



STATE OF WISCONSIN  
Division of Hearings and Appeals

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In the Matter of

[REDACTED]  
[REDACTED]  
[REDACTED]

DECISION

FCP/160124

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**PRELIMINARY RECITALS**

Pursuant to a petition filed August 25, 2014, under Wis. Admin. Code § DHS 10.55, to review a decision by the Milwaukee County Department of Family Care - MCO in regard to Medical Assistance, a hearing was held on October 07, 2014, at Milwaukee, Wisconsin.

The issue for determination is whether the petitioner continues to meet the nursing home level of care.

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: Liz Kirsch

Milwaukee County Department of Family Care - MCO  
901 N 9th St  
Milwaukee, WI 53233

**ADMINISTRATIVE LAW JUDGE:**

Peter McCombs (telephonically)  
Division of Hearings and Appeals

**FINDINGS OF FACT**

1. Petitioner (CARES # [REDACTED]) is a resident of Milwaukee County.
2. The petitioner is an ongoing recipient of Family Care Medical Assistance benefits, which she receives through the Milwaukee County Department of Family Care - MCO.
3. Respondent reviewed the level of care the petitioner required by updating petitioner's long term care functional screen in July, 2014. The results of that screen indicated that she no longer met

the nursing home level of care. Respondent notified the petitioner of this in writing on August 8, 2014.

4. The petitioner is a 58-year-old woman diagnosed with arthritis, insomnia, diabetes, depression, hyperlipidemia, hypertension, GERD, and chronic pain. Petitioner lives alone in a lower duplex.
5. The petitioner cannot do laundry at her home without assistance because she cannot use stairs. She also needs assistance with yard work and other strenuous household chores.
6. The petitioner bathes, moves about her house, and transfers herself without assistance. She needs some assistance putting on her back brace, but is independent in dressing herself.
7. The petitioner can prepare meals but requires transportation assistance for grocery shopping. She can administer her own medication, manage her own money, and use the telephone without assistance.
8. The petitioner has no severe cognitive impairments.
9. The petitioner has no complicating condition that limits her ability to independently meet her needs

### DISCUSSION

The petitioner has received Family Care Medical Assistance benefits at the nursing home level of care through the respondent, which seeks to end her eligibility. The Family Care Program is a health-service delivery system authorized by Wis. Stat. § 46.286 and comprehensively described in Wis. Admin. Code, Chapter DHS 10. It is designed to increase the ability of the frail elderly and those under 65 with disabilities to live where they want, participate in community life, and make decisions regarding their own care. It places a recipient under the roof of a single private provider that receives a uniform fee, called a capitation rate, for each person it serves. The provider is responsible for ensuring that the person receives all the Medicaid and Medicare services available to her. The theory behind the program is that it will save money by providing recipients with only the services they need rather than requiring that they enroll in several programs whose services may overlap. Each CMO signs a contract with the State of Wisconsin that sets forth exactly what services it must provide.

Eligibility for the Family Care Program depends upon a person meeting one of the program's target groups and upon her ability to function independently falling below a certain level. Wis. Admin. Code, §§ DHS 10.32 and 10.33. Respondent contends that the petitioner no longer meets the nursing home level of care.

The nursing home level of care, which is also referred to as the comprehensive level of care, is described as follows at Wis. Admin. Code, § DHS 10.33(2)(c):

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.

Activities of daily living, or ADLs, refer to “bathing, dressing, eating, mobility, transferring from one surface to another such as bed to chair and using the toilet.” Wis. Admin. Code, § DHS 10.13(1m). Instrumental activities of daily living, or IADLs, refer to “management of medications and treatments, meal preparation and nutrition, money management, using the telephone, arranging and using transportation and the ability to function at a job site.” Wis. Admin. Code, § 10.13(32)

Agencies must determine eligibility using a uniform functional screening tool prescribed by the Department. Wis. Admin. Code, § DHS 10.33(2)(a). The petitioner is a 58-year-old woman. She has no severe mental disabilities; nor does she have any of the other complicating conditions mentioned in Wis. Admin. Code, § DHS 10.33(2)(c)6. She is diabetic, and has chronic pain issues. Nevertheless, she bathes, dresses herself, moves about her house, uses the toilet, and transfers herself without assistance. Although she can perform these tasks, many are difficult for her.

Because she has no significant cognitive issues or complicating conditions, and she has not shown that she cannot perform at least two activities of daily living, she must prove that she cannot adequately perform at least five instrumental activities of daily living. She cannot do her laundry at home because she cannot go up and down steps, and she requires transportation help grocery shopping. However, she independently uses the telephone, and manages her own money and medication. Because she has not established that she cannot perform at least five instrumental activities of daily living, she does not meet the nursing home level of care. Therefore, I must uphold the agency’s decision finding that she is not entitled to services at this level.

At hearing, the respondent specifically complained about the lack of transportation benefits. Services that can be provided to non-nursing home level recipients are seen at [www.dhs.wisconsin.gov/LTCare/StateFedReqs/cy2014mcocontract-amendmnt1.pdf](http://www.dhs.wisconsin.gov/LTCare/StateFedReqs/cy2014mcocontract-amendmnt1.pdf), which is the Department’s contract with the various MCOs. The allowed services are found at Addendum X.B (page 289 of the document) as referenced from page 81, “*Services for Members at the Non-Nursing Home Level of Care – Family Care.*” The services found at Addendum X.B do not include non-medical transportation. There is a reference to transportation services as defined in the Wis. Admin. Code, §DHS 107.23, but that section specifically discusses transportation to medical services.

Non-medical transportation services cannot be provided by the MCO based upon petitioner’s level of care determination. In other words, the respondent cannot offer these services anymore because petitioner no longer meets the nursing home level of care.

**CONCLUSIONS OF LAW**

Respondent correctly determined that the petitioner no longer meets the level of care found in a nursing home.

**THEREFORE, it is**

**ORDERED**

The petitioner's appeal is 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 10th day of November, 2014.

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\sPeter McCombs  
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 November 10, 2014.

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