HFS 10.41(1) (October 2000). Application for the Family Care Benefit must be made to the agency serving the county, tribe or family care district in which the person resides. Wis. Stat. § 46.287(2)(a)1. (1999-00); Wis. Admin. Code § HFS 10.55(3) (October 2000).

Wis. Adm. Code, §HFS 10.33(2) provides that an FCP applicant must have a functional capacity level of comprehensive-needs nursing home care, comprehensive or intermediate. If the person meets the comprehensive-needs nursing home care level, s/he is eligible for full services through a care management organization (CMO), including MA. See Wis. Adm. Code, §HFS 10.36(1)(a). If the person meets the other levels, s/he is eligible for full services only if s/he is financially eligible for MA. See Wis. Adm. Code, §HFS 10.36(1)(b). In addition, if the person was receiving services under COP-W or another community-based service program before those programs ended with the onset of FCP, s/he can be grandfathered for services even if s/he does not meet the intermediate level. Wis. Adm. Code, §HFS 10.36(1)(c), referencing §HFS 10.33(3).

Ms. Lund contended that petitioner's need for assistance with employment could be met through his informal supports established on the job. Ms. Kloehn responded that while the petitioner at this time has a supportive supervisor in his employment, such informal support could change at any time with rather disastrous results (petitioner becoming unable to continue functioning in his employment). Moreover, petitioner testified believably that he needed his continued job coaching to continue in his employment.

In regard to meal preparation, Ms. Lund contended that petitioner was capable of independently preparing simple, balanced meals. Ms. Kloehn responded that it has been consistently found that petitioner needs menu planning, nutritional guidance, as well as assistance with the actual preparation of a meal. While Ms. Kloehn acknowledged that petitioner can buy and prepare frozen TV dinners (or reheat a meal), such

limited ability does not indicate he does not have continuing need for assistance with planning and preparing nutritional, balanced meals. See Exhibit 4.

While the functional screen assessments by CCO do have some merit, the testimony of social worker Marty Kloehn was most compelling and determinative in the final conclusion regarding petitioner's functional level of care. Ms. Kloehn has been the petitioner's social worker case manager for 25 years, and worked closely with him during those years. She has a wealth of understanding of petitioner's medical, psychological, and functional limitations and needs. As a result, her testimony carried much weight at the August 24, 2004 hearing. Ms. Kloehn's sworn testimony was that while petitioner may be somewhat functioning better, he is unable to cope with change and any change could result in his employability or activities of daily living "falling apart." Ms. Kloehn did not present such conclusion as a possible risk, but rather as highly probable based upon her long history as petitioner's case manager.

In any discontinuance or reduction, the county agency has the burden of proof to establish that it correctly discontinued the recipient's FCP benefits. While it did appear that the CCO made a conscientious attempt to follow the questions in the function screens (Exhibits 1 & 1A), such screens of course do not provide the same depth of understanding as Exhibit 4, which did find petitioner eligible at the intermediate level of function. Accordingly, for the above reasons, the county agency did not meet its burden of proof to establish a prima facie case that it correctly discontinued petitioner's Family Care Program eligibility effective August 1, 2004.

CONCLUSIONS OF LAW

1. The agency incorrectly discontinued petitioner's FCP eligibility effective August 1, 2004 based upon his functional level of care.
2. The petitioner is eligible for continued FCP benefits at the intermediate level of care.

NOW, THEREFORE, it is

ORDERED

The matter is remanded to the county agency with instructions to restore petitioner's eligibility for the Family Care Program retroactive to August 1, 2004, within 10 days of the date of this Decision.

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 be 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 2nd day of
November, 2004

/sGary M. Wolkstein
Administrative Law Judge
Division of Hearings and Appeals
428/GMW

cc: Lori Dalka – Fond Du Lac Co. - e-mail
Jenifer Harrison-Metastar - e-mail
April Hays-DHFS/Metastar – e-mail
Charles Jones, OSF/CDSO - e-mail
Anne Luby – Fond Du Lac Co. - e-mail
Cheryl McIlquham – BHCE
Ann Marie Ott – DHFS - e-mail
Kay Krause Creative Care Options - e-mail
Sandy Tryon - e-mail
Larry Debbert, Creative Care Options