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STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

DECISION

Case #: FCP - 206978

PRELIMINARY RECITALS

Pursuant to a petition filed on November 22, 2022, 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 March 7, 2023, by telephone.

The issue for determination is whether the FC agency correctly discontinued the Petitioner's 1:1 support in his adult family home.

There appeared at that time the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

Respondent:

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

By: Lisa Strieter

Community Care Inc.
205 Bishops Way
Brookfield, WI 53005

ADMINISTRATIVE LAW JUDGE:

Debra Bursinger
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner is a resident of Waukesha County. He resides at an adult family home (AFH). He is 19 years old. His diagnoses include ADHD, conduct disorder, intermittent explosive disorder, anxiety disorder, OCD, depression, lack of normal physical development, dermatitis, intellectual disability, insomnia, bowel and urinary incontinence, hyperlipidemia, aphasia. He requires total assistance with personal cares due to cognitive limitations. Petitioner has aggressive behaviors that include pulling hair (of others), kicking, and pinning people down. Petitioner's OCD behaviors include turning lights on and off and turning knobs on appliances. He has a history of behaviors while caregivers are providing care.
2. Petitioner was enrolled in Family Care on April 12, 2022 with Community Care. At the time of enrollment, he lived at home with his parents/guardians and sister. He attended [REDACTED] on weekdays.
3. During the enrollment process, the Petitioner's parents disclosed a pending divorce. They identified the need for a placement for the Petitioner. The Petitioner's parents also reported that Petitioner had 1:1 caregiver when he was at school to deal with his behaviors and requested 1:1 caregiver in his adult family home placement.
4. On May 9, 2022, the Petitioner moved to an AFH with 1:1 support, 7 hours on weekdays and 12 hours on weekends and holidays.
5. In June 2022, the Petitioner started attending [REDACTED] ([REDACTED]). Staff ratio for Petitioner is 1:4. He attends day programming Monday through Friday from 8 a.m. – 3:30 p.m.
6. On October 4, 2022, the IDT team held its semi-annual review meeting of Petitioner's support plan. The Petitioner attended the meeting with his parents and caregivers. A Long Term Care Functional Screen (LTCFS) was completed. It notes that the AFH and day program are monitoring behaviors and maintaining a daily behavior log. It reports that the Petitioner's behaviors are decreasing from what was previously reported by his parents. It notes that he has a BSP and interventions are done daily to prevent behaviors. It also notes that Petitioner is not safe to be left alone for any length of time and needs line of sight supervision.
7. On October 4, 2022, the Petitioner's Care Plan was updated. His goals include the following:

Goal identified 1: Living Environment – Petitioner to adjust to living in AFH and be healthy and safe; this Goal is continued since last care plan; The status of this goal is open; Progress: Petitioner has adjusted to AFH routine. He has been able to follow directions from staff. Petitioner's behaviors have been stable if not improved since living at home.

Goal identified 3: Community Integration/Social – Petitioner will continue to attend day programming; Progress: Updated prior goals from attending school to day programming. Member was unable to attend any programming during the summer and instead attended day programming at Next Step. Member has been successful in day program. He will no longer be going back to school. He has obtained his diploma from [REDACTED]; this goal is continued since last care plan; the status of this goal is open.

The Care Plan identifies Obstacles or Risks that could prevent the Petitioner from accomplishing his goals to include the following: “he has OCD which causes member to do things including turning on and off lights and items with buttons. Hx of violent behavior of pulling people's hair and pulling them down to the ground when dysregulated.”

8. On October 13, 2022, the FC agency issued a notice to the Petitioner that 1:1 support in the AFH would be discontinued effective November 1, 2022 because he no longer needs that level of support.

9. On November 22, 2022, an appeal was filed on behalf of the Petitioner with the Division of Hearings and Appeals.
10. On December 9, 2022, the Petitioner's AFH issued a notice to him that he must move out of the home within 30 days due to "behaviors or actions that have repeatedly and/or (sic) interfered with the rights or well-being of other residents and staff." It noted there have been multiple occasions of physical aggression toward staff, regular physical attacks on his mother, and demanding and intimidating behavior toward another resident. It noted that his mother has been unable to take him outside the AFH because of his aggressive behavior toward her. It indicates that the Petitioner's behaviors pose an immediate danger to himself and others, and they cannot continue to keep the Petitioner and other residents and staff safe.

DISCUSSION

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

The starting point for whether a Medicaid or waiver service should be maintained is the general criteria for determining authorization for services – medical appropriateness and necessity, cost effectiveness, statutory and rule limitations, and effectiveness of the service. See Wis. Admin. Code, § DHS 107.02(3)(e).

The Care Management Organization (CMO) must develop an Individual Service Plan (ISP) in partnership with the client. Wis. Admin. Code, § DHS 10.44(2)(f). While the client has input, the CMO does not have to provide all the services the client desires if there are less expensive alternatives to achieve the same results. Wis. Admin. Code, § DHS 10.44(1)(f). ISPs must be reviewed periodically. Wis. Admin. Code, § DHS 10.44(j)(5).

The ISP must meet all the following conditions:

1. Reasonably and effectively addresses all of the long-term care needs and utilizes all enrollee strengths and informal supports identified in the comprehensive assessment under par. (e) 1.
2. Reasonably and effectively addresses all of the enrollee's long-term care outcomes identified in the comprehensive assessment under par. (e) 2. and assists the enrollee to be as self-reliant and autonomous as possible and desired by the enrollee.
3. Is cost-effective compared to alternative services or supports that could meet the same needs and achieve similar outcomes.
4. Is agreed to by the enrollee, except as provided in subd. 5.
5. If the enrollee and the CMO do not agree on a service plan, provide a method for the enrollee to file a grievance under s. DHS 10.53, request department review under s. DHS 10.54, or request a fair hearing under s. DHS 10.55. Pending the outcome of the grievance, review or fair hearing, the CMO shall offer its service plan for the enrollee, continue negotiating with the enrollee and document that the service plan meets all of the following conditions:
 - a. Meets the conditions specified under subds. 1. to 3.
 - b. Would not have a significant, long-term negative impact on the enrollee's long-term care outcomes identified under par. (e) 2.

