



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

FCP/159114

PRELIMINARY RECITALS

Pursuant to a petition filed July 15, 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 August 27, 2014, at Milwaukee, Wisconsin.

The issue for determination is whether the agency properly determined the Petitioner's level of care at a non-nursing home level of care and properly denied her Supportive Home Care (SHC) services as a result of the level of care determination.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]

I

Respondent:

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

By: Blair Burnham

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 Milwaukee County. She is 51 years old. Her diagnosis includes hypertension, arthritis, history of knee joint replacement, back pain, headaches, myalgia, degenerative disc disease, cognitive deficits, obesity.

2. On April 2, 2014, the agency's interdisciplinary team (IDT) did a home visit and assessment of the Petitioner.
3. On April 11, 2014 and April 17, 2014, the agency had additional visits with the Petitioner and completed a Long Term Care Functional Screen (LTCFS). The Petitioner was assessed as requiring partial assistance with bathing. She was assessed as independent with all other activities of daily living (ADLs). She was assessed as needing assistance with three Instrumental Activities of Daily Living (IADLs): meal preparation, laundry/chores and transportation. The team reported she was observed putting on shoes and socks, pulling up her pants and adjusting her pants independently. She was observed using her right hand to use her cell phone without any obvious pain. She was observed walking throughout the house to the bathroom and bedroom without distress or need for assistance. She reported being independent with toileting. She was observed to get in and out of bed independently. Petitioner was noted to need assistance with carrying groceries and carrying laundry up and down the stairs. She was reported to go downstairs to take out garbage without assistance.
4. On April 24, 2014, the agency completed a Resource Allocation Decision (RAD) Tool. The agency noted the Petitioner's history of knee replacement surgery, obesity, chronic back pain and arthritis. It noted that the Petitioner is currently at a non-nursing home level of care and needs assistance only with bathing. The agency noted that the Petitioner was observed to be able to complete all other tasks independently.
5. On April 28, 2014, the agency issued a Notice of Action to the Petitioner denying her request for SHC services.

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.

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, there is no dispute that the Petitioner needs assistance with bathing (1 ADL) and with three IADLs (meal preparation, laundry/chores, driving). The LTCFS notes that the Petitioner has cognitive deficits. Based on this evidence from the agency, I must conclude that the Petitioner meets the code definition for eligibility at a nursing home level of care and is, therefore, eligible for supportive home care services.

CONCLUSIONS OF LAW

The Petitioner is eligible at a nursing home level of care and is eligible for supportive home care services.

THEREFORE, it is

ORDERED

That this matter is remanded to the agency to take the administrative steps necessary to change the Petitioner's eligibility to nursing home level of care and take all steps necessary to determine the level of supportive home care services she requires. The agency shall issue a new notice to the Petitioner regarding its determination of the level of supportive home care services required with new appeal rights. These actions shall be completed within 10 days of the date of this decision.

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 16th day of September, 2014

\sDebra Bursinger
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 16, 2014.

Community Care Inc.
Office of Family Care Expansion