



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[Redacted]
[Redacted]
[Redacted]

DECISION

FCP/172842

PRELIMINARY RECITALS

Pursuant to a petition filed March 14, 2016, under Wis. Admin. Code § DHS 10.55, to review a decision by the Milwaukee Cty Dept on Aging-ARC in regard to Medical Assistance (MA), a telephonic hearing was held on April 05, 2016, at Milwaukee, Wisconsin.

The issue for determination is whether the agency correctly denied petitioner’s application for the Family Care Program (FCP).

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] ADRC Supv.
Milwaukee Cty Dept on Aging-ARC
1220 W Vliet St
Milwaukee, WI 53205

ADMINISTRATIVE LAW JUDGE:

Kelly Cochrane
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Milwaukee County.
2. The petitioner called the FCP agency to request he be assessed for the FCP on November 17, 2015.
3. The agency performed an assessment (called in the parlance, the Long Term Care Functional Screen (LTCFS)) with the petitioner on February 25, 2016. Based on that assessment, the agency found that the petitioner was not eligible for the FCP.
4. On March 3, 2016 the FCP agency issued written notice to the petitioner advising him that he was not functionally eligible for the FCP.
5. The petitioner's diagnoses include left leg edema, high blood pressure, and mild mental retardation/borderline intellectual functioning with an IQ of 73.
6. The petitioner is independent in the performance of activities of daily living (ADLs) and instrumental activities of daily living (IADLs). He lives alone and works cleaning offices 5 days/week, 3 hours per day.

DISCUSSION

The Family Care Program (FCP) is supervised by the Department of Health Services (DHS) and is designed to provide appropriate long-term care services for physically/developmentally disabled or elderly adults. See, Wis. Stat. §46.286, and Wis. Admin. Code ch. DHS 10. In order to qualify for FCP services, with certain exceptions not applicable here, a person's functioning must be such that they would otherwise require institutional care. Wis. Stat. §46.286(1)(a). To be found eligible, the applicant must undergo an assessment of his/her needs and functioning.

The DHS has made efforts to improve the statewide efficacy of functional assessments by designing and implementing a computerized functional assessment screening system. This system relies upon a face-to-face interview with a trained quality assurance screener. The screener met with the petitioner as part of the assessment process. Current policy requires the Department's local agent/screener to enter the assessment data into the Department's functional screen computer program. See <http://dhs.wisconsin.gov/LTCare/FunctionalScreen/Index.htm>. When the petitioner's functional ability scores were entered into the DHS algorithm, the result was a DHS conclusion that the petitioner does not have care needs at the nursing home level. Thus, the petitioner was denied FCP coverage, consistent with the DHS-directed result.

Wis. Admin. Code §DHS 10.33(2)(c) describes comprehensive (a/k/a nursing home) functional capacity:

(2) DETERMINATION OF FUNCTIONAL ELIGIBILITY.

(a) Determination. Functional eligibility for the family care benefit shall be determined pursuant to s. 46.286 (1), Stats., and this chapter, ...

(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.

As evidenced by the February 2016 screen and the evidence at hearing, the petitioner is independent in the performance of ADLs and IADLs. He also lives alone and works cleaning offices 5 days/week, 3 hours per day. He has no complicating condition that limits his ability to independently meet his needs as described in 6.a. or 6.b. above. Thus, he is ineligible for the FCP. I must therefore uphold the agency's decision to deny his application for the FCP.

CONCLUSIONS OF LAW

The petitioner is not functionally eligible for the FCP.

THEREFORE, it is

ORDERED

That the petition for review herein 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 Milwaukee,
Wisconsin, this 12th day of May, 2016

\sKelly Cochrane
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 12, 2016.

Milwaukee Cty Dept on Aging-ARC
Office of Family Care Expansion
Health Care Access and Accountability