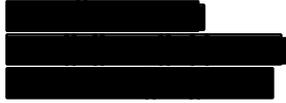




**STATE OF WISCONSIN  
Division of Hearings and Appeals**

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In the Matter of



**DECISION**  
Case #: FCP - 175396

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**PRELIMINARY RECITALS**

Pursuant to a petition filed on July 7, 2016, 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 August 2, 2016, by telephone.

The issue for determination is whether the agency correctly determined that petitioner no longer meets the nursing home level of care.

There appeared at that time the following persons:

**PARTIES IN INTEREST:**

Petitioner:



Respondent:

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

By:   
MY Choice Family Care  
901 N 9th St  
Milwaukee, WI 53233

**ADMINISTRATIVE LAW JUDGE:**

Corinne Balter  
Division of Hearings and Appeals

**FINDINGS OF FACT**

1. The petitioner (CARES # ) is a resident of Milwaukee County.
2. The petitioner was receiving services through My Choice Family Care. She was previously eligible at the nursing home level of care.

3. On May 12, 2016 My Choice Family Care did a Long-Term-Care Functional Screen of the petitioner. The screener concluded that the petitioner was independent with all of her Activities of Daily Living (ADLs). She needed some assistance with Instrumental Activities of Daily Living (IADLs) including grocery shopping, complex meal preparation, household chores, and laundry. This screener also concluded that the petitioner needed assistance with money management. The petitioner has mental health issues. The screener notes that the petitioner's mental health has been stabilized. She has a new mental health provider, and has not been hospitalized in the last six months for her mental health issues.
4. On June 30, 2016 My Choice Family Care sent the petitioner a notice stating that her services would be terminated effective July 15, 2016.
5. On July 5, 2016 the Division of Hearings and Appeals received the petitioner's Request for Fair Hearing. Her services are continued pending this appeal.
6. On July 20, 2016 My Choice Family Care conducted another Long Term Care Functional Screen of the petitioner with a different screener. This screener concluded that the petitioner needed some assistance with mobility. She could move around her apartment with the assistance of furniture or her rollator walker. She preferred to use the furniture. The screener further concluded that the petitioner was independent with money management. This screener used a number of cognitive assessments and questions regarding math. The petitioner passed these assessments, and informed the screener that she handles her own money. This screener agreed that the petitioner needed assistance with grocery shopping, complex meal preparation, household chores, and laundry.

### 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, 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 is eligible for full services only if he is in need of adult protective services, he is financially eligible for MA, or she is grandfathered as described in §DHS 10.33(3). Wis. Adm. Code, §DHS 10.36(1)(b). A person eligible under the non-nursing home level is eligible for less FCP services.

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 petitioner does not meet the nursing home level of care. She is independent with all of her ADLs. The screen indicates a 1 for mobility because she needs to grab furniture or use a rollator walker to get around her apartment. She has not had any recent falls that have required medical attention. The petitioner needs some assistance with IADLs. She cannot grocery shop on her own. Although she can prepare simple meals, she is unable to prepare complex meals. She needs assistance with laundry and household chores.

Although it appears that the petitioner would be functionally eligible at the non-nursing home level of care, she is no longer functionally eligible at the nursing home level of care. This change is in large part due to the stabilization of her mental health issues. Previously, she had to be hospitalized frequently due to her mental health. While being enrolled in the Family Care Program, the petitioner found a new mental health provider, and her mental health condition has been stabilized.

Although the petitioner will in no longer eligible for services to assist her with grocery shopping, I urge the Family Care team to set up some supports for this prior to discontinuing these services. This was the petitioner's main concern at the hearing. It is a legitimate concern given her condition.

My Choice Family Care did not know whether the petitioner would be financially eligible at the non-nursing home level of care. Milwaukee Enrollment Services (MILES) will make that determination after this decision.

### **CONCLUSIONS OF LAW**

The agency correctly determined that petitioner no longer meets the 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, **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 9th day of August, 2016

\s \_\_\_\_\_  
Corinne 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 August 9, 2016.

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