



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

(petitioner)

DECISION

FCP-40/64953

PRELIMINARY RECITALS

Pursuant to a petition filed August 17, 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.

The issue for determination is whether the County may reduce petitioner's personal care hours, supportive care hours, and overnight rate.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

(petitioner) (not present at October
19, 2004 hearing)

Represented by:

BP, petitioner's caregiver and Power of
Attorney (POA)

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:

Sharon Murphy, Contract Specialist
Stephanie Edel, Lead Supervisor, St. Ann Intergenerational Center

Theda Jardanowski, R.N., Case Manager, St. Ann Intergenerational Center
Jessica Lyman, Family Care Case Manager, St. Ann Intergenerational Center

ADMINISTRATIVE LAW JUDGE:

Sean P. Maloney
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (SSN xxx-xx-xxxx, CARES # xxxxxxxxxxxx; DOB January 4, 1929) is a resident of Milwaukee County.
2. Petitioner was authorized to receive 24.5 personal care hours per week, plus 17.5 supportive care hours per week, plus an overnight rate; following a reassessment in spring 2004, including several home visits, the County reduced this authorization to 26.5 personal care hours per week, plus 4 supportive care hours per week¹, and no overnight rate.
3. Petitioner lives with her son, her son's fiancée, and the fiancée's 2 daughters (ages 20 and 3); the fiancée is petitioner's caregiver and Power of Attorney (POA).
4. Petitioner is incontinent of bowel and bladder; she has left side weakness; she is in a wheelchair and needs assistance with transferring, dressing, bathing, meals, and her medicine.
5. Petitioner is alert and oriented, has excellent communication skills, is an avid reader, and is able to express complex ideas and feelings clearly without impairment; she needs to see a doctor only once per year; petitioner has refused the following supportive services offered by the County: adult day care services (including a bath and one meal per day), Lifeline, Meals on Wheels (MOW), Physical Therapy (PT), Occupational Therapy (OT), and respite care; the County has suggested that petitioner be put on a toileting schedule as she has been on a toileting schedule in the past and was continent of both bowl and bladder but petitioner's caregiver states that petitioner "just doesn't want to . . . "

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).

¹ The assessment called for only 1 hour of supportive care for week, but at the October 19, 2004 hearing the County acknowledged that 4 hours was probably needed.

In this case petitioner is eligible for FCP, is enrolled in a CMO, and is receiving FCP benefits. Petitioner appeals because she was authorized to receive 24.5 personal care hours per week, plus 17.5 supportive care hours per week, plus an overnight rate but following a reassessment in spring 2004, including several home visits, the County reduced this authorization to 26.5 personal care hours per week, plus 4 supportive care hours per week, and no overnight rate.

I must conclude, based on the evidence in the record of this matter, that the County may make the reductions it has identified. The County conducted a thorough assessment prior to determining that a reduction was warranted and the evidence supports the County conclusion that petitioner's needs can be met with fewer hours. This is especially true since petitioner lives in a household with not only her caregiver but also with 2 other adults, including her son. Routine work such as cleaning, shopping, and cooking should be done by these other household members as a matter of course and need not be reimbursed by the County. Since petitioner lives with others, no overnight rate need be paid. Further, petitioner has refused supportive services and suggestions offered by the County that would reduce the cares her caregiver must provide. Petitioner has offered little in the way of concrete evidence to demonstrate that her needs cannot be met with fewer hours.

CONCLUSIONS OF LAW

For the reasons discussed above, the County may reduce petitioner's personal care hours, supportive care hours, and overnight rate.

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 1st day of
November, 2004

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

cc: Ann Blewett - Milw. Cty - e-mail
Nora Gomez - Milw. Co. - e-mail
Lois Greene For Jackson -Milw. Cty - e-mail
Jenifer Harrison-Metastar - e-mail
April Hays-DHFS/Metastar - e-mail
Ruby Jackson-Milw Cty - e-mail
Charles Jones, OSF/CDSO - e-mail
Chester Kuzminski-MilwCty-DEPT AGING - e-mail
Cheryl McIlquham - BHCE
Ann Marie Ott - DHFS - e-mail
Felice Riley-MILWCNTY ADMINISTRATOR
Teresa Smith-MILW.CO-QI/AGING - e-mail
Lydia Torres-Community/Milw Cty - e-mail