



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

In the Matter of

[REDACTED]
[REDACTED]
c/o [REDACTED]
[REDACTED]
[REDACTED]

AMENDED DECISION

FCP/156032

PRELIMINARY RECITALS

Pursuant to a petition filed March 13, 2014, under Wis. Admin. Code § DHS 10.55, to review a decision by the Community Care of Central Wisconsin in regard to Family Care (FC) eligibility, a hearing was held on May 20, 2014 by telephone. A hearing set for April 23, 2014, was rescheduled at the petitioner's request. At the CCCW's emailed request, this Decision is amended by insertion of the last paragraph in the Discussion, and a change to the Order, neither of which is adverse to the petitioner.

The issue for determination is whether the agency correctly determined that the petitioner no longer satisfies the functional eligibility requirement for the Family Care program (FC).

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
By: [REDACTED]
[REDACTED]
[REDACTED]

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

Respondent:

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

By: Emily Connor, CCCW mgr.
Community Care of Central Wisconsin
3349 Church St, Suite 1
Stevens Point, WI 54481

ADMINISTRATIVE LAW JUDGE:

Nancy J. Gagnon
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Ashland County.
2. The petitioner has been a recipient of FC benefits for several years. To remain eligible for FC, the recipient must periodically undergo functional screening to determine whether he continues to have functional care needs at the requisite level. The petitioner underwent such a functional screening in February 2014.
3. As a result of the 2014 screening, the FC program determined that the petitioner was no longer functionally eligible for the program. In March, the FC agency issued notice to the petitioner advising that he was no longer eligible for “nursing home level” FC benefits due failure to satisfy the program’s nursing home-related functional eligibility requirement, effective March 18, 2014. The petitioner timely appealed, and aid has been continued pending decision issuance.
4. The petitioner, age 44, has diagnoses of traumatic brain injury, bipolar disorder, depression, alcoholism, seizures, liver disease, left eye blindness, and impaired hearing. For purposes of FC program eligibility, the petitioner has a “long-term condition.”
5. *ADLs*. The petitioner is ambulatory and independent in bathing, dressing, toileting, transferring and grooming. The petitioner requires some assistance with eating.
6. *Instrumental ADLs*. The 2014 screening established that the petitioner requires assistance with the following instrumental ADLs: meal preparation, medication administration, money management, telephone use, and transportation.

DISCUSSION

The Family Care program, which is supervised by the Department of Health Services, is designed to provide appropriate long-term care services for physically/developmentally disabled or elderly adults. *See*, Wis. Stat. §46.286, and Wis. Admin. Code ch. DHS 10. Whenever the local Family Care program decides that a person is to be terminated from the program, the client is allowed to file a fair hearing request. The petitioner did so here.

In order to qualify for FC services, with certain exceptions not applicable here, a person’s functioning must be such that they would otherwise require institutional care. Wis. Stat. §46.286(1)(a). To be found eligible, the applicant must undergo an assessment of his/her needs and functioning.

The Wisconsin Department of Health Services has made efforts to improve the statewide accuracy of functional assessments by designing and implementing a computerized functional assessment screening system. This system relies upon a face-to-face interview with a trained quality assurance screener. The petitioner met with a screener as part of an annual reassessment process. In this case, the petitioner and screener agree as to the screener’s findings of the petitioner’s ADL and IADL needs. Policy requires the local screener to then enter this data into the Department’s functional screen computer program. *See* <http://dhs.wisconsin.gov/LTCare/FunctionalScreen/Index.htm>. The Level of Care (LOC) Functional Screen form and program reiterate the skeletal definitions from the federal Medicaid rules for Intermediate Nursing Care and institutional Developmental Disability facilities. When the petitioner’s functional ability scores were entered into the DHS algorithm, the result was a DHS conclusion that the petitioner does not have care needs at the nursing home level. Thus, the petitioner was found to be ineligible going forward, consistent with the DHS-directed result.

However, the computer program infrequently yields a result that is not consistent with state code. In the code, the standard for the requisite level of care is as follows:

DHS 10.33 Conditions of functional eligibility.

...

