



FH
[REDACTED]

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

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

FCP/150412

PRELIMINARY RECITALS

Pursuant to a petition filed July 02, 2013, under Wis. Admin. Code § DHS 10.55, to review a decision by the Eau Claire County Department of Human Services in regard to Medical Assistance, a hearing was held on July 24, 2013, at Eau Claire, Wisconsin.

The issue for determination is whether the petitioner remains functionally eligible for the Family Care Program at the nursing home level of care.

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: T.J. Adkins

Eau Claire County Department of Human Services
721 Oxford Avenue
PO Box 840
Eau Claire, WI 54702-0840

ADMINISTRATIVE LAW JUDGE:

Michael D. O'Brien
Division of Hearings and Appeals

FINDINGS OF FACT

1. The petitioner (CARES # [REDACTED]) is a resident of Eau Claire County.
2. The petitioner is 76 years old. She lives alone in an apartment.
3. The petitioner can dress and feed herself.

4. The petitioner uses a cane, walker, and furniture to move about her house.
5. The petitioner can transfer herself but finds it easier to do so if she gets out of chair with arms. She has grab bars on her toilet and shower and uses a shower chair.
6. The petitioner has a driver's license but can no longer drive.
7. The petitioner can do laundry but cannot carry a basket of laundry. She can carry a few pieces of clothing in a wheeled walker.
8. The petitioner handles her own money and medication.
9. The petitioner requires some help with meals because she cannot shop for groceries by herself or stand for any length of time.
10. The petitioner has no significant cognitive or mental impairments. Her condition is stable. She does not require frequent medical or social intervention to safely maintain an acceptable health or developmental status

DISCUSSION

The petitioner receives Family Care Medical Assistance benefits at the nursing home level of care through her care maintenance organization (CMO), Continuous. Continuous contends that she no longer qualifies at this level of care. The Family Care Program is a health-service delivery system authorized by Wis. Stat. § 46.286 and comprehensively described in Wis. Admin. Code, Chapter DHS 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 her. 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 CMO signs a contract with the State of Wisconsin that sets forth exactly what services it must provide.

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. The nursing home level of care, which is also referred to as 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).

Activities of daily living, or ADLs, refer to “bathing, dressing, eating, mobility, transferring from one surface to another such as bed to chair and using the toilet.” Wis. Adm. Code, § DHS 10.13(1m). Instrumental activities of daily living, or IADLs, refer to “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 problem with this requirement is that the Department has changed the screening tool to better comply with the federal government’s long-term waiver provisions, but it has not changed the administrative code to reflect these changes. *See DHA Decision No. FCP-44/115906*. Because the administrative code has the force of law, I must follow it rather than the screening tool.

The petitioner is 76-year-old woman who lives alone. Continuous determined that she no longer meets the nursing home level of care. She bathes using a shower chair and grab bars but does so safely and without assistance. She can wash all areas of her own body. She eats and dresses herself without assistance. She does find it difficult to move throughout the house; she uses a walker, cane, or furniture to do so. She has some difficulty transferring herself but can always do so safely and without assistance. From this, I find that the only activity of daily living that she cannot perform safely and adequately is moving about. She has no significant cognitive or mental impairments, her condition is stable, and she does not require frequent medical or social intervention to safely maintain an acceptable health or developmental status. This means that to remain eligible at the nursing home level of care, she must prove that she cannot safely or appropriately perform five or more instrumental activities of daily living. She manages her own money and medications and can use the telephone without assistance. She requires help with grocery shopping, preparing meals, and laundry. She has a license but cannot drive. While she has significant physical problems related to aging, preparing meals and doing her laundry are the only instrumental activities of daily living she cannot safely or appropriately perform. Because she has not met one of the nursing home level of care standards found at Wis. Admin. Code, § DHS 10.33(2)(c), I must uphold Continuous’s decision.

CONCLUSIONS OF LAW

The petitioner is no longer functionally eligible for the Family Care Program at the nursing home level of care.

THEREFORE, it is

ORDERED

The petitioner's appeal 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 9th day of September, 2013

\sMichael D. O'Brien
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 9, 2013.

Eau Claire County Department of Human Services
Office of Family Care Expansion