



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

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

CWA/159832

PRELIMINARY RECITALS

Pursuant to a petition filed August 14, 2014, under Wis. Admin. Code, §HA 3.03, to review a decision by the Milwaukee County Disability Services Division (DSD) in regard to long term care services, a hearing was held on September 18, 2014, by telephone.

The issue for determination is whether petitioner meets the nursing home level of care for long term care purposes.

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]

Petitioner's Representative:

[REDACTED]
[REDACTED]
[REDACTED]

Respondent:

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

By: Regina Cooper
Milwaukee County DSD
1220 W. Vliet Street, Suite 300
Milwaukee, WI 53205

ADMINISTRATIVE LAW JUDGE:

Brian C. Schneider
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner is a resident of Milwaukee County.
2. Petitioner is 49 years old. Her medical conditions include diabetes, arthritis, history of hip replacement, chronic pain, asthma, bi-polar disorder, and seizure disorder.
3. On June 5, 2014 an agency nurse assessor completed a long term functional screen. The conclusion from the screen was that petitioner met the non-nursing home level of care.

4. Petitioner was found to need assistance with entering and exiting a bath tub and with washing her lower body. She needs assistance with dressing her lower body and in particular with shoes and socks. She needs assistance with grocery shopping, laundry and chores, medication management, and transportation.

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, she 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, she is eligible for full services only if she is in need of adult protective services or she 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 she cannot safely and appropriately perform two ADLs and at least one IADL. In this case, petitioner cannot safely and appropriately bath without assistance getting into and out of the tub, and she cannot dress without assistance putting on shoes and socks. She also cannot grocery shop or perform chores without assistance, and she needs assistance with transportation due to physical impairments.

I conclude, therefore, that although the functional screen conclusion was that petitioner does not meet the nursing home level of care, she actually meets it as it is defined in the Wisconsin Administrative Code.

I note that I am aware of a proposed decision that says that the IRIS program does not necessarily follow the administrative code provisions of Chapter DHS 10. That particular case involved a discontinuance of IRIS services. In this case petitioner has not elected to participate in a particular program. She simply applied for long-term care, and only after meeting the level of care does she elect to participate in Family Care, IRIS, or another program if available. Thus I cannot hold petitioner to the finding in the proposed decision because she can elect Family Care, and she meets the nursing home level for that program.

CONCLUSIONS OF LAW

Petitioner meets the comprehensive (nursing home) level of care for long-term care eligibility.

THEREFORE, it is

ORDERED

That the matter be remanded to the agency with instructions to continue processing petitioner's application for long-term care with the finding that she meets the nursing home level of care for functional eligibility purposes. The agency shall do so within 10 days of this decision subject to necessary delays for verification and other processing needs.

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 26th day of September, 2014

\sBrian C. Schneider
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 26, 2014.

Milwaukee Cty Disability Services Division-DSD
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