FH
[redacted]

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[redacted]

DECISION

CWA/147115

PRELIMINARY RECITALS

Pursuant to a petition filed February 4, 2013, under Wis. Admin. Code, §HA 3.03, to review a decision by the Rock County Dept. of Social Services to deny Medical Assistance Waiver eligibility, a hearing was held on February 28, 2013, by telephone.

The issue for determination is whether petitioner meets the level of care requirement for Community Options Program waiver (COP-W) or Community Integration Program (CIP-II) eligibility.

PARTIES IN INTEREST:
Petitioner:

[redacted]

Respondent:

Department of Health Services
1 West Wilson Street
Madison, Wisconsin 53703
By: Heather Campbell
Rock County Dept. of Social Services
P.O. Box 1649
Janesville, WI 53546

ADMINISTRATIVE LAW JUDGE:
Brian C. Schneider
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [redacted]) is a resident of Rock County.
2. Petitioner first applied for waiver program eligibility in the spring, 2012. After a functional screen she was found eligible and placed on the program's waiting list. When she reached the top of the list in late 2012 another functional screen was done. The second time it was determined that petitioner did not meet the level of care necessary for eligibility.

3. By a notice dated December 26, 2012, the agency informed petitioner that her application was denied.

4. The reason for the different result was that the assessor attended training between April and December and discovered that she was entering results into the screening tool incorrectly.

5. Petitioner is 68 years old. She has obesity, metabolic disorders, a heart condition, arthritis, a respiratory disorder, problems with her genitourinary system, and depression. She is independent in activities of daily living although she has problems toileting due to incontinence and dressing because she cannot reach her shoe laces. She particularly needs help with grocery shopping, laundry, and chores.

DISCUSSION

Petitioner applied for an "MA waiver" program. There are four such programs in Wisconsin that use Medical Assistance funds to facilitate community placement for disabled persons who otherwise would be institutionalized. They are CIP-1A, CIP-1B, CIP II, and COP-W. The policies for the programs are set forth in the department's MA Waivers Manual. The manual is found on the internet at www.dhs.wisconsin.gov/ltc_cop/waivermanual/index.htm. Specifically CIP-II and COP-W are for elderly and disabled individuals; the other two are for developmentally disabled individuals. Petitioner would fall within COP-W or CIP-II.

In order to receive COP-W and/or CIP-II services an individual must qualify for care reimbursable by the MA program in a skilled nursing facility or an intermediate care facility. Medicaid (MA) Home & Community-Based Waivers Manual Ch. II, p. II-13. The Manual states the level of care standard as follows:

> **C. CIP II and COP-W and Level of Care** Level of care eligibility for CIPII/COP-W is established when the applicant meets a level of care reimbursable by Medicaid in a skilled nursing facility (SNF) or an intermediate care facility (ICF). Beginning January 1, 2005 all initial level of care determinations and annual re-determinations of level of care are accomplished using the Wisconsin Adult Long Term Care Functional Screen (LTC-FS). Waiver eligibility is established with a determination of a qualifying Nursing Home LOC, as indicated on the LTC-FS Eligibility Results screen.
>
> A screen result of Intensive Skilled Nursing (ISN) or Skilled Nursing Facility (SNF) is equivalent to HSRS Level 1. A screen result of Intermediate Care Facility (ICF-1 or ICF-2) is equivalent to HSRS Level II.

Id. The Department has developed a computerized functional assessment screening system. The system relies upon a face-to-face interview with a quality assurance screener who has at least a bachelor of science degree in a health or human services related field, with at least one year of experience working with the target populations (or, if not, an individual otherwise specifically approved by the Department based upon like combination of education and experience). The screener asks the applicant, or a recipient at a periodic review, questions about his or her medical conditions, needs, cares, skills, activities of daily living, and utilization of professional medical providers to meet these needs. The assessor then submits the Functional Screen Report for the person to the Department's Division of Disability and Elder Services. The Department enters the Long Term Functional Screen data into a computer program to see if the person meets any of the required levels of care.

If the assessor enters information into the functional screen correctly, then it is assumed that the computer will accurately determine the level of care. In this case, I find that the screen was completed correctly.

The screener showed that petitioner was independent in activities of daily living but noted her use of a grab bar and shower chair, her incontinence, and her problems with dressing. The instrumental activities of daily living page also was compiled correctly. It noted petitioner's need for assistance with the various activities.

With those entries the computer determined that petitioner does not need an ICF level of care, and I must agree. The Department formerly used a manual called the MA Waivers Manual. Although that manual has been discontinued, I note its description of the ICF level of care. It described the types of services generally provided for ICF-2 level individuals to include administration of medication, performance of special nursing techniques, prophylactic and palliative skin care, routine care in connection with assistive devices such as casts and braces, and instructing patients in basic health needs. Obsolete MA Waivers Manual, Appendix F, page 171. On the other hand, the same MA Waivers Manual, in the same appendix, described a person who does not meet the required level of care: "No nursing care is needed. Emphasis is on activities/social services. Simple medications may be self-administered. Independently performs most personal cares. Independently mobile." Id., page 172.

Ms. Campbell, who did the two screens, testified that she downgraded petitioner's abilities in the April, 2012 screen, and that she discovered her error after attending training. It appears that the screen was filled out appropriately on the second attempt, and therefore I conclude that the agency correctly determined that petitioner does not meet the level of care requirement for COP-W or CIP II.

CONCLUSIONS OF LAW

Petitioner does not meet the required level of care for COP-W or CIP II eligibility.

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 5th day of March, 2013

\sBrian C. Schneider
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 March 5, 2013.

Rock County Department of Social Services
Bureau of Long-Term Support