



FH
[REDACTED]

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

FCP/155215

PRELIMINARY RECITALS

Pursuant to a petition filed February 03, 2014, under Wis. Admin. Code § DHS 10.55, to review a decision by the Milwaukee County Department of Family Care - MCO in regard to Medical Assistance, a hearing was held on March 18, 2014, at Milwaukee, Wisconsin.

The issue for determination is whether the Milwaukee County Department of Family Care (the agency) correctly determined that the Petitioner's level of care changed.

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: Leslie Carter, Case Manager
Milw Cty Dept Family Care - MCO
901 N 9th St
Milwaukee, WI 53233

ADMINISTRATIVE LAW JUDGE:

Mayumi M. Ishii
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Milwaukee County.
2. On December 17, 2013, the agency completed a Long Term Care Functional Screen that indicated that the Petitioner was independent with all Activities of Daily Living, but that she

needed help with one Instrumental Activity of Daily Living: Laundry or Chores. (Exhibit 4, pgs.11-17)

3. On December 24, 2013, the Milwaukee County Department of Family Care (the agency) sent the Petitioner a notice indicating that effective December 23, 2013, her level of care was being changed from “Nursing Home” level of care to “Non-nursing Home” level of care. (Exhibit 3, pg. 3)
4. The agency completed another Long Term Care Functional Screen on January 13, 2014, that indicated that the Petitioner needs help with 2 Activities of Daily Living and 2 Instrumental Activities of Daily Living. (Exhibit 4, pgs. 2-10; See also Exhibit 2, pgs. 4-12)
5. Petitioner needs assistance with bathing and toileting. Petitioner also needs help with meal preparation and laundry / chores. (Exhibit 4, pgs. 2-10; See also Exhibit 2, pgs. 4-12)
6. The Petitioner filed a request for fair hearing that was received by the Division of Hearings and Appeals on February 3, 2004. (Exhibit 1)

DISCUSSION

It is undisputed between the parties that the current, most accurate Long Term Care Functional Screen is the one dated January 13, 2014. However, the parties still disagree about Petitioner’s Level of Care. Petitioner filed an appeal, because she disagreed with the agency’s determination that her level of care has dropped from nursing home level of care to non-nursing home level of care.

The terms “nursing home level of care” and “non-nursing home level of care” 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 §10.33(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.

(Current through Register, March 2014, No. 699)

Applying the above definitions to the information contained in the January 2014 Long Term Care Functional Screen, Petitioner falls into the Comprehensive/Nursing Home level of care under Wis. Admin. Code §DHS 10.33(2)(c)2., because she cannot safely or appropriately complete two ADLs, bathing and toileting and because she cannot safely or appropriately complete one or more IADL; she needs assistance with meal preparation and laundry and/or chores.

This decision is consistent with prior decisions in cases FCP-11/113325 (Wis. Div. of Hearings & Appeals October 26, 2010, ALJ Schneider)(DHS), FCP-44/115906 (Wis. Div. of Hearings & Appeals April 5, 2011, ALJ Schneider)(DHS), and Rehearing FCP/130316 (Wis. Div. of Hearings & Appeals September 29, 2011, ALJ O'Brien)(DHS).

CONCLUSIONS OF LAW

The agency did not correctly determine the Petitioner's Level of Care; Petitioner is at the Comprehensive/Nursing Home Level of Care.

THEREFORE, it is

ORDERED

That the petition is remanded to the Milwaukee County Department of Family Care with instructions to reverse the discontinuance of Petitioner's Family Care benefits at the Nursing Home level of care. This action shall be taken within 10 days of the date 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 9th day of April, 2014.

\s\sMayumi M. Ishii
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

Brian Hayes, Administrator
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Madison, WI 53705-5400

Telephone: (608) 266-3096
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Internet: <http://dha.state.wi.us>

The preceding decision was sent to the following parties on April 9, 2014.

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



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

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The preceding decision was sent to the following parties on April 15, 2014.

Attorney April Hartman