



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

FCP/154907

PRELIMINARY RECITALS

Pursuant to a petition filed January 21, 2014, under Wis. Admin. Code § DHS 10.55, to review a decision by the Milw. Cty. Dept. Family Care - MCO in regard to Medical Assistance, a hearing was held on February 11, 2014, at Milwaukee, Wisconsin.

The issue is whether the agency correctly discontinued Petitioner's Family Care eligibility because she no longer meets functional eligibility requirements.

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: Rosaida Shrank

Milw. Cty. Dept. Family Care - MCO
901 N 9th St
Milwaukee, WI 53233

Also appearing – Patrick Missall and Megan Klackner of the CMO

ADMINISTRATIVE LAW JUDGE:

David D. Fleming
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Milwaukee County.
2. Petitioner has been eligible for the Family Care program thus has been determined to require the nursing home level of care as that term is used in the Family Care program.
3. Petitioner was informed, by letter dated January 10, 2014 from the Milwaukee County Department of Family Care, that she no longer met the nursing home level of care for the Family Care program.

4. Petitioner is 79 years of age (DOB 12/-/34). She lives alone in the community. Her diagnoses and medical issues include - but are but are not limited to - diabetes, IBS, CVA, back pain related to surgeries, breast cancer (but cancer free for 7 years), renal problems, cataract surgery, anemia, lymphedema and arthritis.
5. The agency conducted a review of Petitioner's functional abilities via an in home assessment on January 9, 2014. That assessment concluded that Petitioner is independent as to her Activities of Daily Living but requires some assistance with the Instrumental Activities of Daily Living of meal preparation and laundry. She does drive though just to church and then not when the weather is bad.
6. Though details were not available at the hearing, with the discontinuance of her Family Care eligibility Petitioner's Medicaid eligibility became dependent on meeting a deductible.

DISCUSSION

The Family Care Long Term Care program (FCP) is a long-term care benefit for the elderly, people with physical disabilities and those with developmental disabilities. *Medicaid Eligibility Handbook (MEH)*, §29.1. It is authorized in the Wisconsin Statutes, §46.286, and is described comprehensively in the Wisconsin Administrative Code at Chapter DHS 10. Also see *Medicaid Eligibility Handbook (MEH)*, §29.1. Once a person has been enrolled in FCP they may become ineligible for a variety of reasons, including a change in functional eligibility. *Id.*, §29.5.2.

Though not noted at the hearing, Petitioner's eligibility for the FCP must have been as a group B or C person because with the loss of her nursing home level of functional eligibility Petitioner was not found eligible for non-nursing home. The categories of eligibility are:

There are 3 types of eligibility in Family Care Medicaid:

Group A eligibility

1. People 18 and over who meet full benefit EBD Medicaid financial and non-financial requirements and who are also functionally eligible for FC at either the nursing home or non-nursing home level of care.
2. People 18 and over who meet BC+ Standard Plan, Well Woman Medicaid, Medicaid through Adoption Assistance or Foster Care Care financial and non-financial requirements and who are functionally eligible for FC at either the nursing home or non-nursing home level of care.

Group B eligibility

People 18 and over who meet full benefit EBD Medicaid non-financial and financial requirements except for income, who are functionally eligible for FC at the nursing home level of care, and whose income is at or below the special income limit (See the Community Waivers Special Income Limit in 39.4.1)

Group C eligibility

People 18 and over who meet full benefit EBD Medicaid non-financial and financial requirements except for income, who are functionally eligible for FC at the nursing home level of care, and whose income is above the special income limit (see the Community Waivers Special Income Limit in 39.4.1), but whose allowable monthly expenses are sufficient to reduce their income to the medically needy limit (See EBD Medically Needy Limits in 39.4.1.)
MEH, §29.3.1.

Wis. Admin. Code, §DHS 10.33(2) provides that an FCP applicant must have a functional capacity level of comprehensive or intermediate; I note here, however, that *Wis. Stat., §46.286*, uses the terms “nursing home” and “non-nursing home” levels just as the agency in this case. If the person meets the comprehensive (nursing home) level, s/he is eligible for full services through a care management organization (CMO), including Medical Assistance (MA). *Wis. Admin. Code, §DHS 10.36(1)(a)*. If the person meets the intermediate (non-nursing home) level, s/he is eligible for full services only if s/he is in need of adult protective services, s/he is financially eligible for MA, or she is grandfathered as described in §DHS 10.33(3). *Wis. Admin. Code, §DHS 10.36(1)(b)*. A person eligible under the non-nursing home level is eligible for less FCP services.

Comprehensive functional capacity is defined at *Wis. Admin. Code, §DHS 10.33(2)(c)*:

(c) 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 is defined at *Wis. Admin. Code, §DHS 10.33(2)(d)*:

d) 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.

A person's long term care needs and the level of care are determined by use of the Long Term Care Functional Screen. The Long Term Care Functional Screen (LTCFS) is a functional needs assessment describing assistance needed with:

- **Activities of Daily Living** (ADL's-bathing, dressing, mobility, transfers, eating, toileting)

- **Instrumental Activities of Daily Living** (IADL's-meal preparation, medication management, money management, laundry, telephone, transportation, and employment)
- **Health Related Tasks** (including skilled nursing)
- **Diagnoses**
- **Behavioral Symptoms and Cognition**

The LTC FS also includes information on risk factors, mental health and substance abuse, and where the person would like to live. *Source: Wisconsin Dept of Health Services, online, Adult Long-Term Care Functional Screen, Module #1: Overview of the Long Term Care Functional Screen (LTC FS), §1.1 History. (<http://dhs.wisconsin.gov/lcicare/FunctionalScreen/instructions.htm>).*

The ADLs are bathing, dressing, eating, mobility in the home, toileting and transferring. The IADLs are meal preparation, medication administration and management, money management, laundry and/or chores, use of the telephone, transportation, overnight care or supervision and employment. *Id.*, *Module #4*. Petitioner is not cognitively impaired so must be unable to safely perform 3 or more activities of daily living; 2 or more ADLs and 1 or more IADLs or 5 or more IADLs to be found functionally eligible at the nursing home/comprehensive level of care.

Petitioner is, however, able to perform all of her ADLs and the only IADLs that are problematic are meal preparation and laundry. This means that she does not meet the nursing home functional level of care. She does meet the non-nursing home level of care as she needs assistance with the critical IADL of meal preparation. Nonetheless, this does not translate into Family Care eligibility because Petitioner's income is high enough to cause her to have a Medicaid deductible, i.e., her income is in excess of \$591.67.

If any of these circumstances change Petitioner is encouraged to again apply for the Family Care program.

CONCLUSIONS OF LAW

That Petitioner is not eligible for the Family Care Program as she does not meet the required functional level of care requirements.

THEREFORE, it is

ORDERED

That this 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 Milwaukee,
Wisconsin, this 18th day of April, 2014

\sDavid D. Fleming
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 April 18, 2014.

Milw Cty Dept Family Care - MCO
Office of Family Care Expansion