



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

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

FCP/158722

PRELIMINARY RECITALS

Pursuant to a petition filed June 26, 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, a hearing was held on August 12, 2014, at Milwaukee, Wisconsin.

The issue for determination is whether the agency properly discontinued the Petitioner’s supportive home care services.

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: Sharon Traner
Milw Cty Dept Family Care - MCO
901 N 9th St
Milwaukee, WI 53233

ADMINISTRATIVE LAW JUDGE:

Debra Bursinger
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Milwaukee County. He lives with his wife and grandchildren.

2. Petitioner's diagnoses include a history of stroke, cirrhosis, high cholesterol, arrhythmia, hypertension, myocardial infarct, anxiety disorder, a history of pneumonia and a history of fractured hip.
3. On April 18, 2014, the agency conducted a home visit with the Petitioner. The agency used the Long Term Care Functional Screen (LTCFS) to determine the Petitioner is independent with all activities of daily living (ADLs). It also determined that the Petitioner requires assistance with grocery shopping, laundry/chores and transportation. It determined that the Petitioner is independent with all other instrumental activities of daily living (IADLs).
4. On June 3, 2014, the agency issued a Notice of Action to the Petitioner informing him that the agency had determined his level of care changed from nursing home to non-nursing home.
5. A follow-up visit was conducted on July 22, 2014.
6. On June 26, 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, he 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, he is eligible for full services only if he is in need of adult protective services, he is financially eligible for MA, or he 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.

In a companion case, the agency's determination that the Petitioner is no longer eligible for the FC program at a nursing home level of care was upheld. See DHA Case No. FCP/158721. Supportive home care services are not available to persons at a non-nursing home level of care. See DHS Memo P-00088P (March, 2011). Because the Petitioner is no longer eligible at a nursing home level of care, I conclude that the agency properly discontinued the Petitioner's supportive home care services.

CONCLUSIONS OF LAW

The agency properly discontinued the Petitioner's supportive home care 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 9th day of September, 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 September 9, 2014.

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