

2. Petitioner applied for Family CARE (FC) benefits in late 2015. An assessment was performed by the Racine ADRC in October 2015 and concluded that Petitioner was functionally eligible at the nursing home level of care. Benefits began on January 5, 2016. Petitioner receives 7 hours per week of services – 2 hours per day 2 days per week and 1 hour per day 3 days per week for general housekeeping and grocery shopping and standby support for bathing and dressing.
3. Petitioner was rescreened by MY Choice Family Care on January 14, 2016 and in April 2016. It concluded that Petitioner is not functionally eligible and discontinued Petitioner's benefits.
4. Petitioner is 45 years of age (DOB [REDACTED]). He lives alone and has lived in his current apartment for about 10 years. His diagnosis includes IBS, rheumatoid factor positive, bi polar and anxiety disorders, multiple joint osteoarthritis, obesity with a BMI of 40-44.9 and chronic pain – especially his back and knees.
5. Petitioner uses grab bars and a shower chair. He does report difficulty cleaning himself after bowel movements. He does have a TENS unit and has monthly trigger point injections of lidocaine. He uses a scooter when out in the community. Petitioner does not drive, cannot manage money (his father is his payee) and needs assistance with grocery shopping.
6. The caregiver is Society Assets.
7. Petitioner does not have cognitive impairments. He manages his own medications and uses a phone. He does not work.

DISCUSSION

The Family Care Program (FCP) is a long-term care benefit for the elderly, people with physical disabilities and those with developmental disabilities. It is authorized in the Wisconsin Statutes, §46.286, and is described comprehensively in the Wisconsin Administrative Code at Chapter DHS 10. Also see *Medicaid Eligibility Handbook (MEH), Chapter 38*. The Family Care Program is a part of the Family Care Program for frail elderly and adults with developmental and physical disabilities. Participation requires a nursing home level of care. *MEH, §38.3*. Also see <https://www.dhs.wisconsin.gov/familycare/fcp-overview.htm>.

As of January 1, 2008 the levels of care for the general Family Care Program are:

1. Nursing Home (formerly Comprehensive NH)
2. Non-Nursing Home (formerly Intermediate and Comprehensive non-NH)

Wis. Admin. Code, §DHS 10.33(2) provides that an FCP applicant must have a functional capacity level of comprehensive or intermediate; I note here, however, 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, s/he is eligible for full services through a care management organization (CMO), including Medical Assistance (MA). *Wis. Admin. Code, §DHS 10.36(1)(a)*. If the person meets the intermediate (non-nursing home) level, s/he is eligible for full services only if s/he is in need of adult protective services, s/he is financially eligible for MA, or she is grandfathered as described in §DHS 10.33(3). *Wis. Admin. Code, §DHS 10.36(1)(b)*. A person eligible under the non-nursing home level is eligible for less FCP services. Again, for the Family Care Program a person must meet the nursing home level of care, i.e., the comprehensive functional capacity.

Comprehensive functional capacity is defined at *Wis. Admin. Code, §DHS 10.33(2)(c)*:

(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.

A person's long term care needs and the level of care are determined by use of the Long Term Care Functional Screen. The Long Term Care Functional Screen (LTCFS) is a functional needs assessment describing assistance needed with:

- **Activities of Daily Living** (ADL's-bathing, dressing, mobility, transfers, eating, toileting)
- **Instrumental Activities of Daily Living** (IADL's-meal preparation, medication management, money management, laundry, telephone, transportation, and employment)
- **Health Related Tasks** (including skilled nursing)
- **Diagnoses**
- **Behavioral Symptoms and Cognition**

The LTCFS also includes information on risk factors, mental health and substance abuse, and where the person would like to live. *Source: Wisconsin Department of Health Services, online, Adult Long-Term Care Functional Screen, Module #1: Overview of the Long Term Care Functional Screen (LTC FS), §1.1 History. (<http://dhs.wisconsin.gov/ltcare/FunctionalScreen/instructions.htm>)*

The ADLs are bathing, grooming, dressing, eating, mobility in the home, toileting and transferring. The IADLs are meal preparation, medication administration and management, money management, laundry and/or chores, use of the telephone, transportation, overnight care or supervision and employment. *Id.*, *Module #4*. Petitioner is not cognitively impaired so must be unable to safely perform 3 or more activities of daily living; 2 or more ADLs and 1 or more IADLs or 5 or more IADLs to meet the nursing home level of care to be found functionally eligible at the nursing home/comprehensive level of care.

There is no dispute here as to the ADL of bathing (given the LTFS logic of it is counted if adaptive equipment is used) and the IADLS of meal preparation (grocery shopping), money management and transportation. The question then become whether Petitioner need assistance with any other ADLS.

Petitioner notes that only one of the assessors testified at the hearing – an individual from [REDACTED] who performed the April rescreen. On the day of that rescreen, a Tuesday, Petitioner was wearing easy to

pull on shorts and shirt and he indicated that he had been wearing those clothes since the previous Friday. Petitioner indicated that he cannot always clean himself after bowel movements and has to clean stains from clothes and furniture. The [REDACTED] staffer who appeared at the hearing did not note any stains or odors. Further, that individual observed that Petitioner was quite mobile – folding his legs under himself while sitting on the couch, bending and reaching for crutches, his iPad and paperwork.

Petitioner argues that nothing has changed in his condition from the October 2015 initial functional screen assessment to the January and April 2016 rescreenings. He points to his medical record and medication requirements and his limitations because of pain.

I am not convinced that Petitioner meets the nursing home level of care requirements. While he has had support from his father and brother, Petitioner has lived on his own for 10 years in his current apartment. He cares for two cats. He is observed to be fairly mobile in his apartment. While he reports trouble dressing and cleaning himself after toileting, it is not reported that he uses any reaching or cleaning equipment. Given observations as to how he has been able to move it is not apparent that he cannot dress and clean himself. Petitioner does not, therefore, meet the nursing home level of care standard necessary for Family Care Program eligibility.

The evidence does, however, indicate that Petitioner does meet general Family Care non-nursing home (or intermediate functional capacity) level of care requirements and might be eligible for non-nursing home level of care services. Intermediate functional capacity is defined at *Wis. Admin. Code, §DHS 10.33(2)(d)*:

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.

CONCLUSIONS OF LAW

That Petitioner does not meet the nursing home level of care requirement necessary for Family Care Program eligibility.

THEREFORE, it is

ORDERED

That this 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.

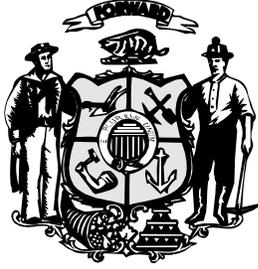
APPEAL TO COURT

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, **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 7th day of September, 2016

\s _____
David D. Fleming
Administrative Law Judge
Division of Hearings and Appeals



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The preceding decision was sent to the following parties on September 7, 2016.

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