- c. Balances the needs and outcomes identified by the comprehensive assessment with reasonable cost, immediate availability of services and ability of the CMO to develop alternative services and living arrangements.
- d. Was developed after active negotiation between the CMO and the enrollee, during which the CMO offered to find or develop alternatives that would be more acceptable to both parties.

Wis. Admin. Code, § DHS 10.44(f).

The Petitioner is enrolled in the FC program with Community Care. Community Care representatives testified that 1:1 support was initially approved for the Petitioner during his transition from living at home to the AFH. The agency further noted that the Petitioner's day program does not provide 1:1 support while he is there but has a staff ratio of 1:4. The day program staff report that the Petitioner has sporadic behaviors, but he has a strong interest in community outings and has participated in many outings without incident. He does prefer to hold a staff member's hand all the time. The representatives also testified that the Petitioner exhibited no behaviors during a 1 ½ hour IDT meeting in October 2022. The representatives testified that, when the Petitioner attended [REDACTED], he did not have 1:1 support. He did, however, have a crisis cycle plan there in addition to a behavioral support plan when he was enrolled in the IRIS program due to his history of violent and physically aggressive behaviors. Though the [REDACTED] indicated the Petitioner did not require 1:1 staff, it is not disputed that the school denied his application for summer camp due to behaviors, staffing, and risks during community outings.

The Petitioner's parents testified on his behalf. They also produced behavior logs and communications from the AFH where the Petitioner resides as well as a letter from the Petitioner's physician.

The Petitioner's mother testified that the Petitioner has required constant supervision since he was a baby. He cannot be left alone at any time. She testified that he has frequent elopement attempts, he likes to start fires, and he will turn on the stove. She noted that he doesn't require 1:1 during day programming because he doesn't have access to a kitchen or other areas that usually create issues.

The Petitioner's father testified that the Petitioner was placed in an AFH with 1:1 support for safety reasons. He noted that the Petitioner had 1:1 support when he was enrolled at [REDACTED], but he was still suspended from school on several occasions due to behaviors that included repeatedly pulling the fire alarm. He noted that the Petitioner is very quick and even if someone is holding his hand, he frequently and quickly gets away to pull fire alarms or cause other issues. He noted that the 1:4 ratio at the day program involves a caregiver with the Petitioner and three other individuals that are high functioning. If the other individuals were not high functioning, the 1:4 ratio would not work effectively. He noted that the Petitioner's behaviors include pulling out handfuls of other people's hair, opening the door of a moving vehicle, and physically attacking others. He testified that the current AFH has given notice for him to move because without 1:1 support, they are unable to safely care for him and other residents. He provided a list of 33 AFHs that they have contacted for placement of the Petitioner, but all have declined because of his behaviors.

Based on the evidence presented, I conclude the MCO has not demonstrated it correctly terminated the Petitioner's 1:1 support at the AFH. The evidence does not demonstrate that the Petitioner's long-term outcomes and goals in his ISP can be met without 1:1 support at the AFH. Specifically, the Petitioner's ISP has an outcome to live a healthy and safe life in an AFH. The current AFH has indicated that it cannot provide safe care to the Petitioner and its other residents due to the Petitioner's physically aggressive behavior and elopement attempts. The MCO's assertion that the Petitioner's behaviors have improved in the AFH is not supported by the behavior logs or communications from the AFH, including the notice of

termination of his residency due to behaviors. There is evidence that thirty-three other AFHs have declined placement for the Petitioner for the same reason. The Petitioner's parents and the AFH home produced behavior logs that show far more behavioral incidents than was described by the agency representatives. It is my understanding that the agency may not have had all the behavior logs, despite requesting them from the AFH. If so, then the agency's determination is based on an incomplete understanding of the extent of his behaviors. The MCO representatives testified that there is one AFH that it "hopes" will be able to manage the Petitioner but there is no certainty of that AFH accepting his placement. The MCO stated that it needs to find the "correct" situation for the Petitioner. However, it is not able currently to identify an appropriate and effective placement that meets his ISP outcome.

Therefore, I conclude the MCO did not correctly terminate the Petitioner's 1:1 support because it has not demonstrated that the Petitioner's goals and outcomes to live safely in an AFH can be met without it. The MCO has not identified an alternative that is effective and cost-effective. Therefore, the MCO must continue to provide 1:1 support to the Petitioner at the AFH.

CONCLUSIONS OF LAW

The Petitioner remains eligible for 1:1 support in an AFH.

THEREFORE, it is **ORDERED**

That this matter is remanded to the MCO to rescind its termination of 1:1 support for the Petitioner in the AFH and revise the ISP to include the service. This action shall be completed within 10 days of the date of this decision.

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 North, 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.

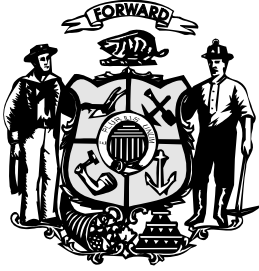
APPEAL TO COURT

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 7th day of April, 2023

\s _____
Debra Bursinger
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 April 7, 2023.

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