



STATE OF WISCONSIN  
Division of Hearings and Appeals

In the Matter of



DECISION

FCP/172037

**PRELIMINARY RECITALS**

Pursuant to a petition filed February 15, 2016, under Wis. Admin. Code § DHS 10.55, to review a decision by the Community Care Inc. in regard to Medical Assistance, a hearing was held on April 19, 2016, at Waukesha, Wisconsin.

The issue for determination is whether the agency correctly discontinued the petitioner from the Family Care Program because she was not functionally eligible at the nursing home level of care and her Medical Assistance coverage was discontinued causing her to be financially ineligible at the non-nursing home level of care.

There appeared at that time and place the following persons:

**PARTIES IN INTEREST:**

Petitioner:



Respondent:

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

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

**ADMINISTRATIVE LAW JUDGE:**

Corinne Balter  
Division of Hearings and Appeals

**FINDINGS OF FACT**

1. The petitioner (CARES # ) is a resident of Waukesha County. The petitioner is an elderly, blind, or disabled household of one.

2. The petitioner was previously eligible for the Family Care Program at the non-nursing home level of care. She was financially eligible because she received MA coverage through the MAPP program.
3. Effective March 1, 2016 the petitioner had a monthly MAPP premium in the amount of \$725. Prior to that she did not have a MAPP premium. She failed to pay that premium, and was disenrolled from the MAPP program effective April 1, 2016. The petitioner's MAPP premium, eligibility and enrollment is discussed in a separate decision under case number MAP-172035.
4. On January 4, 2016 the Family Care team conducted a long term care functional (LTCFS) screen of the petitioner. The LTCFS shows that the petitioner needs assistance with meal preparation, grocery shopping, putting things away, and laundry and chores. The petitioner is independent in all other Activities of Daily Living (ADLs) and Instrumental Activities of Daily Living (IADLs).
5. Because the petitioner was only eligible at the non-nursing home level of care when her MA coverage ended, her eligibility for the Family Care Program also ended.
6. Prior to the petitioner's Family Care benefits ending, she requested a three wheel walker and step stool with handle, which were denied. The denial notices were mailed to the petitioner on December 23, 2015.
7. The Division of Hearings and Appeals received the petitioner's Request for Fair Hearing on February 15, 2016.

### DISCUSSION

The Family Care program, which is supervised by the Department of Health Services, 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.

Wis. Adm. Code, §DHS 10.33(2) provides that an FCP applicant must have a functional capacity level of comprehensive or intermediate; I note here that Wis. Stat., §46.286, uses the terms "nursing home" and "non-nursing home" levels just as the agency in this case. If the person meets the comprehensive (nursing home) level, he or she is eligible for full services through a care management organization (CMO), including Medical Assistance (MA). Wis. Adm. Code, §DHS 10.36(1)(a). If the person meets the intermediate (non-nursing home) level, he or she is eligible for full services only if he is in need of adult protective services, he is financially eligible for MA, or he is grandfathered as described in §DHS 10.33(3). Wis. Adm. Code, §DHS 10.36(1)(b).

Wis. Adm. Code, §DHS 10.33(2)(c) describes comprehensive functional capacity:

(c) *Comprehensive functional capacity level.* 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. Adm. Code, §DHS 10.33(2)(d) describes intermediate functional capacity:

d) *Intermediate functional capacity level.* A person is functionally eligible at the intermediate level if the person is at risk of losing his or her independence or functional capacity unless he or she receives assistance from others, as is evidenced by a finding from application of the functional screening that the person needs assistance to safely or appropriately perform either of the following:

1. One or more ADL.
2. One or more of the following critical IADLs:
  - a. Management of medications and treatments.
  - b. Meal preparation and nutrition.
  - c. Money management.

ADLs include bathing, dressing, eating, mobility, and transferring. Wis. Adm. Code, § DHS 10.13(1m). IADLs include meal preparation, medication management, money management, laundry and chores, telephone, and transportation. Critical IADLs include management of medications and treatments, meal preparation and nutrition, and money management.

The Family Care Team conducted a LTCFS, and concluded that the petitioner needed assistance with meal preparation, grocery shopping, putting things away, and laundry and chores. The petitioner is independent in all other Activities of Daily Living (ADLs) and Instrumental Activities of Daily Living (IADLs). The petitioner is thus functionally eligible for the Family Care Program at the non-nursing home level of care. She has been at this level of care since she began receiving services through the Family Care Program. She has never been functionally eligible at the nursing home level of care.

The petitioner argued that she was eligible at the nursing home level of care. She states that she needs assistance with bathing, dressing, toileting, incontinence, meal preparation, and laundry and chores. She testified that she is unable to step over the tub, that she does not have a grab bar, and that she cannot reach her shoulders or back. With respect to dressing the petitioner stated that she must wiggle into her clothes. She further stated that she has a difficult time wiping herself after toileting and that she was once part of a Depends study, and must wear depends. There is no evidence that corroborates the petitioner's testimony. In addition, based upon her testimony alone she can dress herself, wipe herself, and manage her own incontinence care through the use of depends. Just because something is difficult does not mean that she needs assistance or that she is incapable of the task. Even if the petitioner needs assistance with bathing, she would still be functionally eligible at the non-nursing home level of care.

The LTCFS is the most credible and through analysis of the petitioner's abilities with respect to ADLs and IADLs. This is consistent with the past findings. For all these reasons, I conclude that the agency correctly determined that the petitioner functionally eligible at the non-nursing home level of care.

In order to receive services through the Family Care Program at the non-nursing home level of care, a person must also be financially eligible. The petitioner was financially eligible when she received MA coverage through the MAPP program. That coverage terminated effective April 1, 2016. Thus, the petitioner was no longer eligible for the Family Care Program effective April 1, 2016. If the petitioner's condition worsens causing her to be at the nursing home level of care or if she regains her MA eligibility, she may reapply for the Family Care Program.

The denial of a three wheel walker and step stool with handle are no longer an issue because the petitioner is discontinued from the Family Care Program. Should the petitioner reapply and regain eligibility for the program, the petitioner can make another request for this equipment.

### **CONCLUSIONS OF LAW**

The agency correctly discontinued the petitioner from the Family Care Program because she was not functionally eligible at the nursing home level of care and her Medical Assistance coverage was discontinued causing her to be financially ineligible at the non-nursing home level of care.

**THEREFORE, it is** **ORDERED**

That the petition 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).

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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 5th day of May, 2016

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\sCorinne Balter  
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 May 5, 2016.

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