



FH
[REDACTED]

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

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

COP/150109

PRELIMINARY RECITALS

Pursuant to a petition filed June 17, 2013, under Wis. Admin. Code, §HA 3.03(1), to review a decision by the South Madison Coalition of the Elderly (SMCE) to discontinue Community Options Program Waiver (COP-W) services, a hearing was held on September 19, 2013, by telephone. A hearing set for August 20, 2013 was rescheduled at the petitioner's request.

The issue for determination is whether petitioner continues to meet the level of care requirement for Community Options Program waiver (COP-W) eligibility.

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]

Respondent:

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

By: Laura LaFleur, S.W.
SMCE
128 E. Olin Ave., Suite 110
Madison, WI 53713

ADMINISTRATIVE LAW JUDGE:

Brian C. Schneider
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a 67-year-old resident of Dane County.
2. Petitioner has been receiving services under the COP-W program. An annual reassessment was done in May, 2013. After the functional screen was completed it was determined that petitioner did not meet the required nursing home level of care for COP-W. By a notice dated June 7, 2013,

the agency informed petitioner that COP-W would be ending due to not meeting the level of care requirement.

3. Petitioner has a number of diagnoses including diabetes, heart and circulatory conditions, mental illness that includes anxiety, depression and bi-polar/manic depressive. She also has pain from arthritis and respiratory issues that cause her to become fatigued easily.
4. In the reassessment petitioner noted that she gets fatigued easily when doing activities of daily living such as bathing and dressing, but she reports being able to complete those tasks on her own. She is independent in eating, mobility, toileting, and transferring. She does experience pain while walking but still is able to do so without assistance.
5. Petitioner manages her medications and money. She needs assistance with meal preparation, laundry, and chores. She does not drive.

DISCUSSION

Petitioner received services under the COP-W program, one of four 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.

In order to receive COP-W 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.

As noted, petitioner has received COP-W for a number of years, and if anything her condition has worsened. Ms. LaFleur surmised that the main difference in this instance is changes in the functional screen instructions. Whereas in prior years a person like petitioner who experienced pain and fatigue while dressing and bathing would be scored a "2," meaning that assistance was needed, in the current instructions she is scored a "1" because she does not actually need hands-on assistance.

Petitioner major concern is that she will lose her current services, including cleaning and grocery assistance, delivery of medications and assistance with co-pays, the "MOST" program, and cab rides. Ms. LaFleur noted that all of these services would continue in some form, with the primary negative effect a slightly higher cost to petitioner.

In reviewing the functional screen, I cannot find any error by the screener. Petitioner is able to do her bathing and dressing without assistance even though it is painful and fatiguing. In addition the need for assistance with groceries, laundry, and chores is not sufficient to find that petitioner would need to be placed in a nursing home without the benefit of the COP-W program. Thus I find that that the screen was filled out correctly, and based on the screen, petitioner does not meet the functional requirements for COP-W eligibility.

The Department could have made provision for instances such as this where a long-standing COP-W participant loses eligibility due to changes in the functional screen instructions such as "grandfathering" the participant to continue services. However, I find no evidence that the Department has done so, and thus I am limited in my jurisdiction to conclude that the functional screen was drafted correctly, and that petitioner no longer meets the functional requirements for COP-W.

CONCLUSIONS OF LAW

Petitioner no longer meets the functional requirements for COP-W eligibility following the completion of her May, 2013 reassessment.

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 30th day of September, 2013

\sBrian C. Schneider
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin \DIVISION OF HEARINGS AND APPEALS

Wayne J. Wiedenhoef, Acting Administrator
Suite 201
5005 University Avenue
Madison, WI 53705-5400

Telephone: (608) 266-3096
FAX: (608) 264-9885
email: DHAmail@wisconsin.gov
Internet: <http://dha.state.wi.us>

The preceding decision was sent to the following parties on September 30, 2013.

Bureau of Long-Term Support