



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

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

CWA/171003

PRELIMINARY RECITALS

Pursuant to a petition filed December 23, 2015, under Wis. Admin. Code § HA 3.03, to review a decision by the Bureau of Long-Term Support in regard to Medical Assistance (MA), a hearing was held on April 21, 2016, at Balsam Lake, Wisconsin. Hearings scheduled for January 14, 2016, February 17, 2016, and March 23, 2016, were rescheduled at the petitioner’s request.

The issue for determination is whether the petitioner continues to require care at the nursing home level .care.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]

||

Respondent:

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

By: [REDACTED]
Bureau of Long-Term Support
1 West Wilson
Madison, WI

ADMINISTRATIVE LAW JUDGE:

Michael D. O'Brien
Division of Hearings and Appeals

FINDINGS OF FACT

1. The petitioner (CARES # [REDACTED]) is a resident of Polk County.
2. The petitioner is an ongoing recipient of medical assistance waiver benefits through the IRIS program.

3. The petitioner completed his Annual Long-Term Care Functional Screen on November 16, 2015. The results of that screen indicated that he no longer required care at the nursing home level. As a result, the IRIS program notified him on November 17, 2015, that it was ending his enrollment in the program.
4. The petitioner is a 56-year-old man with various intellectual limitations. He has no significant physical limitations.
5. The petitioner lives alone in a trailer next to his sister.
6. The petitioner has no guardian and makes his own basic decisions concerning his life.
7. The petitioner can cook basic meals for himself and shop for his own food if someone drives him to the store. Relatives help him plan his meals.
8. The petitioner cleans his own residence but requires some suggestions to ensure thoroughness.

DISCUSSION

The Bureau of Long-Term Support seeks end the petitioner's enrollment in the Wisconsin IRIS program, a fee-for-service alternative to the Family Care and Partnership programs for individuals requesting a long-term care support program in Family Care counties. It allows persons to direct their own care. *Medicaid Eligibility Handbook*, § 37.1.1. IRIS, which stands for "Include, Respect I Self-Direct," requires potential recipients to reside in a county with Family Care, have a nursing home level of care, and meet the MA Waiver financial and non-financial criteria. *Id.*, 37.1.3. The petitioner lives in a county with Family Care, but the agency contends he no longer requires care at the nursing home level.

The nursing home level of care, which is also referred to as the comprehensive level of care, is described as follows at Wis. Admin. Code, § DHS 10.33(2)(c):

A person is functionally eligible at the comprehensive level if the person requires ongoing care, assistance or supervision from another person, as is evidenced by any of the following findings from application of the functional screening:

1. The person cannot safely or appropriately perform 3 or more activities of daily living.
2. The person cannot safely or appropriately perform 2 or more ADLs and one or more instrumental activities of daily living.
3. The person cannot safely or appropriately perform 5 or more IADLs.
4. The person cannot safely or appropriately perform one or more ADL and 3 or more IADLs and has cognitive impairment.
5. The person cannot safely or appropriately perform 4 or more IADLs and has cognitive impairment.
6. The person has a complicating condition that limits the person's ability to independently meet his or her needs as evidenced by meeting both of the following conditions:
 - a. The person requires frequent medical or social intervention to safely maintain an acceptable health or developmental status; or requires frequent changes in service due to intermittent or unpredictable changes in his or her condition; or requires a range of medical or social interventions due to a multiplicity of conditions.
 - b. The person has a developmental disability that requires specialized services; or has impaired cognition exhibited by memory deficits or disorientation to person, place or time; or has impaired decision making ability exhibited by wandering, physical abuse of self or others, self neglect or resistance to needed care.

Wis. Admin. Code, § DHS 10.33(2)(c).

Activities of daily living, or ADLs, refer to “bathing, dressing, eating, mobility, transferring from one surface to another such as bed to chair and using the toilet.” Wis. Admin. Code, § DHS 10.13(1m). Instrumental activities of daily living, or IADLs, refer to “management of medications and treatments, meal preparation and nutrition, money management, using the telephone, arranging and using transportation and the ability to function at a job site.” Wis. Admin. Code, § 10.13(32)

Agencies must determine eligibility using a uniform functional screening tool prescribed by the Department. Wis. Admin. Code, § DHS 10.33(2)(a). The problem with this requirement is that the Department has changed the screening tool to better comply with the federal government’s long-term waiver provisions, but it has not changed the administrative code to reflect these changes. *See DHA Decision No. FCP-44/115906*. Because the administrative code has the force of law, I must follow it rather than the screening tool.

The petitioner is a 56-year-old man with various mental limitations but no significant physical limitations. He lives alone and can perform all of his activities of daily living; the only assistance he receives is some guidance to ensure he thoroughly cleans his house and eats proper meals. He does not drive a car, but he can use a telephone without assistance and handle his own finances.

His mother believes that without continued benefits, he would end up in an institution. I see little evidence of this, but, regardless, I must determine his eligibility on the objective standards set forth in the law. He has no significant problem performing his activities of daily living and, at worst, has difficulty with the instrumental activity of daily living in the area of transportation. Thus he does not qualify for programs in which he must meet the nursing home level of care, including IRIS.

I note that the petitioner remains eligible for Family Care Benefits at the non-nursing level of care.

CONCLUSIONS OF LAW

1. The petitioner does not meet the nursing home level of care.
2. The petitioner is no longer eligible for IRIS because he does not meet the nursing home level of care.

THEREFORE, it is

ORDERED

The petitioner's appeal is 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, 5005 University Avenue, Suite 201, 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.

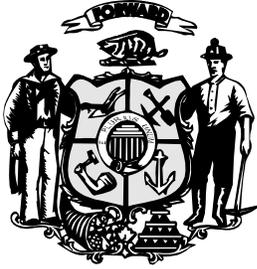
APPEAL TO COURT

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, Madison, Wisconsin 53703, **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 10th day of June, 2016

\sMichael D. O'Brien
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 June 10, 2016.

Bureau of Long-Term Support