



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of



DECISION

FCP/157761

PRELIMINARY RECITALS

Pursuant to a petition filed May 20, 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 (MA), a telephonic hearing was held on September 04, 2014, at Milwaukee, 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:



Respondent:

Department of Health Services
1 West Wilson Street, Room 651
Madison, Wisconsin 53703
By: Michelle Lee, Case Manager
Milw Cty Dept Family Care - MCO
901 N 9th St
Milwaukee, WI 53233

ADMINISTRATIVE LAW JUDGE:

Kelly Cochrane
Division of Hearings and Appeals

FINDINGS OF FACT

- 1. Petitioner (CARES # [redacted]) is a resident of Milwaukee County and has been enrolled in the MA program called Family Care.
2. The petitioner's Family Care Case Manager reviewed the level of care the petitioner required by using the functional screen on April 24, 2014. The results of that screen indicated that he no

longer met the nursing home level of care. The Milwaukee County Department of Family Care notified the petitioner of this in writing on April 24, 2014. Exhibit 3; see also Exhibit 6.

3. On April 25, 2014 the Milwaukee County Department of Family Care notified the petitioner that his supportive home care (SHC) would terminate on May 10, 2014 because his level of care was at the non-nursing home level of care. Exhibit 4.
4. The petitioner is a 64-year-old man diagnosed with cognitive delay, arthritis, asthma, COPD, depression, joint disorder and a history of substance abuse disorder. He is not prescribed any medications and does not use any durable medical equipment. He is able to go to the corner store to make small purchases. He needs no assistance with Activities of Daily Living (ADLs). He can prepare simple meals (cereal, sandwich) but requires help with larger meals and grocery shopping. He needs assistance with laundry and does not drive. He can use the telephone without assistance. He does not require overnight care or supervision and is not working. He does not have a complicating condition that limits his ability to independently meet his needs.

### DISCUSSION

The petitioner has received Family Care Medical Assistance benefits at the nursing home level of care through the Milwaukee County Department of Family Care, which seeks to end his 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. Eligibility for the Family Care Program depends upon a person's meeting one of the program's target groups and upon his ability to function independently falling below a certain level. Wis. Admin. Code, §§ DHS 10.32 and 10.33. The Milwaukee County Department of Family Care 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, §DHS 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 tool showed that the petitioner did not meet the nursing home level of care; therefore the agency seeks to end the Family Care Home Based Waiver Services, which includes the SHC services he has received. While the petitioner has some limitations, the evidence presented at hearing still does not show that petitioner meets the nursing home level of care as described in Wis. Admin. Code, §DHS 10.33(2)(c). Therefore, I must uphold the agency’s decision finding that he is not entitled to services at this level. Petitioner is reminded that if his conditions worsen or if he develops better evidence, he may request another screen to determine the appropriate level of services.

### **CONCLUSIONS OF LAW**

1. The Milwaukee County Department of Family Care correctly determined that the petitioner no longer meets the level of care found in a nursing home.
2. The Milwaukee County Department of Family Care correctly seeks to terminate petitioner’s SHC services.

**THEREFORE, it is**

**ORDERED**

The petitioner's 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 9th day of September, 2014

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\sKelly Cochrane  
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 September 9, 2014.

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