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

In the Matter of

██████████
████████████████████
████████████████████

DECISION

FCP/154290

PRELIMINARY RECITALS

Pursuant to a petition filed December 19, 2013, under Wis. Admin. Code § DHS 10.55, to review a decision by the Disability Resource Center of Milwaukee County in regard to Medical Assistance, a hearing was held on January 28, 2014, at Milwaukee, Wisconsin.

The issue for determination is whether the Disability Resource Center of Milwaukee County correctly determined that the Petitioner is not functionally eligible for the Family Care Program.

NOTE: ██████████ gave ALJ Ishii permission to contact Milwaukee County and obtain the long-term care functional screen. It has been marked as Exhibit 6 and entered into the record.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

██████████
████████████████████
████████████████████

Respondent:

Department of Health Services
1 West Wilson Street, Room 651
Madison, Wisconsin 53703

By: No one due to the Polar Vortex; the county was closed
Disability Resource Center of Milwaukee County
1220 W. Vliet St.
Milwaukee, WI 53205

ADMINISTRATIVE LAW JUDGE:

Mayumi M. Ishii
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner is a resident of Milwaukee County.
2. On November 11, 2013, the Disability Resource Center of Milwaukee County (the agency) sent Petitioner a letter advising him that he was not functionally eligible for the Family Care Program. (Exhibit 1, pg. 3)
3. The Petitioner filed a request for fair hearing that was received by the Division of Hearings and Appeals on December 19, 2013. (Exhibit 1, pg. 2)
4. Petitioner suffers from bi-polar disorder, schizophrenia and chronic back pain caused by herniated/diseased disks. (Testimony of the Petitioner; Exhibits 4, 5 and 6)

DISCUSSION

In order to be eligible for the Family Care Program, a person must:

1. Be at least 18 years of age;
2. Have a physical disability or a developmental disability or be a frail elder; AND
3. Meet the functional and financial eligibility criteria of the program.

Wis. Stats. §46.286(1)

In the case at hand, it is the agency's contention that the Petitioner does not meet the functional eligibility criteria of the Family Care Program.

Wis. Stats. §46.286(1)(a) describes the two levels of care under functional eligibility as "nursing home level of care" and "non-nursing home level of care". These terms are given general definitions in Wis. Stats §46.286(1)(a):

- (a) *Functional eligibility.*** A person is functionally eligible if the person's level of care need, as determined by the department or its designee, is either of the following:
- 1m.** The nursing home level, if the person has a long-term or irreversible condition, expected to last at least 90 days or result in death within one year of the date of application, and requires ongoing care, assistance or supervision.
 - 2m.** The non-nursing home level, if the person has a condition that is expected to last at least 90 days or result in death within 12 months after the date of application, and is at risk of losing his or her independence or functional capacity unless he or she receives assistance from others.

In further defining levels of care for the Family Care Program, Wis. Admin. Code §DHS10.33(2)(c) and (d) refers to "nursing home level of care" as "Comprehensive functional capacity" and it refers to "non-nursing home level of care" as "intermediate functional capacity":

Comprehensive functional capacity level. 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.

Intermediate functional capacity level. 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.

The agency completed a Long Term Care Functional Screen Report on November 7, 2013, that indicated that Petitioner was independent in all ADLs and IADLs. (See Exhibit 6)

At the hearing, the Petitioner testified that he does need assistance with two ADLs: bathing and dressing. Specifically, Petitioner testified that he needs help bathing because he cannot bend or reach behind himself due to severe back pain and that he needs supervision because his medications make him very sleepy. Petitioner also testified that he needs help dressing, because he cannot reach behind himself to get a belt on, nor can he bend over to get his shoes and socks on. It should be noted that the Petitioner testified that his ability to transfer himself out of bed or safely move about his home is dependent upon the level of back pain he is experiencing and how drowsy his medications are making him, so that on some days he might need assistance with those tasks. Petitioner does use a cane and walker to ambulate. (Testimony of Petitioner)

Petitioner also testified that he needs assistance with at least four IADLs: medication management, laundry, money management and driving. Petitioner testified that he needs assistance with medication management in the mornings, because his medications cause him to sleep deeply and if someone doesn't wake him up, he will miss the morning doses of his psychiatric medication. Petitioner testified that he needs assistance with laundry, because he cannot carry the laundry basket down the stairs and because he is not safe in the basement, due to periodic fits of rage during which he tends to grab whatever is around and throw it or break it. Petitioner also testified that he needs help with money management and that his sister helps him with shopping transactions and his roommate helps him with the rent. Finally, the Petitioner testified that he is unable to drive safely because his psychiatric medications make him very drowsy and because he is susceptible to fits of rage, even when he is on medication.

Petitioner offered credible testimony that is corroborated by a Mental Health Report (Exhibit 4). The mental health report indicates that Petitioner suffers from bi-polar disorder, schizophrenia and chronic pain, that he suffers from hallucinations and that he has persistent cognitive deficits because his mood disorder and psychosis went undertreated for a long period of time. Id.

Petitioner's testimony is also corroborated by Exhibit 5, a Medical Examination and Capacity Report, which indicated that Petitioner can lift and carry less than 10 pounds, that his ability to stoop, bend and twist is extremely limited and that he is likely to have difficulty controlling his anger.

Because Petitioner is not able to appropriately perform two ADLS and is unable to appropriately perform at least one IADL, he is functionally eligible for the Family Care program under the comprehensive/nursing home level of capacity under Wis. Stats. §46.286(1)(a) and Wis. Admin. Code §DHS10.33(2)(c).

CONCLUSIONS OF LAW

The Petitioner is functionally eligible for the Family Care Program.

THEREFORE, it is **ORDERED**

That the agency continue the application process for Petitioner and determine whether he is financially eligible for the Family Care Program. The agency shall then issue a new notice to Petitioner telling him whether he has met all eligibility criteria for the Family Care Program. The agency shall take all administrative steps necessary to complete these tasks within ten days 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

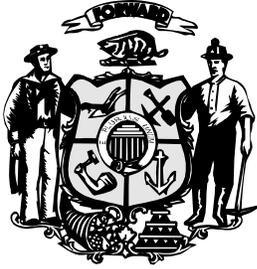
You may also appeal this decision to Circuit Court in the county where you live. Appeals must be served and filed with the appropriate court no more than 30 days after the date of this hearing decision (or 30 days after a denial of rehearing, if you ask for one).

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, 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
Milwaukee, Wisconsin, this 3rd day of
March, 2014

\sMayumi M. Ishii
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 March 3, 2014.

Milwaukee Cty Dept On Aging-ARC
Office of Family Care Expansion