



FH
[REDACTED]

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

MGE/148087

PRELIMINARY RECITALS

Pursuant to a petition filed March 15, 2013, under Wis. Stat. § 49.45(5), and Wis. Admin. Code § HA 3.03(1), to review a decision by the Monroe County Department of Human Services in regard to Medical Assistance (MA)/Family Care, a hearing was held on May 7, 2013, by telephone.

The issue for determination is whether the Department discontinued the petitioner's Family Care benefit due to lack of *nonfinancial* eligibility.

There appeared at that time the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]

Respondent:

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

By: Tom Miller, ES Supr.

Monroe County Department of Human Services
Community Services Bldg.
14301 Cty Hwy B, Box 19
Sparta, WI 54656-4509

ADMINISTRATIVE LAW JUDGE:

Nancy J. Gagnon
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Monroe County.
2. The Family Care program is a nursing home diversion program for low-income, targeted groups, such as the disabled and elderly. The petitioner, age 46, is not elderly. To determine disability,

the Department uses the same disability standards from the Social Security Administration that apply to Social Security Disability and Medical Assistance disability determinations. The petitioner was enrolled in Family Care on December 10, 2012, as “presumptively disabled.” This occurred because the petitioner was hospitalized and underwent amputation of his lower left leg.

3. The Department forwarded the petitioner’s Presumptive Disability application to the Wisconsin Disability Determination Bureau (DDB or Bureau) for a full evaluation of his disability. On January 29, 2013, the DDB determined that the petitioner’s medical condition, although significant, did not preclude him from performing any kind of job. Thus, his disability application was denied.
4. On February 25, 2013, the Department’s Western Region Consortium issued written notice to the petitioner advising that his Family Care would be discontinued effective April 1, 2013. The basis for discontinuance was that the petitioner did not fit into a target eligibility group for the Family Care program.
5. Post-hearing, this Administrative Law Judge checked to see if this office had received a “red file” appeal from DDB, creating an automatic disability hearing request for this petitioner. If a “red file” appeal had been received by this office, I would have consolidated it into this hearing file and directly addressed the evidence of disability in this decision. We have not received an automatic appeal. It is possible (I do not know if this is the case) that the petitioner may have requested Reconsideration with the DDB, and that the DDB is still working on a Reconsideration decision.

DISCUSSION

The Family Care Long Term Care (FC) program is a long-term care benefit that serves target groups consisting of **elderly** people (65 or over), people with physical disabilities and those with developmental disabilities. *See*, the FC § 1915(c) waiver document #0367.R02.00, available at <http://www.medicaid.gov/Medicaid-CHIP-Program-Information/By-Topics/Waivers/Home-and-Community-Based-1915-c-Waivers.html>. The Department’s policy instructions for FC eligibility require a person to meet “full benefit EBD Medicaid ... non-financial requirements.” *Medicaid Eligibility Handbook (MEH)*, § 29.3.1, available at <http://www.emhandbooks.wisconsin.gov/meh-ebd/meh.htm>. The nonfinancial requirements for EBD Medicaid are that a person must be elderly, blind, or disabled to Social Security Disability/SSI standards. *See*, Wis. Stat. § 49.47(4)(a)4; 42 C.F.R. § 441.301(b)(6)(i), cross-referencing 42 C.F.R. § 435.540 [federal rule]. Additionally, a person within one of the target groups must require nursing-home level care, even though s/he lives outside of a nursing home. Wis. Stat. § 46.286(1)(a).

Because the Department’s Consortium was notified that the petitioner does not meet the Social Security/SSI Disability standard, the Consortium was correct to discontinue his FC benefit.

As an informational courtesy to the petitioner, below is the Social Security Disability standard regarding amputation:

1.05 Amputation (due to any cause)

A. Both hands;

or

B. One or both lower extremities at or above the tarsal region, with stump complications resulting in medical inability to use a prosthetic device to ambulate effectively, as defined in 1.00B2b, which have lasted or are expected to last for at least 12 months;

or

C. One hand and one lower extremity at or above the tarsal region, with inability to ambulate effectively, as defined in 1.00B2b;

or

D. Hemipelvectomy or hip disarticulation.

I misspoke when mentioning at hearing that DDB would be looking for a double leg amputation; I was thinking of the double hand amputation. Additionally, DDB is supposed to consider the combination of a person's medical problems, in addition to applying the "solo problem" standard.

CONCLUSIONS OF LAW

Because the Department's Consortium was notified that the petitioner does not meet the Social Security/SSI Disability standard, the Consortium was correct to discontinue his FC benefit.

THEREFORE, it is

ORDERED

That the petition is 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 8th day of May, 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 May 8, 2013.

Monroe County Department of Human Services
Division of Health Care Access and Accountability