



FH
[REDACTED]

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION
Case #: FCP - 211038

PRELIMINARY RECITALS

Pursuant to a petition filed on November 13, 2023, 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 4, 2024, by telephone.

The issue for determination is whether the respondent correctly reduced Petitioner's self-directed supports budget.

There appeared at that time the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]

Respondent:

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

By: Megan Klackner
Community Care Inc.
205 Bishops Way
Brookfield, WI 53005

ADMINISTRATIVE LAW JUDGE:

Teresa A. Perez
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a 68-year old resident of Milwaukee County who has been enrolled in the Family Care Program and receiving services through Community Care managed care organization (MCO) since at least February 2016.
2. Petitioner resides with his adult son who is also his primary caregiver.
3. Petitioner has medical diagnoses including but not limited to left-sided hemiparesis resulting from a prior stroke, urinary and fecal incontinence, dementia, bipolar disorder, schizophrenia, major neurocognitive disorder, and a seizure disorder.
4. Petitioner is at a significant risk for falls due to the medications he must take and due to his left-sided hemiparesis.
5. Petitioner is at an increased risk for aspiration due to a history of dysphagia.
6. Due to his numerous medical conditions, Petitioner requires 24 / 7 care and supervision.
7. Petitioner has a self-directed supports budget through the Family Care Program that is used to fund supportive home care.
8. By notice dated September 11, 2023, Community Care informed Petitioner that his monthly self-directed supports budget from \$4,134.02 to \$2,684.43.
9. On November 3, 2023, the Community Care Grievance and Appeal Committee upheld the reduction of Petitioner’s self directed supports budget.
10. On November 16, 2023, the Division of Hearings and Appeals received a request for a state fair hearing from Petitioner.

DISCUSSION

Family Care (FC) is a Medical Assistance funded program intended to meet the long term care and health care needs of target groups consisting of frail elders; individuals age 18 and older who have physical disabilities, as defined in Wis. Stat. §15.197 (4) (a) 2.; and individuals age 18 and older who have developmental disabilities, as defined in Wis. Stat. §51.01 (5) (a). FC is administered by the Department of Health Services (DHS). DHS contracts with several managed care organizations (MCOs) throughout the state to provide case management which includes the authorization of allowable and appropriate long term care services for individual FC recipients. Wis. Admin. Code §DHS 10.44(2)(f).

The contract into which every MCO must enter with DHS requires MCOs to determine appropriate long term care services by engaging in a “member-centered planning process” and by applying either the “Resource Allocation Decision” (RAD) method or by applying the terms of service authorization policies designed by the individual MCOs that are explicitly approved by the Department. See Family Care Contract Template, Issued January 1, 2022, Article V, Sec. K (available at <https://www.dhs.wisconsin.gov/familycare/mcos/fc-fcp-2022-generic-final.pdf>).

The issue in this case is whether the agency correctly seeks to reduce his supportive home cares budget which will effectively reduce his supportive home care from approximately 51.5 hours per week to 33hours per week. Because the respondent agency seeks to change the present circumstances by reducing Petitioner's care, it has the burden of proof. *State v. Hanson*, 295 N.W.2d 209, 98 Wis. 2d 80 (Wis. App. 1980); see also DHA Final Decision ATI-40/87198.

At hearing, the agency contended that the reduction of Petitioner's self-directed services budget is justified for three primary reasons: (1) during the most recent review conducted by his care management team, Petitioner's adult son estimated that Petitioner requires toileting assistance 9 times per day and had previously reported that Petitioner required assistance with 12 episodes of toileting per day; (2) Petitioner's son reported that Petitioner had been experiencing fewer manic episodes that entailed dirtying the house, and (3) Petitioner's son reported that Petitioner had not been attempting to elope from their residence as often. The agency argued that due to these improvements, Petitioner needed less time for toileting and that he no longer required "enhanced housekeeping" or supervision.

The agency did not however offer any written definition of enhanced housekeeping or supervision from relevant law, regulation, policy, or even internal guideline. I cannot assess whether Petitioner requires less of undefined services. Moreover, I note that there is no dispute that Petitioner requires round the clock care and that if he could no longer reside with his son and daughter, he would require services to be provided by a supportive home care agency or to relocate into residential placement. It is difficult to imagine that either of those options would be more cost-effective since Petitioner's family is plainly providing many hours of uncompensated care or, in the parlance of the Family Care Program, "natural supports".

As to the question of toileting needs, Petitioner's son testified that Petitioner's needs ebb and flow to a certain extent but estimated that he may require assistance with 11 – 12 episodes again. The agency's documentation indicated that Petitioner's current monthly SDS budget allows for \$682.55 to provide Petitioner with toileting assistance and proposed to reduce that amount to \$511.91 per month. The documentation indicates that the "total frequency of tasks per month" is 273.75 but was previously 365. The documentation does not indicate whether that is referring to minutes or units of some other measurement. And, the agency did not explain how it determined the amount of time or amount of money per toileting episode.

For the reasons set forth above, I find that the agency has not met its burden of proof to establish that Petitioner had a change in circumstances justifying the proposed SDS budget reduction.

CONCLUSIONS OF LAW

The agency did not establish that it is appropriate to reduce Petitioner's self-directed supports budget.

THEREFORE, it is

ORDERED

That this matter is remanded to Community Care with instructions to, within 10 days, continue funding petitioner's monthly self-directed supports budget in the amount of \$4,134.02.

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.

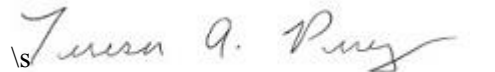
The process for requesting a rehearing may be found at Wis. Stat. § 227.49. A copy of the statutes may be found online or at your local library or courthouse.

APPEAL TO COURT

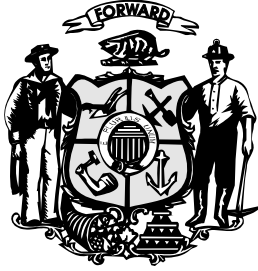
You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Health Services, 1 West Wilson Street, Room 651, **and** on those identified in this decision 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 Madison,
Wisconsin, this 31st day of January, 2024



Teresa A. Perez
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 January 31, 2024.

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