



FH
[REDACTED]

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

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

FCP/146078

PRELIMINARY RECITALS

Pursuant to a petition filed December 20, 2012, under Wis. Admin. Code § DHS 10.55, to review a decision by the Milwaukee County Department of Family Care MCO – Curative CMU in regard to Medical Assistance, a hearing was scheduled for February 19, 2013. Following petitioner's request to reschedule that date, a hearing was held on March 14, 2013, at Milwaukee, Wisconsin.

The issue for determination is whether the Department, by its agents, correctly discontinued the petitioner's Family Care Program (FCP) benefits because she no longer meets level of care criteria.

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
Madison, Wisconsin 53703

By: Rosaida Schrank

Milw Cty Dept Family Care - MCO
901 N 9th St
Milwaukee, WI 53233

ADMINISTRATIVE LAW JUDGE:

Peter McCombs (telephonically)
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Milwaukee County.

2. Petitioner was receiving FCP benefits following rotator cuff surgery; she was subsequently found ineligible after an annual rescreen (Functional Screen) was completed on December 10, 2012, which found her “functionally ineligible.” Exhibit 2.
3. The Functional Screen of December 10, 2012, found specifically that petitioner was independent in her activities of daily living (ADLs), but needed some help in an instrumental activity of daily living (IADL), i.e., laundry (score of 1). Exhibit 2. The Functional Screen determined that petitioner needed help weekly or less with laundry (outside of home). *Id.* It was further noted at the screening that petitioner can drive and has a valid license; however she did not have a working vehicle. *Id.* The screening determined petitioner’s FCP level of care to be “functionally ineligible.” *Id.*
5. On December 19, 2012, the respondent informed petitioner of the determination of functional ineligibility, and her disenrollment effective December 31, 2012. Petitioner was advised of her appeal rights, and she filed a timely appeal on December 20, 2012. Exhibit 2.
6. Petitioner requires some help with laundry and with transportation. She has diagnoses of depression, chronic pain, Gastric Esophageal Reflux Disease, Lupus, Rheumatoid arthritis, musculoskeletal, neuromuscular, or peripheral nerve disorder, and a history of torn rotator cuff.

DISCUSSION

The Family Care Program is a health-service delivery system authorized by Wis. Stat. § 46.286 and comprehensively described in Wis. Admin. Code, Chapter 10. It is designed to increase the ability of the frail elderly and those under 65 with disabilities to live where they want, participate in community life, and make decisions regarding their own care. It places a recipient under the roof of a single private provider that receives a uniform fee, called a capitation rate, for each person it serves. The provider is responsible for ensuring that the person receives all the Medicaid and Medicare services available to her. The theory behind the program is that it will save money by providing recipients with only the services they need rather than requiring that they enroll in several programs whose services may overlap. Each provider signs a contract with the State of Wisconsin that sets forth exactly what services it must give.

Eligibility for the Family Care Program depends upon a person’s ability to function independently falling below a certain level. This is referred to as the person’s functional capacity level. Those eligible for the program must have a functional capacity level that is either “comprehensive” or “intermediate” or, in the words of the statute, “nursing home” or “non-nursing home.” Wis. Admin. Code, § DHS 10.33(2); Wis. Stat. § 46.286(1)(a). Those meeting the comprehensive level are eligible for full services, including medical assistance, through a MCO. Wis. Admin. Code, § DHS 10.36(1)(a). Those who meet the intermediate care level are eligible for full services only if they require adult protective services, are financially eligible for medical assistance, or are grandfathered in under Wis. Admin. Code, § DHS 10.33(3). Wis. Admin. Code, § DHS 10.36(1)(b). A person eligible under the non-nursing home level is eligible for reduced Family Care services.

The comprehensive level of care is described as follows at Wis. Admin. Code, § DHS 10.33(2)(c):

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. Admin. Code, § DHS 10.33(2)(c).

The intermediate functional level is described as follows at Wis. Admin. Code, § DHS 10.33(2)(d):

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.

Activities of daily living, or ADLs, include “bathing, dressing, eating, mobility, transferring from one surface to another such as bed to chair and using the toilet.” Wis. Admin. Code, § DHS 10.13(1m). Instrumental activities of daily living, or IADLs, include “management of medications and treatments, meal preparation and nutrition, money management, using the telephone, arranging and using transportation and the ability to function at a job site.” Wis. Admin. Code, § 10.13(32)

In a nutshell, petitioner’s level of care requirements were re-determined after an annual rescreen (Functional Screen) was completed on December 10, 2012 to assess her abilities. The agency seeks to end the petitioner’s Family Care benefits because the screening tool indicated that she no longer is functionally eligible. As of the date of the Functional Screen, she was a 48-year-old woman able to perform all of her activities of daily living and the majority of her instrumental activities of daily living adequately without assistance. She can prepare meals, manage her medications and finances, and use the telephone without assistance. She needs assistance with laundry, which she presently receives from family and/or her boyfriend. Petitioner testified that she does not feel that she can drive, but there is no evidence indicating that she is unable to arrange alternate transportation when so desired.

Petitioner admitted that she is essentially independent in her activities of daily living, but has needs for assistance with laundry and transportation to her medical appointments. However, the evidence does not show that petitioner requires the significant level of assistance required for comprehensive or intermediate levels of care under the FCP. I do not mean to diminish the challenges the petitioner faces, however,

under the rules I conclude that the respondent correctly determined that the petitioner was functionally ineligible.

Finally, I must add that administrative law judges do not have the power to address issues of fairness or equity. We are required to apply the law as written. The action to dis-enroll the petitioner due to her functional ineligibility must be sustained.

CONCLUSIONS OF LAW

The agency correctly concluded that petitioner was not functionally eligible for FCP following her recovery from rotator cuff surgery.

NOW, THEREFORE, it is ORDERED

That the petition for review herein be and the same is hereby 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 2nd day of April, 2013

\sPeter McCombs
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 April 2, 2013.

Milw Cty Dept Family Care - MCO
Office of Family Care Expansion