



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]
[REDACTED]
Redact
[REDACTED]

DECISION

CWA/158930

PRELIMINARY RECITALS

Pursuant to a petition filed July 10, 2014, under Wis. Admin. Code § HA 3.03, to review a decision by the Milwaukee County Disability Services Division-DSD in regard to Medical Assistance, a telephonic hearing was held on September 30, 2014, at Milwaukee, Wisconsin. At the request of petitioner, a hearing set for September 3, 2014 was rescheduled. At the request of the parties, the record was held open for written closing arguments to be submitted to the Division of Hearings and Appeals (DHA) with a copy sent to the other party. Both parties timely submitted their statements to DHA which are received into the hearing record.

The issue for determination is whether the Milwaukee County Disability Services (DSD) correctly denied the petitioner's April 15, 2014 Family Care Program long term care application due to not meeting the functional level of care requirement.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
Redact
[REDACTED]

Respondent:

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

By: Priscilla Beadle, supervisor
Milwaukee Cty Disability Services Division-DSD
Attention: Mark Stein-DSD
1220 W. Vliet Street, Suite 300
Milwaukee, WI 53205

ADMINISTRATIVE LAW JUDGE:

Gary M. Wolkstein
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner is a 21 year old resident of Milwaukee County who lives with his family.
2. The petitioner is diagnosed with cognitive delay, learning disabilities in reading and reading comprehension, ADHD, Major Depressive disorder, asthma, anger problems, and chronic right great toe pain and hallux rigidus resulting in difficult ambulation and pair. See October 23, 2014 letter by Redact, MD.
3. The petitioner's family psychiatric history is notable for learning disabilities, schizophrenia, depression, and bipolar disorder.
4. Petitioner has a full scale IQ of 80. July 9, 2013 neuropsychological evaluation for Drs. Redact and Redact. Petitioner reported suicidal ideation, hearing voices, and family psychiatric history.
5. In his June 26, 2013 neuropsychological evaluation, it stated in pertinent part: "His main areas of weakness that would limit him are his reading problems, slowed processing speed, and impaired to low average verbal learning and memory. It is unlikely that he will be able to independently manage his finances, medical decision making, and many of the responsibilities that are required for independent living. He will need ongoing assistance with communication, complex decision making and home living." October 16, 2014 letter by Redact, MD.
6. On April 15, 2014, petitioner applied for Wisconsin's Publicly Funded long term care (PFLTC) services through Disabilities Services Division (DSD) Resource Center for persons with intellectual developmental (IDD) and physical disabilities (PD).
7. On May 6, 2014, disability resource center staff member, Redact, conducted an assessment home visit at the petitioner's home, and completed an initial Wisconsin computer based Long Term Care Functional Screen.
8. In the functional screen, Petitioner was found to need assistance with the following: a) ADLs – help needed with 1) bathing and 2) dressing (petitioner in both areas needs supervision, cueing, and hands-on-assistance); and b) IADLs –he needs assistance with 1) grocery shopping and meal preparation, 2) laundry and chores, 3) medication administration and management, 4) money management, and 5) transportation (petitioner does not drive).
9. On June 6, 2014, petitioner's Long Term Care Functional Screen (LTCFS) was calculated and petitioner was determined functionally ineligible for long term care services based upon him meeting the severe and persistent mental illness (SPMI) target group and not meeting the PD or IDD target group. As a result, petitioner was confirmed to be ineligible for long term care as calculated on July 17, 2014.
10. Milwaukee County Disabilities Services Division (DSD) sent a June 6, 2014 notice to the petitioner stating that his long term care services application was denied due to not meeting the functional level of care.

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 just as the agency in this case. If the person meets the **comprehensive (nursing home) level**, he is eligible for full services through a care management organization (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 or he is financially eligible for MA. 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:

(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:

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. The problem is that in many cases the result of the functional screen does not correspond with the administrative code provision. The code, for example, says that a person meets the comprehensive (nursing home) level of care if he cannot safely and appropriately perform two ADLs and at least one IADL.

In this case, petitioner cannot safely and appropriately bath without assistance due to his mental health issues, and he cannot dress without assistance due to "inappropriate dressing patterns." He also cannot grocery shop or perform chores without assistance, and he needs assistance with medication management, money management, and transportation. See Finding of Fact #8 above. The petitioner also meets the nursing home level of care for "person cannot safely or appropriately perform one or more ADL and 3 or more IADLs and has cognitive impairment" and "person cannot safely or appropriately perform 4 or more IADLs and has cognitive impairment" pursuant to §DHS 10.33(2)(c) as set forth above in bold print.

It is true that petitioner does not receive daily hands-on medical care. However, petitioner receives incidental services such as supportive home care services (the supportive home care worker is the person who helps him with bathing and dressing, non-medical money management, laundry and grocery shopping, transportation, and meals). He would lose those services with the non-nursing home FCP package, and I have difficulty understanding how he would get by without those services. Although the functional screen conclusion was that petitioner does not meet the nursing home level of care, such conclusion is incorrect as petitioner meet the nursing home level of care as it is defined in the Wisconsin Administrative Code. Accordingly, based upon the above, I conclude that the Milwaukee County Disability Services (DSD) incorrectly denied the petitioner's April 15, 2014 Family Care Program long term care application due to not meeting the functional level of care requirement.

CONCLUSIONS OF LAW

1. Petitioner meets the Family Care Program comprehensive (nursing home) level of care for long-term care eligibility based upon Wis. Admin. Code, §DHS 10.33(2)(c).
2. The Milwaukee County Disability Services (DSD) incorrectly denied the petitioner's April 15, 2014 Family Care Program long term care application due to not meeting the functional level of care requirement.

THEREFORE, it is

ORDERED

That the matter is remanded to the agency with instructions to continue processing petitioner's April 15, 2014 Family Care Program application for long-term care with the finding that he meets the nursing home level of care for functional eligibility purposes. The agency shall do so within 10 days of the date of his Decision.

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 23rd day of December, 2014

\sGary M. Wolkstein
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 December 23, 2014.

Milwaukee Cty Disability Services Division-DSD
Bureau of Long-Term Support