



FH
[REDACTED]

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

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

COP/149748

PRELIMINARY RECITALS

Pursuant to a petition filed May 30, 2013, under Wis. Stat., §46.27(7m), to review a decision by the Kewaunee County Dept. of Social Services to discontinue Community Options Program – Waiver (COP-W) services, a hearing was held on August 22, 2013, by telephone. A hearing set for July 23, 2013 was rescheduled at the petitioner's request. The record was held open for two weeks to allow petitioner to provide additional medical information.

The issue for determination is whether the agency correctly determined petitioner's functional status.

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]

Respondent:

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

By: Melissa Annoye, S.W.
Kewaunee County Dept. of Social Services
810 Lincoln Street
Kewaunee, WI 54216

ADMINISTRATIVE LAW JUDGE:

Brian C. Schneider
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a 62-year-old resident of Kewaunee County.
2. Petitioner has been eligible for services under the COP-W program. In March, 2013, petitioner met with two agency nurses. They noted that she appeared to be more physically able and independent than in the past, particularly since she had had surgery on her hand that made it easier for her to dress and do other motor activities. They decided to do a new functional screen.

3. The new screen found that petitioner was independent in activities of daily living except that she needed supervision with bathing and mobility. She was independent in instrumental activities of daily living except that she needed assistance with grocery shopping and with laundry and chores. She did not need assistance with health related services and had no communication or memory impairments. She was unstable mentally, however. The result of the screen was that petitioner did not meet a nursing home level of care.
4. Petitioner disputed the result so another screen was done in July, 2013 by a new screener with no previous experience with petitioner. The result essentially was the same except for the notation that petitioner also needs supervision with dressing. Again the result was that petitioner did not meet a nursing home level of care.
5. By a notice dated April 11, 2013, the agency informed petitioner that COP-W would end April 22 because she did not meet the level of care necessary for eligibility. Benefits were not continued pending the appeal.

DISCUSSION

Petitioner has been eligible for COP-W, 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 screens were completed correctly. Two separate screeners met with petitioner in April and July, 2013, with both coming to the same conclusion. Petitioner testified that her condition has worsened, but of course her testimony must be tempered by the knowledge that she does not want to lose the program and thus is motivated to make her situation sound as bad as possible.

The record was held open to allow petitioner to provide additional information. Petitioner provided a list of her medications, the results of some blood tests, and a letter confirming that she has slight neuropathy of her wrists. It is undisputed that she has wrist problems, but the issue is how the problems affect petitioner's ability to live in the community. The records submitted do not rebut the results of the functional screens.

Perhaps the best way to look at petitioner's situation is to review the assistance that the COP-W program was providing to petitioner before the agency action. The only assistance being provided was cleaning and a Lifeline. Both of those services could be provided through other programs, but importantly it shows that petitioner did not need a great deal of assistance from the program even before she had her wrist surgery. It follows that petitioner would need less assistance after the surgery, which was successful by all accounts.

CONCLUSIONS OF LAW

The agency correctly determined petitioner's COP-W eligibility following new functional screens done in the spring and summer, 2013 concluded that petitioner no longer meets the program's level of care requirement.

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 16th day of September, 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 September 16, 2013.

Bureau of Long-Term Support