



FH
[REDACTED]

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

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

FCP/157739

PRELIMINARY RECITALS

Pursuant to a petition filed May 14, 2014, under Wis. Admin. Code § DHS 10.55, to review a decision by the Continuum in regard to Medical Assistance, a hearing was held on June 12, 2014, at Menomonie, Wisconsin.

The issue for determination is whether the petitioner continues to meet the nursing home level of care.

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: T.J. Adkins

Continuum
28526 US Hwy 14
Lone Rock, WI 53556

ADMINISTRATIVE LAW JUDGE:

Michael D. O'Brien
Division of Hearings and Appeals

FINDINGS OF FACT

1. The petitioner (CARES # [REDACTED]) is a resident of Dunn County.
2. The petitioner is an ongoing recipient of Family Care Medical Assistance benefits, which she receives through her care maintenance organization, Continuum.

3. Continuum reviewed the level of care the petitioner required by using the functional screen on April 16, 2014. The results of that screen indicated that she no longer met the nursing home level of care. Continuum notified the petitioner of this in writing on April 18, 2014.
4. The petitioner is a 51-year-old woman diagnosed with diabetes, obesity, osteomyelitis, and chronic pain. Her right leg was amputated below the knee, and she uses a prosthesis.
5. The petitioner cannot do laundry without assistance because she cannot use stairs. She has trouble putting on her prosthesis but can do so without assistance. She also has trouble with lawn care, snow removal, and other strenuous household chores.
6. The petitioner bathes, dresses herself, moves about her house, uses the toilet, and transfers herself without assistance. She does have some incontinence at least once a week. She dresses herself slowly, uses adaptive equipment when bathing and using the toilet, and walks with a cane in her house. She has not accepted assistance for these chores.
7. The petitioner can prepare simple meals but requires help grocery shopping. She can administer her own medication, manage her own money, and use the telephone without assistance. She drives a car adapted to meet her physical limitations.
8. The petitioner has no cognitive impairments.
9. The petitioner has no complicating condition that limits her ability to independently meet her needs

DISCUSSION

The petitioner receives Family Care Medical Assistance benefits at the nursing home level of care through her care maintenance organization (CMO), Continuum, which seeks to end her eligibility. The Family Care Program is a health-service delivery system authorized by Wis. Stat. § 46.286 and comprehensively described in Wis. Admin. Code, Chapter DHS 10. It is designed to increase the ability of the frail elderly and those under 65 with disabilities to live where they want, participate in community life, and make decisions regarding their own care. It places a recipient under the roof of a single private provider that receives a uniform fee, called a capitation rate, for each person it serves. The provider is responsible for ensuring that the person receives all the Medicaid and Medicare services available to her. The theory behind the program is that it will save money by providing recipients with only the services they need rather than requiring that they enroll in several programs whose services may overlap. Each CMO signs a contract with the State of Wisconsin that sets forth exactly what services it must provide.

Eligibility for the Family Care Program depends upon a person's meeting one of the program's target groups and upon her ability to function independently falling below a certain level. Wis. Admin. Code, §§ DHS 10.32 and 10.33. Continuum contends that the petitioner no longer meets the nursing home level of care.

The nursing home level of care, which is also referred to as the comprehensive level of care, is described as follows at Wis. Admin. Code, § DHS 10.33(2)(c):

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.

Activities of daily living, or ADLs, refer to “bathing, dressing, eating, mobility, transferring from one surface to another such as bed to chair and using the toilet.” Wis. Admin. Code, § DHS 10.13(1m). Instrumental activities of daily living, or IADLs, refer to “management of medications and treatments, meal preparation and nutrition, money management, using the telephone, arranging and using transportation and the ability to function at a job site.” Wis. Admin. Code, § 10.13(32)

Agencies must determine eligibility using a uniform functional screening tool prescribed by the Department. Wis. Admin. Code, § DHS 10.33(2)(a). The problem with this requirement is that the Department has changed the screening tool to better comply with the federal government’s long-term waiver provisions, but it has not changed the administrative code to reflect these changes. *See DHA Decision No. FCP-44/115906*. Because the administrative code has the force of law, I must follow it rather than the screening tool.

The petitioner is a 51-year-old woman physically disabled woman who lives with her brother. She has no mental disabilities; nor does she have any of the other complicating conditions mentioned in Wis. Admin. Code, § DHS 10.33(2)(c)6. She is obese and diabetic, which has led to the amputation of her lower right leg and limited her ability to move about. Nevertheless, she bathes, dresses herself, moves about her house, uses the toilet, and transfers herself without assistance. Although she can perform these tasks, many are difficult for her. She dresses herself slowly, uses adaptive equipment when bathing and using the toilet, and walks with a cane in her house. Still, she has not accepted assistance for these chores.

Because she has no significant cognitive issues or complicating conditions, and she has not shown that she cannot perform at least two activities of daily living, she must prove that she cannot adequately perform at least five instrumental activities of daily living. She cannot do her laundry because she cannot go up and down steps, and she requires help grocery shopping. But she drives a modified car, uses the telephone, and manages her own money and medication. Because she has not established that she cannot perform at least five instrumental activities of daily living, she does not meet the nursing home level of care. Therefore, I must uphold the agency’s decision finding that she is not entitled to services at this level.

CONCLUSIONS OF LAW

Continuus correctly determined that the petitioner no longer meets the level of care found in a nursing home.

THEREFORE, it is

ORDERED

The petitioner's appeal is 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 28th day of July, 2014

\sMichael D. O'Brien
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 July 28, 2014.

Continuus
Office of Family Care Expansion