(2) DETERMINATION OF FUNCTIONAL ELIGIBILITY. (a) *Determination.* Functional eligibility for the family care benefit shall be determined pursuant to s. [46.286 \(1\)](#), Stats., and this chapter, using a uniform functional screening prescribed by the department. To have functional eligibility for the family care benefit, the functional eligibility condition under [par. \(b\)](#) shall be met and, except as provided under [sub. \(3\)](#), the functional capacity level under [par. \(c\)](#) or [\(d\)](#) shall be met.

(b) *Long-term condition.* The person shall have a long-term or irreversible condition.

(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.

(emphasis added)

Wis. Admin. Code §DHS 10.33(2)(a)-(c). IADLs are defined at §DHS 10.13(2). The petitioner cannot perform one ADL unassisted (eating), and cannot perform five IADLs unassisted (*e.g.*, money management).

As evidenced by the 2014 screen, the petitioner falls within the comprehensive functional capacity definition -- he cannot safely/appropriately perform five IADLs (item 3 above). Thus, per code, he meets the comprehensive/nursing home level of care. The code has the force of law, and must be followed. Therefore, although the screening personnel followed their DHS instructions correctly the discontinuance of the petitioner's FC eligibility for failure to meet the level of care requirements was incorrect. This decision is in accord with prior decisions FCP-11/113325 (Wis. Div. of Hearings & Appeals October 26, 2010, ALJ Schneider)(DHS), and FCP-44/115906 (Wis. Div. of Hearings & Appeals April 5, 2011, Judge Schneider)(DHS).

Amendment: The original Decision remanded the case to the agency to continue FC benefits from March 18, 2014, forward. On June 3, 2014, this Judge received an emailed request from [REDACTED] [REDACTED] to amend the Order to read as it does below. The explanation for the request was as follows:

The mechanics of coordination between Income Maintenance and a Family Care Managed Care organization require the Managed Care Organization to complete the annual rescreen. The date that the rescreen is calculated becomes the effective date of the level of care change for IM and in this case the level of care change was effective on 2/24/14. However, the Managed Care Organization through a different process and contractual agreement has indicated an effective date of 3/18/14 as you indicated in the Order below.

After consulting with this Judge's supervisor, it was determined that Ms. [REDACTED]'s request would cause no harm to the petitioner, so the Order is amended to assist with her organizational needs.

CONCLUSIONS OF LAW

1. The petitioner remains at the nursing home level of care as defined in the FC chapter of the Wisconsin Administrative Code; therefore, he currently satisfies the functional eligibility requirements of the FC program.

THEREFORE, it is

ORDERED

That the petition be remanded to the agency with instructions to continue the petitioner's FC benefits from *February 24, 2014*, forward, in accord with the Conclusion of Law above, if he is otherwise eligible for the program. This action shall be taken within 10 days of the date of this Decision.

[change italicized]

REQUEST FOR A REHEARING

You may request a rehearing if you think this decision is based on a serious mistake in the facts or the law or if you have found new evidence that would change the decision. Your request must be **received within 20 days after the date of this decision**. Late requests cannot be granted.

Send your request for rehearing in writing to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400 **and** to those identified in this decision as "PARTIES IN INTEREST." Your rehearing request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and explain why you did not have it at your first hearing. If your request does not explain these things, it will be denied.

The process for requesting a rehearing may be found at Wis. Stat. § 227.49. A copy of the statutes may be found online or 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 filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Health Services, 1 West Wilson Street, Room 651, Madison, Wisconsin 53703, **and** on those identified in this decision as "PARTIES IN INTEREST" **no more than 30 days after the date of this decision** or 30 days after a denial of a timely rehearing (if you request one).

The process for Circuit Court Appeals may be found at Wis. Stat. §§ 227.52 and 227.53. A copy of the statutes may be found online or at your local library or courthouse.

Given under my hand at the City of Madison,
Wisconsin, this 9th day of June, 2014

\sNancy J. Gagnon
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

Brian Hayes, Administrator
Suite 201
5005 University Avenue
Madison, WI 53705-5400

Telephone: (608) 266-3096
FAX: (608) 264-9885
email: DHAmail@wisconsin.gov
Internet: <http://dha.state.wi.us>

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

Community Care of Central Wisconsin
Office of Family Care Expansion