



**STATE OF WISCONSIN
Division of Hearings and Appeals**

In the Matter of

██████████
████████████████████
████████████████████

DECISION
Case #: FCP - 206264

PRELIMINARY RECITALS

Pursuant to a petition filed on September 13, 2022, under Wis. Admin. Code § DHS 10.55, to review a decision by the MY Choice Family Care regarding Medical Assistance (MA), a hearing was held on December 7, 2022, by telephone.

The issue for determination is whether the respondent correctly reduced petitioner’s supportive home care (SHC) from 42 hours/week to 32.25 hours/week.

There appeared at that time the following persons:

PARTIES IN INTEREST:

Petitioner:

██████████
████████████████████
████████████████████

Petitioner's Representative:

██████████
██
██
████████████████████

Respondent:

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

By: ██████████
MY Choice Family Care
10201 Innovation Dr, Suite 100
Wauwatosa, WI 53226

ADMINISTRATIVE LAW JUDGE:
Peter McCombs
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner is a resident of Dane County. She is eligible for Family Care with MY Choice Wisconsin as her managed care organization (MCO).

2. Petitioner is a 74-year-old woman. Her diagnoses include arthritis, chronic pain, morbid obesity, depression, muscle weakness, stage 2 pressure ulcer of sacral region, history of falling and stage 3 kidney disease
3. Petitioner was previously found eligible for 42.0 hours of SHC.
4. The MCO utilized a Supportive Home Care Assessment tool, in conjunction with a November 23, 2022 Long Term Care Function Screen (LTCFS) and discussions with petitioner, and determined that 32.25 hours of SHC would be sufficient to meet petitioner's health and safety needs.
5. Petitioner appealed the 9.75 hours reduction of SHC to the MY Choice Wisconsin Grievance and Appeal Committee.
6. On August 31, 2022, the MCO's Grievance and Appeal Committee upheld the MCO's reduction of SHC hours to 32.25 per week.
7. The MCO subsequently learned that petitioner had began receiving physical therapy from a new provider and needed assistance with skin integrity (ulcers). As a result, the SHC modification was changed to 36.5 hours per week.
8. On September 13, 2022, petitioner filed an appeal with the Division of Hearings and Appeals.

DISCUSSION

The Family Care (FC) Program provides appropriate long-term care services for elderly or disabled adults. It is supervised by the Department of Health and Family Services, authorized by Wis. Stat. § 46.286, and comprehensively described in Chapter DHS 10 of the Wisconsin Administrative Code. The process contemplated for an applicant is to test functional eligibility, then financial eligibility, and if both standards are met, to certify eligibility. The applicant is then referred for enrollment in a Care Management Organization, which drafts a service plan that meets her needs. Wis. Admin. Code § DHS 10.44(2)(f).

The Department of Health Services (DHS) contracts with managed care organizations (MCOs) throughout the state to provide case management services to FC members. Case management services include the development of individual service plans (ISPs) and the authorization of allowable and appropriate long term care services. Wis. Admin. Code §DHS 10.44(f). The ISP must reasonably and effectively address all of the FC recipient's long-term needs and outcomes, assist the recipient to be as self-reliant and autonomous as possible, and be cost effective when compared to alternative services or supports that could meet the same needs and achieve similar outcomes. *Id.*

The issue in this case is whether the MCO acted appropriately in reducing petitioner's weekly SHC from 42.0 hours to 36.50 hours.

It is a well-established principle that a moving party generally has the burden of proof, especially in administrative proceedings. *State v. Hanson*, 295 N.W.2d 209, 98 Wis. 2d 80 (Wis. App. 1980). The court in *Hanson* stated that the policy behind this principle is to assign the burden to the party seeking to change a present state of affairs. Thus, the burden falls on the MCO to justify the reduction in PC and SHC.

SHC is included in the FCP benefit package. See Wisconsin Department of Health Services, Division of Medicaid Services Family Care Contract ("FCP Contract"), Addendum VIII (available on-line at <https://www.dhs.wisconsin.gov/familycare/mcos/fc-fcp-2020-genericfinal.pdf>). Following a period of time during which the parties attempted to reach agreement on the MCO's pursuit of a reduction in the amount of SHC time approved, the MCO ultimately reduced the SHC to 36.50 weekly hours. At hearing, petitioner and her managed care ombudsman, [REDACTED], contested the MCO's finding as to the

reduction in SHC hours. The MCO based its reduction determination upon its conclusion that petitioner had met many therapy milestones, resulting in greater independence. As such, the MCO sought to reduce her SHC hours.

Petitioner and her ombudsman testified that the MCO's conclusion incorrectly determined that therapy milestones were reached that led to greater independence. Petitioner testified that she has had no changes in her diagnoses, that despite her physical therapy she remains unable to bend her knees, that she is a fall risk, and that she spends approximately 18 hours per day in bed. The long periods of time spent in bed have led to ulcers on her right buttocks. She further noted that the allotted time for her to complete her exercise program, 37 minutes daily, is entirely insufficient. Petitioner's ombudsman questioned the MCO's review of the SHC notes and the review policies/standards that may have been employed during the review. She noted that petitioner's physical therapy notes have never approved petitioner standing without a caregiver present, and that petitioner is expected to work on her standing in the amount of five minutes/standing exercise.

Based on the evidence in the record, I find that MCO did not meet its burden as to the reduction in SHC care. The petitioner has successfully rebutted the MCO's arguments. As such, I will remand this matter to the MCO to reinstate the 42.0 weekly hours. Petitioner's ombudsman also raised questions concerning additional SHC time for laundry, snack preparation, and deep-cleaning. I decline any invitation by petitioner to increase the SHC above the prior amount, as such a request is outside the scope of the appeal. Nothing in this decision would preclude petitioner from requesting additional time, and grievance and appeal rights would apply to any future determination by the MCO in that regard.

CONCLUSIONS OF LAW

The MCO failed to meet its burden to support the reduction in supportive home care from 42.0 weekly hours to 36.50 weekly hours.

THEREFORE, it is

ORDERED

That the matter is remanded to the respondent to, within ten days of the date of this order, continue authorizing 42.0 weekly hours of SHC for petitioner.

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).

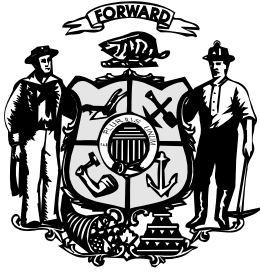
The process for Circuit Court Appeals may be found at Wis. Stat. §§ 227.52 and 227.53. A copy of the statutes may be found online or at your local library or courthouse.

Given under my hand at the City of Madison,
Wisconsin, this 11th day of January, 2023



\s

Peter McCombs
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 11, 2023.

MY Choice Family Care
Office of Family Care Expansion
Health Care Access and Accountability

