



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

FCP/157807

PRELIMINARY RECITALS

Pursuant to a petition filed May 21, 2014, under Wis. Admin. Code § DHS 10.55, to review a decision by the Community Care Inc. in regard to Medical Assistance, a hearing was held on June 17, 2014, at Kenosha, Wisconsin.

The issue for determination is whether the agency properly determined the Petitioner is eligible for Family Care services at a non-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: Alma Booker

Community Care Inc.
205 Bishops Way
Brookfield, WI 53005

ADMINISTRATIVE LAW JUDGE:

Debra Bursinger
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner is a resident of Kenosha County.
2. Petitioner has been enrolled in the Family Care program since April, 2008. Her primary diagnosis is mild mental retardation. She lives independently in an apartment in the community.

3. On April 14, 2014, a Long Term Care Functional Screen (LTCFS) was completed by the agency. The agency assessed the Petitioner as independent with all activities of daily living including bathing, dressing, eating, mobility, toileting and transferring. She was also assessed as independent with meal preparation, money management, laundry/chores and telephone use. The agency assessed the Petitioner as unable to drive due to physical, psychiatric or cognitive impairment. She was noted as not requiring overnight care or supervision. She was reported to be working part-time in a work environment with tasks designed for people with disabilities. She was assessed as needing assistance to work weekly or less. It is noted that the staff at her employment report she has a productivity of 82% and is able to do numerous jobs and multi-task. The Petitioner was assessed as having no issues with communication, memory loss, cognition for daily decision-making, resistance to cares, wandering, self-injurious behaviors, offensive or violent behavior, mental health needs, substance use. There were no risk factors or evidence of abuse, neglect or exploitation noted. The Petitioner was assessed at a non-nursing home level of care.
4. Petitioner's Individual Service Plan was developed based on the April 14, 2014 review for the period of May 1, 2014 – October 31, 2014. It contains the following desired outcomes: explore other vocational opportunities; to remain social and participate in Special Olympics; to find alternate living arrangements.
5. On April 18, 2014, the agency issued a Notice of Action to the Petitioner terminating her pre-vocational and non-medical transportation services effective July 1, 2014 because those services are not available to individuals assessed at a non-nursing home level of care.
6. On May 13, 2014, a re-screen using the LTCFS was conducted per the Petitioner's request. The Petitioner was again found to be independent with all ADLs. She was observed to safely transfer in/out of tub, on/off toilet, on/off chair, in/out of bed, raise arms above head, reach fee, ambulate through apartment without sign or complaint of negative outcome. The Petitioner was again found to be independent with meal preparation and telephone use. There was a change in the assistance required for money management and laundry/chores. It was noted that the Petitioner has difficulty with basic math and has difficulty if there are changes in her bills/expenses. It was also noted that the Petitioner needs assistance with lawn care/snow removal due to right wrist pain. In addition, the agency changed the overnight care/supervision, noting that the Petitioner had difficulty stating accurate and safe steps to take in the event of a fire or tornado. Further, the agency noted that the Petitioner requires assistance with making routine daily decisions in new situations. The Petitioner was found to be failing or at high risk of failing to obtain nutrition, self-care or safety adequate to avoid significant negative health outcomes. The Petitioner was assessed at a non-nursing home level of care.
7. On May 27, 2014, the agency issued a Notice of Action to the Petitioner terminating her pre-vocational and non-medical transportation services effective July 1, 2014 because those services are not available to individuals assessed at a non-nursing home level of care.
8. On May 21, 2014, the Petitioner filed an appeal with the Division of Hearings and Appeals.

DISCUSSION

The Family Care program, which is supervised by the Department of Health Services, is designed to provide appropriate long-term care services for elderly or disabled adults. It is authorized in the Wisconsin Statutes, §46.286, and is described comprehensively in the Wisconsin Administrative Code, Chapter DHS 10.

Wis. Admin. Code, §DHS 10.33(2) provides that an FCP applicant must have a functional capacity level of comprehensive or intermediate; I note here that Wis. Stat., §46.286, uses the terms “nursing home” and “non-nursing home” levels. If the person meets the comprehensive (nursing home) level, the individual is

eligible for full services through a CMO, including Medical Assistance (MA). Wis. Admin. Code, §DHS 10.36(1)(a). If the person meets the intermediate (non-nursing home) level, s/he is eligible for full services only if the individual is in need of adult protective services, is financially eligible for MA, or is grandfathered as described in §DHS 10.33(3). Wis. Admin. Code, §DHS 10.36(1)(b). A person eligible under the non-nursing home level is eligible for less FCP services.

Wis. Admin. Code, §DHS 10.33(2)(c) describes comprehensive functional capacity (nursing home level of care):

(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.

Wis. Admin. Code, §DHS 10.33(2)(d) describes intermediate functional capacity (non-nursing home level of care):

d) 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.

ADLs include bathing, dressing, eating, mobility, and transferring. Wis. Admin. Code, §DHS 10.13(1m). IADLs include meal preparation, medication management, money management, laundry and chores, telephone, and transportation.

The Department has developed 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). The screener asks the applicant, or a recipient at a periodic review, 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 assessor then submits the Functional Screen Report for the person to the Department's Division of Disability and Elder Services. The Department enters the Long Term Functional Screen data into a computer program to see if the person meets any of the required levels of care.

If the assessor enters information into the functional screen correctly, then it is assumed that the computer will accurately determine the level of care. However, in the past it has been evident that the screen might miss the intermediate functional level for FCP cases because the specifics of the code definition do not necessary fit into the general definition of institutional care. Thus for FCP cases it is possible that a person could meet the code definition even if the person fails the functional screen.

In this case, the evidence clearly establishes that the Petitioner is eligible at a non-nursing home level of care. At the hearing, the Petitioner testified that she needs assistance with ADLs, specifically with hair care. The agency pointed out that the Petitioner has never indicated at any reviews that she is unable to do this task independently. Even if it was correct that she requires assistance with her hair, that would not change her level of care. She also testified that she needs assistance with cooking, laundry and cleaning. The agency again noted that the Petitioner has never reported needing such assistance in the past and the Petitioner concedes that she is able to make simple meals. Again, even if the Petitioner required some assistance with these tasks, it still would not change the level of care based on the requirements noted above. She clearly does not meet the requirements for nursing home level of care but does meet the requirements for non-nursing home level of care.

The Petitioner's primary concern at the hearing was the fact that she is on a waiting list for DVR and therefore is currently unable to access vocational services if she does not receive them through the Family Care program. These services are not available to the Petitioner at a non-nursing home level of care through the Family Care program. The agency noted that the Petitioner applied for DVR services in January, 2013 but took her name off the waiting list. When she recently re-applied, she was put back on the waiting list at the bottom and was told that it will be 3 – 5 months before she is able to access the services. She testified she was not aware she would be placed at the bottom of the list if she took her name off the list but the agency testified that this was clearly explained to her at the time. In any case, the lack of pre-vocational services or vocational services through DVR is not a basis to find her eligible at a nursing home level of care for the Family Care program. There was no evidence presented to demonstrate that she meets the nursing home level of care. Therefore, I conclude the agency properly determined that she is eligible for services at a non-nursing home level of care.

CONCLUSIONS OF LAW

The agency properly determined the Petitioner is eligible for Family Care at a non-nursing home level of care and properly terminated Petitioner's pre-vocational and non-medical transportation services.

THEREFORE, it is

ORDERED

That 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 31st day of July, 2014

\sDebra Bursinger
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 July 31, 2014.

Community Care Inc.
Office of Family Care Expansion