



FH
[REDACTED]

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

In the Matter of

[REDACTED]

DECISION

CWA/144970

PRELIMINARY RECITALS

Pursuant to a petition filed November 1, 2012, under Wis. Admin. Code § HA 3.03, to review a decision by the Bureau of Long-Term Support in regard to IRIS eligibility, a hearing was held on December 19, 2012, by telephone.

The issue for determination is whether the petitioner continues to be functionally eligible for the IRIS program.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]

Respondent:

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

By: Andrea Loasby
IRIS consultant agency
Madison, WI

ADMINISTRATIVE LAW JUDGE:

Nancy J. Gagnon
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Milwaukee County.
2. The petitioner has been an IRIS (Include, Respect, I Self-Direct) participant for some time. Prior to the September 2012, screening, her functional eligibility had been determined to be at the nursing home level of care.

3. The agency performed an annual reassessment on September 27, 2012. Based on that assessment, the agency found that the petitioner no longer met the nursing home level of care. Specifically, the agency entered its findings into a Departmental computer program, and the result was that the petitioner was at a non-nursing home (rather than nursing home) level of care. The agency also concluded that the petitioner does not belong to any of the three target groups for the IRIS program – developmentally disabled, frail elder, or physically disabled.
4. It is undisputed that the petitioner, age 61, is not developmentally disabled. A frail elder must be age 65 or older.
5. On October 16, 2012, the IRIS agency issued written notice to the petitioner advising that she was no longer eligible for IRIS effective November 1, 2012. The rationale for discontinuance was failure to meet level of care requirements.
6. The petitioner’s diagnoses are diabetes, depression, anxiety, hypothyroidism, high cholesterol, anemia, hypertension, asthma, and chronic lower back pain. She is also bothered by insomnia.
7. Per the September 2012 reassessment, the petitioner is independent in the performance of all activities of daily living (ADLs): bathing, dressing, eating, in-home mobility, toileting, and transfers. The petitioner resides alone in an apartment, and can safely perform most “instrumental activity of daily living” (IADL) – meal preparation, medication administration, telephone use, money management, and laundry. Completion of home chores and laundry takes longer than normal, as the petitioner must take frequent breaks. Due to poor memory, medication reminders/set-up is desirable.

DISCUSSION

The Family Care and IRIS programs, supervised by the Department of Health Services, are 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. The IRIS program is a self-directed care program that pays for home/community-based waiver and personal care services. It has been federally approved as a Medicaid waiver under § 1915(c) of the Social Security Act. The Wisconsin IRIS waiver document (0485.R0.100) states that IRIS is to be an alternative to Family Care, with the same requirements for applicant eligibility. See, *Waiver*, heading #2 – *Brief Waiver Description*, at <http://www.medicaid.gov/Medicaid-CHIP-Program-Information/By-Topics/Waivers/Waivers.html>. Family Care eligibility is described in Wis. Admin. Code ch. DHS 10.

In order to qualify for FC/IRIS 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 Wisconsin Department of Health Services made efforts to improve the statewide accuracy 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 reassessment process. Current policy requires the Department’s local agent/screener to then enter this data into the Department’s functional screen computer program. See <http://dhs.wisconsin.gov/LTCare/FunctionalScreen/Index.htm>. The Level of Care (LOC) Functional Screen form and program reiterate the skeletal definitions from the federal Medicaid rules for Intermediate Nursing Care and institutional Developmental Disability facilities. 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 found to be ineligible going forward, consistent with the DHS-directed result.

The computer program is supposed to yield a result that is consistent with state code. 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 September 2012 screen, the petitioner does not fall within the comprehensive functional capacity definition – she can perform all ADLs and all but one or possibly two IADLs. Thus, per code, she does not meet the comprehensive/nursing home level of care. The code has the force of law, and must be followed.

The petitioner underwent a functional screen for a Medicaid waiver program in November 2011, which resulted in a determination that she met the nursing home level of care. That screener indicated that the petitioner needed no help with ADLs, but needed assistance every week with laundry/chores and medication management (set-up, reminders). The petitioner questions why she met the criteria in November 2011, but not now, when her condition is unchanged. The program's response is that it believes that the screener and/or the computer program erred in 2011. I agree. The petitioner's needs do not meet the code's requirements.

CONCLUSIONS OF LAW

1. The petitioner is not at the nursing home level of care as defined in the FC chapter of the Wisconsin Administrative Code.

THEREFORE, it is

ORDERED

That the petition be dismissed.

REQUEST FOR A REHEARING

This is a final administrative decision. If you think this decision is based on a serious mistake in the facts or the law, you may request a rehearing. You may also ask for a rehearing if you have found new evidence which would change the decision. Your request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and tell why you did not have it at your first hearing. If you do not explain these things, your request will have to be denied.

To ask for a rehearing, send a written request to the Division of Hearings and Appeals, P.O. Box 7875, Madison, WI 53707-7875. Send a copy of your request to the other people named in this decision as "PARTIES IN INTEREST." Your request for a rehearing must be received no later than 20 days after the date of the decision. Late requests cannot be granted.

The process for asking for a rehearing is in Wis. Stat. § 227.49. A copy of the statutes can be found 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 served and filed with the appropriate court no more than 30 days after the date of this hearing decision (or 30 days after a denial of rehearing, if you ask for one).

For purposes of appeal to circuit court, the Respondent in this matter is the Department of Health Services. After filing the appeal with the appropriate court, it must be served on the Secretary of that Department, either personally or by certified mail. The address of the Department is: 1 West Wilson Street, Madison, Wisconsin 53703. A copy should also be sent to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400.

The appeal must also be served on the other "PARTIES IN INTEREST" named in this decision. The process for appeals to the Circuit Court is in Wis. Stat. §§ 227.52 and 227.53.

Given under my hand at the City of Madison,
Wisconsin, this 25th day of January, 2013

\sNancy J. Gagnon
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 January 25, 2013.

Bureau of Long-Term Support