



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

(petitioner)

DECISION

FCP-40/65058

PRELIMINARY RECITALS

Pursuant to a petition filed August 24, 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 (FCP), a hearing was held on November 2, 2004, at Milwaukee, Wisconsin.

The issue for determination is whether the petitioner's SHC hours should have been reduced.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:
(petitioner)

Represented by:
Deanna Singh, Attorney
Senior Law
230 West Wells Street Room 800
Milwaukee, WI 53203

Wisconsin Department of Health and Family Services (Department)
Division of Supportive Living
Bureau on Aging & Long Term Care Resources
Long Term Support Unit
1 West Wilson Street, Room 472
Madison, WI 53702

Nora Gomez, Quality Improvement Coordinator
Milwaukee County Dept Of Human Services
Department on Aging
235 W. Galena Street, Suite 180
Milwaukee, WI 53212-3948

ADMINISTRATIVE LAW JUDGE:

Joseph A. Nowick
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (SSN xxx-xx-xxxx, CARES #xxxxxxxxxx) is a resident of Milwaukee County.
2. Based on a 2003 assessment, the petitioner had been receiving 27 hours of Supportive Home Care (SHC), 25 hours of household services plus 2 hours of Personal Care (PC).

3. The FCP agency did a desk review on May 30, 2004. That review determined that the petitioner needed 10 hours of Supportive Home Care (SHC), 0 hours of household services plus 10 hours of Personal Care (PC). See Exhibit #10.
4. On June 30th and September 16th, two new recommendations were made with the first recommending 14 hours of SHC and the second recommending 19.5 hours of SHC.
5. On July 7, 2004, the CMO notified the petitioner that her SHC hours would decrease on July 27, 2004. On August 4, 2004, the petitioner filed a grievance with the CMO concerning her SHC hours. The grievance was denied on August 25, 2004.
6. The FCP agency had a new assessment done on September 29th and based on it, made a final recommendation of 22.5 hours of SHC, 4 hours of household services plus 18.5 hours of PC.

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. 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). The Family Care Program procedures and eligibility requirements are found in the Wisconsin Administrative Code, Chapter HFS 10.

The petitioner is contesting the decision by the CMO to reduce her hours of household services portion of her SHC from 24.5 hours to 4 hours. The petitioner's attorney has alleged that as the CMO took this action in an arbitrary manner and that the CMO decision was based at least in part on the fact that the petitioner's daughter is the caregiver.

The petitioner's attorney has glossed over the fact that the petitioner's PC increased from 2 hours to 18.5 hours. At the hearing, she argued that the increase was not a consideration in the determination of the household services portion of the SHC hours. WI Admin Code § 10.41(2), states as follows:

2) SERVICES. Services provided under the family care benefit shall be determined through individual assessment of enrollee needs and values and detailed in an individual service plan unique to each enrollee. As appropriate to its target population and as specified in the department's contract, each CMO shall have available at least the *services and support items covered under the home and community-based waivers* under 42 USC 1396n (c) and ss. 46.275, 46.277 and 46.278, Stats., the long-term support community options program under s. 46.27, Stats., and specified services and support items under the state's plan for medical assistance. In addition, a CMO may provide other services that substitute for or augment the specified services if these services are cost-effective and meet the needs of enrollees as identified through the individual assessment and service plan. (Emphasis added.)

There is a manual concerning the services provided through the home and community-based waivers program. The BDDS Medicaid *Waivers Manual*, Chapter IV, Allowable Services, Page IV-99, defines supportive home care as a service (SPC 104.20):

Supportive Home Care is the provision of a range of services for participants who require assistance to meet their daily living needs, ensure adequate functioning in their home and permit safe access to the community.

Supportive home care services include:

1. Personal Services

- a. Assistance with activities of daily living such as eating, bathing, grooming, personal hygiene, dressing, exercising, transferring and ambulating;
- b. Assistance in the use of adaptive equipment, mobility and communication aids;
- c. Accompaniment of a participant to community activities;
- d. Assistance with medications that are ordinarily self-administered;
- e. Attendant care;
- f. *Supervision and monitoring of participants in their homes, during transportation (if not done by the transportation provider) and in community settings;*
- g. Reporting of observed changes in the participant's condition and needs;...

2. Household Services

- a. Performance of household tasks and home maintenance activities, such as meal preparation, shopping, laundry, house cleaning, simple home repairs, snow shoveling, lawn mowing and running errands;
- b. Assistance with packing and general house cleaning when a participant moves.

