



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

FCP/148534

PRELIMINARY RECITALS

Pursuant to a petition filed April 03, 2013, under Wis. Admin. Code § DHS 10.55, to review a decision by the Community Care of Central Wisconsin in regard to Medical Assistance, a hearing was held on May 06, 2013, at Stevens Point, 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]
[REDACTED]
[REDACTED]

Respondent:

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

By: Penny Bartelt
Community Care of Central Wisconsin

ADMINISTRATIVE LAW JUDGE:

Peter McCombs
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner is a resident of Portage County.
1. The petitioner had been an ongoing recipient of services through the Family Care (FC) program since March 12, 2009, through Community Care of Central Wisconsin. To remain eligible for FC, the recipient must periodically undergo functional re-screening to determine whether she

continues to have functional care needs at the requisite level. The petitioner underwent such functional re-screenings on February 26, 2010, February 22, 2012, February 28, 2013, and March 13, 2013. Prior to February 28, 2013, the screenings had consistently determined that petitioner met the nursing home level of care.

2. As a result of both 2013 functional screenings, the FC program determined that the petitioner was no longer functionally eligible for the program. On March 4, 2013, the FC agency issued notice to the petitioner advising that she was no longer eligible for “nursing home level” FC benefits due to his failure to satisfy the nursing home related functional eligibility requirements of the program. The petitioner timely appealed.
3. The petitioner, age 22, has diagnoses of osteoporosis, muscle spasms, neurogenic bladder, chronic urinary tract infection, Spina Bifida, Tendonitis, paraplegia, depression, Meningomyelocele, allergic rhinitis, ovarian cyst, ventricular peritoneal shunt, besicoureteral reflux, epicondylitis, and scoliosis. For purposes of FC program eligibility, the petitioner has a “long-term condition.”

DISCUSSION

The petitioner seeks to retain his eligibility for Family Care benefits provided by Community Care of Central Wisconsin, 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. 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 agency seeks to reduce the petitioner’s Family Care benefits because the screening tool indicated that she no longer is functionally eligible at the comprehensive level, but is eligible at the intermediate level. She is a 22-year-old woman diagnosed with long term physical and mental disabilities. She can perform all of her activities of daily living and most of his instrumental activities of daily living adequately without assistance. She can manage her medication and finances, drive an adapted vehicle, and use the telephone without assistance. She requires weekly assistance with laundry and meal preparation.

This is a very close case. The respondent testified that very minor changes to the functional screen between 2012 and 2013 resulted in the change in determination. Specifically, the 2013 screen changed the toileting ADL to now reflect incontinency less than daily, but at least once per week, and changed the assessment of “Risk 2” to “Risk 1.” “Risk 2” requires a finding that the subject is at imminent risk of institutionalization if they do not receive needed assistance. “Risk 1” requires that the subject be

currently failing or at high risk of failing to obtain nutrition, self-care, or safety adequate to avoid significant health outcomes. Notably, an email from a representative of Community Care of Central Wisconsin dated May 23, 2013, provided the following information:

I am emailing you with this update that [petitioner] has developed a wound that has resulted in a nursing home level of care. When the wound heals, she will drop back to non-nursing home level of care. She has wounds several times per year, which we feel is evidence that she is medically fragile that the risk section of the functional screen is not capturing that. ...

It appears that the petitioner is in the unfortunate position of occupying the gray area between the comprehensive and intermediate levels of care. Based on the record before me, I conclude that the petitioner has demonstrated that she meets the criteria for the comprehensive (nursing home) level of care. In a close case such as this, I am inclined to proceed cautiously. I understand that the screening is not an exact science, but considering that a recent wound concern has returned her, temporarily, to the comprehensive level of care, I am unable to agree with the respondent's determination that she is truly at the intermediate level of care. While petitioner's continued therapy and progress will hopefully allow her to achieve the intermediate care level designation in the future, I do not find that she is there yet.

CONCLUSIONS OF LAW

The petitioner meets the comprehensive (nursing home) functional capacity level.

THEREFORE, it is

ORDERED

That this matter is remanded to Community Care of Central Wisconsin with instructions to continue the petitioner's eligibility for Family Care benefits at the comprehensive (nursing home) functional capacity level and provide benefits to her consistent with the dictates of Wis. Admin. Code, § DHS 10.36(1)(b). Community Care of Central Wisconsin 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 June, 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 June 7, 2013.

Community Care of Central Wisconsin
Office of Family Care Expansion