



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of



DECISION
Case #: FCP - 189820

PRELIMINARY RECITALS

Pursuant to a petition filed on September 12, 2018, under Wis. Admin. Code § DHS 10.55, to review a decision by the Community Care Inc. regarding Medical Assistance (MA), a hearing was held on January 22, 2019, in Milwaukee, WI. Petitioner waived the MOUA deadline at the close of the hearing.

The issue for determination is whether the agency met its burden to show that it correctly denied petitioner's request for acupuncture under the Family Care Program (FCP).

There appeared at that time the following persons:

PARTIES IN INTEREST:

Petitioner:



Respondent:

Department of Health Services
1 West Wilson Street, Room 651
Madison, WI 53703

By: [Redacted], FCP Supv.
Community Care Inc.
205 Bishops Way
Brookfield, WI 53005

ADMINISTRATIVE LAW JUDGE:
Kelly Cochrane
Division of Hearings and Appeals

FINDINGS OF FACT

- 1. Petitioner (CARES # [Redacted]) is a resident of Milwaukee County and is enrolled in the Family Care Program (FCP).

2. The petitioner is a 50-year-old woman. She lives alone. Petitioner has multiple diagnoses but include functional neurologic disorder, depression, chronic pain, seizure disorder, and somatic symptom disorder. See Exhibit P-4.
3. Petitioner receives chiropractic services twice weekly.
4. On July 9, 2018 petitioner requested that the FCP fund acupuncture therapy for her.
5. On July 11, 2018 FCP workers met with petitioner in her home to discuss the request for acupuncture. FCP workers thereafter reviewed petitioner's history and determined that petitioner has had acupuncture in the past but was ineffective for any long-term therapeutic effect.
6. Based on the information the FCP received, the FCP issued a notice of decision to petitioner on August 2, 2018 denying the request for acupuncture. It denied the request because acupuncture has been utilized in the past and it was unsuccessful with pain management or managing side effects from medication.

DISCUSSION

The Family Care Program (FCP) is a subprogram of Medicaid which is supervised by the Department of Health Services (DHS) and is designed to provide appropriate long-term care services for elderly or disabled adults. It is authorized in the Wisconsin Statutes at §46.286, and is described in the Wisconsin Administrative Code, Chapter DHS 10.

The FCP benefit is available to eligible persons only through enrollment in a care management organization (CMO). Wis. Adm. Code §DHS 10.41(1). The terms CMO and MCO (Managed Care Organization) are often used interchangeably in the FCP. Services provided under the FCP are determined through an individual assessment of enrollee needs and values and detailed in an individual service plan (ISP) unique to each enrollee. 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.

Wis. Adm. Code §DHS 10.41(2). Thus, while the client has input, the CMO does not have to provide all of the services the client desires if there are less expensive alternatives to achieve the same results. See Wis. Adm. Code, §DHS 10.44(1)(f).

The petitioner requests acupuncture therapy. When determining whether a service is necessary, the FCP must review, among other things, the medical necessity of the service, the appropriateness of the service, the cost of the service, the extent to which less expensive alternative services are available, and whether the service is an effective and appropriate use of available services. Wis. Adm. Code, §DHS 107.02(3)(e)1.,2.,3.,6. and 7. "Medically necessary" means a medical assistance service under ch. DHS 107 that is:

- (a) Required to prevent, identify or treat a recipient's illness, injury or disability; and

(b) Meets the following standards:

1. Is consistent with the recipient's symptoms or with prevention, diagnosis or treatment of the recipient's illness, injury or disability;
2. Is provided consistent with standards of acceptable quality of care applicable to the type of service, the type of provider, and the setting in which the service is provided;
3. Is appropriate with regard to generally accepted standards of medical practice;
4. Is not medically contraindicated with regard to the recipient's diagnoses, the recipient's symptoms or other medically necessary services being provided to the recipient;
5. Is of proven medical value or usefulness and, consistent with s. HFS 107.035, is not experimental in nature;
6. Is not duplicative with respect to other services being provided to the recipient;
7. Is not solely for the convenience of the recipient, the recipient's family, or a provider;
8. With respect to prior authorization of a service and to other prospective coverage determinations made by the department, is cost-effective compared to an alternative medically necessary service which is reasonably accessible to the recipient; and
9. Is the most appropriate supply or level of service that can safely and effectively be provided to the recipient.

Wis. Adm. Code, §DHS 101.03(96m).

