



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[Redacted]
[Redacted]
[Redacted]
[Redacted]

DECISION

CWA/159404

PRELIMINARY RECITALS

Pursuant to a petition filed July 28, 2014, under Wis. Admin. Code § HA 3.03, to review a decision by the Rock County Department of Social Services in regard to Medical Assistance, a hearing was held on December 04, 2014, at Janesville, Wisconsin.

The issue for determination is whether the agency erred in its determination that petitioner was ineligible for the waiver program because he no longer needed assistance with medication management.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[Redacted]
[Redacted]
[Redacted]
[Redacted]

Respondent:

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

By: Brian Arrowood
Rock County Department of Social Services
1900 Center Avenue
PO Box 1649
Janesville, WI 53546

ADMINISTRATIVE LAW JUDGE:

John P. Tedesco
Division of Hearings and Appeals

FINDINGS OF FACT

- 1. Petitioner (CARES # [Redacted]) is a resident of Rock County.

2. Petitioner was enrolled in the COP waiver program in August 2012. He was receiving supportive home care through the program.
3. Petitioner underwent his annual recertification for the program in July 2014.
4. At some point in the past, petitioner had been using a TENS unit therapy. On previous determinations of COP eligibility, the program had included his TENS therapy needs as a basis for finding that petitioner needed assistance with medication management as petitioner requires the assistance of another person to attach the device to his body.
5. Treatment was, at some point in the past, withdrawn. Petitioner's TENS unit was placed in storage.
6. On July 3, 2014, the agency representative met with petitioner and interviewed him regarding activities of daily living and instrumental activities of daily living.
7. A long term care functional screen was completed on 7/23/14. On this screen, the screener indicated that petitioner was independent for medication management because he was not using a TENS unit.
8. Analysis of the screen by DHS determined that petitioner was ineligible for the program. Notice was sent on 7/25/14 stating that enrollment would terminate effective 8/4/14.
9. Petitioner filed a request for hearing on July 28, 2014.
10. Petitioner obtained a new prescription for the use of a TENS unit from his physician on 8/7/14.
11. He purchased a TENS unit in November 2014 because he was unable to locate the one previously purchased with MA funds.

### DISCUSSION

COP-W is classified as an "MA waiver" program and is one of four programs in Wisconsin which uses Medical Assistance funds to facilitate community placement for disabled persons who otherwise would be institutionalized. Wis. Stat., §46.277. The three other programs are CIP-1A, CIP-1B, and CIP-II. The policies for the program are set forth in the department's MA Waivers Manual. The manual is found on the internet at [www.dhs.wisconsin.gov/ltc\\_cop/waivermanual/index.htm](http://www.dhs.wisconsin.gov/ltc_cop/waivermanual/index.htm).

In order to receive COP-W and/or CIP-II services an individual must qualify for care reimbursable by the MA program in a skilled nursing facility or an intermediate care facility. Medicaid (MA) Home & Community-Based Waivers Manual Ch. II, p. II-13. The Manual states the level of care standard as follows:

**C. CIP II and COP-W and Level of Care** Level of care eligibility for CIPII/COP-W is established when the applicant meets a level of care reimbursable by Medicaid in a skilled nursing facility (SNF) or an intermediate care facility (ICF). Beginning January 1, 2005 all initial level of care determinations and annual re-determinations of level of care are accomplished using the Wisconsin Adult Long Term Care Functional Screen (LTC-FS). Waiver eligibility is established with a determination of a qualifying Nursing Home LOC, as indicated on the LTC-FS Eligibility Results screen.

A screen result of Intensive Skilled Nursing (ISN) or Skilled Nursing Facility (SNF) is equivalent to HSRS Level 1. A screen result of Intermediate Care Facility (ICF-1 or ICF-2) is equivalent to HSRS Level II.

Id. 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. In this case, I find that the screen was completed correctly. It is undisputed that the material change in the functional screen that resulted in the lack of eligibility was that petitioner was found not to need assistance with medication management. Specifically, petitioner had been using a device called a TENS Unit. This device is described on the WebMD website as follows:

*Transcutaneous electrical nerve stimulation (TENS) is a therapy that uses low-voltage electrical current for pain relief.*

*You do TENS with a small, battery-powered machine about the size of a pocket radio. Usually, you connect two electrodes (wires that conduct electrical current) from the machine to your [skin](#). The electrodes are often placed on the area of pain or at a pressure point, creating a circuit of electrical impulses that travels along nerve fibers.*

*When the current is delivered, some people experience less pain. This may be because the electricity from the electrodes stimulates the nerves in an affected area and sends signals to the [brain](#) that block or "scramble" normal pain signals. Another theory is that the electrical stimulation of the nerves may help the body to produce natural painkillers called endorphins, which may block the perception of pain.*

*You can set the TENS machine for different wavelength frequencies, such as a steady flow of electrical current or a burst of electrical current, and for intensity of electrical current. Your physical therapist, acupuncturist, or doctor usually determines these settings.*

*After you receive an introduction to and instruction in this therapy, you can do TENS at home.*

*What is TENS used for?*

*People use TENS to relieve pain for several different types of illnesses and conditions. They use it most often to treat muscle, joint, or bone problems that occur with illnesses such as [osteoarthritis](#) or [fibromyalgia](#), or for conditions such as low [back pain](#), [neck pain](#), [tendinitis](#), or [bursitis](#). People have also used TENS to treat sudden (acute) pain, such as labor pain, and long-lasting (chronic) pain, such as [cancer](#) pain.*

*Although TENS may help relieve pain for some people, its effectiveness has not been proved.*

See URL: <http://www.webmd.com/pain-management/tc/transcutaneous-electrical-nerve-stimulation-tens-topic-overview>.

Petitioner was previously determined to need assistance with medication management because he needed assistance with the process of attaching the TENS electrodes to his body. At the time of the most recent functional screen, the TENS unit petitioner had been using was in his storage locker and he was not using it. He did not, at the time of the screen, have a valid prescription for its use. After he was found to be no longer eligible for the program, he purchased a TENS unit and stated that he would like to use it. There was no testimony presented by a provider or therapist as to the value of the therapy, its medical necessity or value to petitioner. Indeed, it appears that petitioner's urgency about getting the TENS therapy is tied directly to the finding of ineligibility for the waiver program rather than some actual need.

I conclude that the agency correctly determined that petitioner no longer meets the level of care requirement for COP-W. At the time petitioner was found ineligible, he was not using a TENS unit. At hearing, petitioner failed to present evidence that such therapy is necessary or appropriate. Certainly, petitioner may elect to apply for an MA program and persuade the agency that such therapy is appropriate. But, the agency did not err in its discontinuance of the eligibility while petitioner was not receiving the therapy as he did not need the assistance. He only obtained a medical order after his termination was effective.

### **CONCLUSIONS OF LAW**

Petitioner does not meet the required level of care for COP-W eligibility.

**THEREFORE, it is** **ORDERED**

That the petition for review herein be and the same is hereby dismissed.

### **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 29th day of December, 2014

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\sJohn P. Tedesco  
Administrative Law Judge  
Division of Hearings and Appeals



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The preceding decision was sent to the following parties on December 29, 2014.

Rock County Department of Social Services  
Bureau of Long-Term Support