



FH
[REDACTED]

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

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

FCP/152572

PRELIMINARY RECITALS

Pursuant to a petition filed October 04, 2013, under Wis. Admin. Code § DHS 10.55, to review a decision by the Continuum in regard to Medical Assistance, a hearing was held on November 19, 2013, at Eau Claire, Wisconsin.

The issue for determination is whether the petitioner continues to require care equivalent to that received in a nursing home.

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, Room 651
Madison, Wisconsin 53703

By: T.J. Adkins
Continuum
28526 US Hwy 14
Lone Rock, WI 53556

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 receives Family Care Medical Assistance at the nursing home level of care through her CMO, Continuum.

3. The Social Security Administration has determined that the petitioner is disabled because of osteoarthritis. Her left shoulder and both of her knees have been replaced. She suffers from vertigo.
4. On September 12, 2013, Continuus notified the petitioner that, because of a determination made by the Long Term Care Functional Screen, she no longer met the nursing home level of care.
5. The petitioner moves about her house without assistance but depends upon walls and furniture to keep her balance. She uses a cane or walker to get around in the community. Her legs are weak, and she has fallen three times this year.
6. The petitioner bathes without assistance using grab bars.
7. The petitioner eats, uses the toilet, dresses herself, and transfers herself without assistance.
8. The petitioner receives help shopping for groceries.
9. The petitioner's daughter manages her money. The petitioner can handle cash when shopping in the community.
10. The petitioner uses a medical planner that is delivered to her weekly.
11. The petitioner cooks her own meals, does her own dishes and laundry, but does not shovel her own sidewalks.
12. The petitioner does not drive a car.

DISCUSSION

The petitioner receives Family Care Medical Assistance benefits at the nursing home level of care through her care maintenance organization (CMO), Continuus. Continuus seeks to end her eligibility because it contends that she no longer requires care at this level. 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 a disabled woman under 65 who has had her left shoulder and both knees replaced. She has poor balance and has fallen three times in the last year. From this I find that she cannot move about safely and appropriately. However, she can bathe, dress herself, eat, transfer herself, and use the toilet without assistance. She does not require frequent medical or social intervention to safely maintain an acceptable health or developmental status. Nor does she require frequent changes in her service due to intermittent or unpredictable changes in her condition. An she does not require a range of medical or social interventions due to a multiplicity of conditions. She has no developmental disability or significant impairment of her judgment or cognitive abilities. This means that she must demonstrate that she cannot safely and adequately perform five or more instrumental activities of daily living to continue to be eligible at the nursing home level of care. She does not drive. She receives help shopping and with her finances. But she can perform other instrumental activities of daily living such as making meals and using the telephone without assistance. Based upon this, I find that she is no longer eligible for Family Care at the nursing home level of care under Wis. Admin. Code, § DHS 10.33(2)(c)2.

CONCLUSIONS OF LAW

The petitioner is no longer eligible for Family Care Medical Assistance 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, Room 651, 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 December, 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 December 30, 2013.

Continuus
Office of Family Care Expansion