The FCP denied the acupuncture because petitioner has utilized it in the past and it was unsuccessful with pain management or managing side effects from medication. She is currently using chiropractic services, which the FCP found a reasonable alternative for her pain. Accordingly, there is no finding of medical necessity.

There is no dispute that petitioner has struggles with pain. The FCP reports that she has failed to provide several releases for her medical information from her primary care provider and her chiropractor. They also report that in-home caregivers stated that petitioner walks about her home, and transportation providers report that she walks into her chiropractor's office and climbs the stairs to get to the office. This information is hearsay, but it corroborated somewhat by the medical documentation provided by the petitioner at hearing. Numerous emergency room visits show that petitioner routinely complains of weakness and pain, but objective testing shows no underlying diagnosis to support those complaints. Rather, the diagnosis that reoccurs is that of her somatic symptom disorder. Further the FCP provided unsigned and un-notarized letters from petitioner's former acupuncturist – again, hearsay. However, again, petitioner's own records that she provided at hearing show that acupuncture provided her with no effective long-term results and no sustainable progress. See Exhibit P-3.

Petitioner reports that she had acupuncture as recently as this month in California which a friend paid for her to have. Petitioner reported improvement but provided no records of this, nor showed improvement with her complaints at hearing.

The preponderance of the evidence leads me to believe that she has not shown a medical necessity for acupuncture at this time. Even if she submitted a letter from a doctor saying she could benefit from acupuncture, there is no overall showing of a medical necessity. The medical documentation petitioner provided shows no effective long-term results and no sustainable progress with a previous course of acupuncture over the course of one year.

At this point in time, I cannot find that the requested acupuncture services are medically necessary. MA is meant to provide only basic and necessary care. This means that requests, such as this one, may be denied even if they are for desirable items that petitioner believes improves her life. This decision considers the petitioner's medical appropriateness and necessity, cost effectiveness, statutory and rule

limitations, and effectiveness of the service as tied to her outcomes. It is suggested that petitioner provide her FCP team the medical releases it needs to get a complete picture of her needs, and then if there is medical documentation to support her acupuncture requests, the parties can have a better understanding of how to address them.

I add, assuming petitioner finds this decision unfair, that it is the long-standing position of the Division of Hearings & Appeals that the Division’s hearing examiners lack the authority to render a decision on equitable arguments. See, Wisconsin Socialist Workers 1976 Campaign Committee v. McCann, 433 F.Supp. 540, 545 (E.D. Wis.1977). This office must limit its review to the law as set forth in statutes, federal regulations, and administrative code provisions.

CONCLUSIONS OF LAW

The CMO has met its burden to show that it correctly denied petitioner’s request for acupuncture services.

THEREFORE, it is ORDERED

That the petition for review herein be dismissed.

REQUEST FOR A REHEARING

You may request a rehearing if you think this decision is based on a serious mistake in the facts or the law or if you have found new evidence that would change the decision. Your request must be **received within 20 days after the date of this decision**. Late requests cannot be granted.

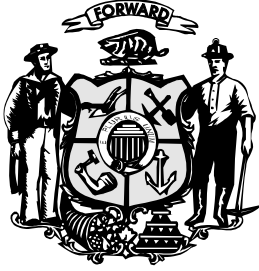
Send your request for rehearing in writing to the Division of Hearings and Appeals, 4822 Madison Yards Way 5th Floor, Madison, WI 53705-5400 **and** to those identified in this decision as "PARTIES IN INTEREST." Your rehearing request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and explain why you did not have it at your first hearing. If your request does not explain these things, it will be denied. The process for requesting a rehearing may be found at Wis. Stat. § 227.49. A copy of the statutes may be found online or 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 with the Court **and** served either personally or by certified mail on the Secretary of the Department of Health Services, 1 West Wilson Street, Room 651, **and** on those identified in this decision as “PARTIES IN INTEREST” **no more than 30 days after the date of this decision** or 30 days after a denial of a timely rehearing (if you request one). The process for Circuit Court Appeals may be found at Wis. Stat. §§ 227.52 and 227.53. A copy of the statutes may be found online or at your local library or courthouse.

Given under my hand at the City of Milwaukee,
Wisconsin, this 6th day of February, 2019

\s _____
Kelly Cochrane
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin \DIVISION OF HEARINGS AND APPEALS

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The preceding decision was sent to the following parties on February 6, 2019.

Community Care Inc.
Office of Family Care Expansion
Health Care Access and Accountability