



FH
[REDACTED]

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]

DECISION

FCP/146437

PRELIMINARY RECITALS

Pursuant to a petition filed January 8, 2013, under Wis. Admin. Code § DHS 10.55, to review a decision by the Washburn County Department of Social Services in regard to Medical Assistance, a hearing was held on February 20, 2013, at Shell Lake, Wisconsin.

The issue for determination is whether the petitioner remains functionally eligible for the Family Care 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: Nancy Tischbein

Washburn County Department of Social Services
110 W 4th Avenue
PO Box 250
Shell Lake, WI 54871

ADMINISTRATIVE LAW JUDGE:

Michael D. O'Brien

Division of Hearings and Appeals

FINDINGS OF FACT

1. The petitioner (CARES # [REDACTED]) is a resident of Washburn County.
2. NorthernBridges notified the petitioner on December 14, 2012,, that it would disenroll him from the Family Care program as of December 29, 2012. It later changed the date of disenrollment to

January 31, 2013. The Division of Hearings and Appeals ordered Northern Bridges to continue his eligibility pending the outcome of this hearing..

3. The petitioner is a 49-year-old man diagnosed with borderline intellectual functioning and unspecified learning disorders.
4. The petitioner can bathe, dress himself, eat, move about the house, use the toilet, and transfer himself without assistance.
5. The petitioner can manage his medication and money, do his own laundry, and use the telephone without assistance.
6. The petitioner can prepare simple foods in a microwave. He requires assistance planning meals to ensure proper nutrition.
7. The petitioner cannot drive a car.

DISCUSSION

The petitioner seeks to retain his eligibility for Family Care benefits provided by NorthernBridges, a care maintenance organization (CMO), under the Family Care Program. 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 him. 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 CMO. Wis. Admin. Code, § DHS 10.36(1)(a). The petitioner has been receiving full benefits as part of the Wisconsin Partnership Program. 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)

Agencies must determine eligibility using a uniform functional screening tool prescribed by the Department. Wis. Admin. Code, § DHS 10.33(2)(a). The problem with this requirement is that the Department has changed the screening tool to better comply with the federal government’s long-term waiver provisions, but it has not changed the administrative code to reflect these changes. *See DHA Decision No. FCP-44/115906*. Because the administrative code has the force of law, I must follow it rather than the screening tool.

The agency seeks to end the petitioner’s Family Care benefits because the screening tool indicated that he no longer is functionally eligible at either the comprehensive or intermediate level. He is a 49-year-old man diagnosed with borderline intelligence and learning disabilities. He can perform all of his activities of daily living and most of his instrumental activities of daily living adequately without assistance. He can manage his medication, do his own laundry, and use the telephone without assistance. He has had assistance managing his money but has petitioned the court to regain this right, which his doctor supports. Based upon his and his doctor’s assertions, I find that he can manage his own money.

The petitioner clearly does not meet any of the criteria for benefits granted for those at the nursing home, or comprehensive, functional capacity level. The question is whether he meets the non-nursing home, or

intermediate, level. This depends upon whether he can appropriately perform the critical IADL of preparing meals and ensuring that he receives proper nutrition. NorthernBridges said he could. However, his ability to prepare meals is limited to placing items in the microwave, and he cannot ensure that his meals provide adequate nutrition without outside guidance. Food must not only provide enough calories to stay alive but also contribute to one's health. Because the petitioner cannot prepare nutritious, balanced meals without help, he cannot appropriately perform this critical IADL. As a result, I find by the greater weight of the credible evidence that he meets the intermediate functional capacity level. I will remand this matter to NorthernBridges with instructions to continue providing whatever benefits he is due under the Family Care program consistent with that capacity. His benefits will depend upon whether he is financially eligible for medical assistance. (I assume that he is not eligible for adult protective services and has not been grandfathered into the Family Care program under Wis. Admin. Code, § DHS 10.33(3).

CONCLUSIONS OF LAW

The petitioner meets the intermediate functional capacity level.

THEREFORE, it is

ORDERED

That this matter is remanded to NorthernBridges with instructions to continue the petitioner's eligibility for Family Care benefits at the intermediate functional capacity level and provide benefits to him consistent with the dictates of Wis. Admin. Code, § DHS 10.36(1)(b). NorthernBridges shall certify the Division of Hearings and Appeals that it has taken this action within 10 days of the date of this decision.

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 7th day of March, 2013

\sMichael D. O'Brien
Administrative Law Judge
Division of Hearings and Appeals



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The preceding decision was sent to the following parties on March 7, 2013.

Northernbridges
Office of Family Care Expansion