(Emphasis added.) Thus, personal services and household services are two distinct but very much related parts to the overall SHC service. It is incorrect to look at the loss of hours of the household services and totally ignore the increase in the personal services. It is clear from the testimony that 16.5 hours of the previous total of 25 hours of household services were designated as personal care services. I will not restore hours that were not actually lost but simply designated differently.

This does not resolve all of the issues. There is still a reduction of 4.5 hours of household services. (27 total hours – 4 hours of household services approved – 18.5 hours of PC approved = 4.5 hours.) The issue is the petitioner's need and whether the fact that her caregiver is her daughter made any difference. A memorandum entitled *Clarification of Family Care policy relating to Paying Family Caregivers* dated October 20, 2004, discusses on pages 2-3 when the CMO shall pay family members to provide services:

1. The service is authorized by the team...
2. The Family Care member's preference is for the family member to provide the service.
3. The family member meets the CMO's competency standards for its own staff or subcontractors who provide similar services, whether or not the paid family member is actually an employee of the CMO. AND
4. Either the family member will provide an amount of service that exceeds normal family care giving responsibilities for a person in a similar family relationship who does not have a disability, OR the family member finds it necessary to forego paid employment in order to provide the service.

I view the family relationship of the petitioner to her caregiver as a two-part question. First, does the petitioner's daughter meet the above criteria for payment. I find that she does and so must the CMO as they did not argue that the daughter was not eligible to be a paid caregiver. Having answered that in the affirmative, I must look at what the petitioner's needs are and what services must be provided to meet them. Then, the needed services must be reviewed to see if they would normally be provided in normal family caregiving responsibilities. The previously mentioned October 20th memorandum incorporates a memorandum dated November, 2003, and entitled *Guidelines for Paying Family Caregivers*, which states the following on page 5:

Types of Services. In general, family members may be compensated for services/supports needed that exceed the typical care-giving/support responsibilities for any family member of the same age, and would be considered a "special caregiving responsibility" due to the member's disability.

- a. Family members can be informed that, typically, the CMO does not pay family members for activities that a relative/family member would normally provide for another family member as a matter of course in the usual relationship among members of a family.
- Services that are typically assumed to be the responsibility of family members are routine laundry, meal preparation, shopping, usual cleaning, general supervision, *non-medical supervision*, assisting with mobility, companionship, and transportation/escorting.
 - Services that are considered to exceed the typical care-giving/support responsibilities of a family member are toileting, bathing (other than set-up), other personal care the member is unable to do for himself or herself, frequent laundry due to incontinence/illness, medical miles (these should be billed to common carrier/MA), complete transfer assist, or other unique services that may be considered by the IDT for consumer-specific situations.
- b. If the member becomes ill, there may be an occasional need to perform certain “hands on tasks,” i.e., assistance with bathing, cooking special meals, checking on the individual during the night, etc. When these types of services go from occasional to routine, the team may wish to revisit a decision not to pay the family member for providing them.

Again, the *medical* supervision that was in the household services was designated as personal care. I also find little documentation suggesting that the petitioner’s health is so fragile that any addition hours of supervision are necessary. Companionship is something that would be part of the natural relationship between mother and child. In reviewing the remaining household services, the time allotted in the new assessment for assistance in the living area, bathroom, and kitchen is almost identical to what was paid for under the old one, 2.5 hours. One change is the cleaning of the stove top/counters/sink went from once per day to once per week. I do not find any justification for such a large change and adding three days at a total additional time of .5 hours per week. When you add the 2 hours per week for laundry, it becomes 5 hours. I also believe the testimony that the daughter makes the evening meal every day. Thus, instead of .5 hours three times per week, it would be .5 hours seven times per week., for a total of 3.5 hours. Thus, the total time for the household services part of SHC is 8.5 hours. When added to the PC time of 18.5 hours, the total is 27 hours, just as it was before. As neither side present convincing evidence that the petitioner’s status (or needs) had changed significantly, I find the continuation of the same number of hours appropriate.

CONCLUSIONS OF LAW

The petitioner is entitled to 27 hours of Supportive Home Care with her daughter as the paid caregiver.

NOW, THEREFORE, it is **ORDERED**

That the petition for review be remanded to the FCP agency with the instructions to increase the total SHC hours to 27 hours (18.5 PC hours and 8.5 household services hours) within 10 days from the date of this Order. For all other matters, the petition 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 that 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 16th day of
November, 2004

/s/ Joseph A. Nowick
Administrative Law Judge
Division of Hearings and Appeals
427/JAN