



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

In the Matter of

[REDACTED]

DECISION

FCP/157357

PRELIMINARY RECITALS

Pursuant to a petition filed May 2, 2014, under Wis. Admin. Code, §DHS 10.55, to review a decision by Care Wisconsin First, Inc., to discontinue Wisconsin Partnership Program (WPP) benefits, a hearing was held on September 24, 2014, by telephone. Hearings set for June 25 and August 13, 2014 were rescheduled at the petitioner’s request.

The issue for determination is whether petitioner meets a level of care to continue WPP benefits.

PARTIES IN INTEREST:

Petitioner:

[REDACTED]

Petitioner's Representative:

[REDACTED]

Respondent:

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

By: Gina Bierman
Care Wisconsin First, Inc.
2802 International Lane
Madison, WI 53704-3124

ADMINISTRATIVE LAW JUDGE:

Brian C. Schneider
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner is a resident of Dane County. He receives benefits under the WPP.
2. In April, 2014, the agency did an annual reassessment of petitioner’s eligibility. A new functional screen was completed, and petitioner was found to no longer meet the nursing home level of care. Petitioner filed this appeal but also asked for a re-screen. The re-screen was done in June, and again petitioner was found to meet only the non-nursing home level of care.

3. The screeners found that petitioner is independent in all activities of daily living, although it was noted that he uses grab bars for bathing and toileting and uses a cane for ambulation in the home. He is independent in instrumental activities of daily living except for partial assistance needed with medication management and with laundry/chores.

DISCUSSION

The Wisconsin Partnership Program is a demonstration project authorized by the United States Department of Health & Human Services under a waiver of the Social Security Act. See 42 U.S.C. §§ 1396n(a), (b). The project is designed to save money for the federal and state governments by integrating long-term care and acute care services under one roof. In essence, the Department of Health Services will pre-pay a uniform fee per person served by the WPP organization, and the organization will provide all Medicaid and Medicare covered medical services each individual is determined to need. It is also designed to maximize the ability of enrolled members to live in a setting of their own choice, to participate in community life, and to participate in making decisions regarding their own care.

The department, operating under a federal waiver, must provide or arrange for all Medicaid *and* Medicare covered services required by participating recipients, i.e., “members,” including nursing facility, primary, acute, and long-term care services utilizing Medicaid and Medicare certified providers. See 42 U.S.C. §1315. The target group for such members is the “frail elderly” and persons “under 65 years of age with disabilities”. Wisconsin Partnership Program Waiver, Section IV, B, effective January, 1999. The department performs this task by delegating the responsibility of service delivery to a private provider known as the “partnership organization.” In Dane County that organization currently is Care Wisconsin.

The WPP is a sub-program of Medical Assistance (MA). MA and WPP reimburse the partnership organization for the costs of otherwise eligible persons who require one of several defined “levels of [nursing] care.” The department has made efforts to improve the state-wide efficacy of level of care assessments by designing and implementing a computerized functional assessment screening system. The system relies upon a face-to-face interview with a quality assurance screener who has at least a bachelor of science degree in a health or human services related field, with at least one year of experience working with the target populations (or, if not, an individual otherwise specifically approved by the department based upon like combination of education and experience), who has been trained and met all requirements to do so by completing a department sanctioned web-based training program, and has experience working with long term care consumers.

The screener asks the applicant, or a recipient at a periodic review, a multitude of questions about his or her medical conditions, needs, cares, skills, activities of daily living, and utilization of professional medical providers to meet these needs. The screener then submits the “Functional Screen Report” for the applicant to the department’s Division of Disability and Elder Services. The department then reviews the Long Term Functional Screen data (or “tool”) by computer programming to see if the applicant meets any of the nursing levels of care, as outlined above in detail.

The department’s computer program in this case found that petitioner did not meet a level of care, based upon the entries on the form. I agree with that conclusion, and petitioner does not disagree with the conclusion. He argues instead that the screen comes to an erroneous conclusion based upon a misinterpretation of the definition of “assistance.” He argues that he needs assistance with activities of daily living by virtue of his need for adaptive equipment to accomplish some activities.

The petitioner’s position was recently addressed by the Department’s Deputy Secretary on October 22, 2014 in case no. FCP-153787. The issue in that case was whether a participant in Family Care Program must be found to require assistance with activities of daily living if she requires adaptive equipment to

complete the activities, even if the use of the adaptive equipment means that she does not need the assistance of a caregiver. The petitioner in that case cited Department "screen logic" manuals from 2008 and 2011 for the proposition that use of adaptive equipment is tied into a finding that assistance is needed with an activity of daily living. The Deputy Secretary noted that the language in the earlier manuals is at odds with the current instructions for completing a functional screen. The Deputy Secretary concluded that a person does not need assistance with an activity of daily living unless the person needs cueing, supervision, or hands-on assistance from another person to complete the activity.

Based on the decision in case no. FCP-153787, I conclude that petitioner does not require assistance with activities of daily living, and thus the functional screens completed in April and June, 2014 were correct. Petitioner does not meet the level of care required for WPP eligibility. The result makes sense from a common sense standpoint. A person who is able to accomplish activities of daily living using adaptive equipment, without the intervention of a caregiver, simply would not be a candidate for a nursing home.

CONCLUSIONS OF LAW

1. A person does not require assistance with activities of daily living for a level of care determination simply because the person utilizes adaptive equipment to accomplish certain activities.
2. The agency correctly determined that petitioner no longer meets the nursing home level of care for WPP eligibility.

THEREFORE, it is

ORDERED

That the petition for review herein be and the same is hereby dismissed.

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 27th day of October, 2014

\sBrian C. Schneider
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 October 27, 2014.

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