



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of



DECISION

CWA/160178

PRELIMINARY RECITALS

Pursuant to a petition filed August 26, 2014, under Wis. Admin. Code § HA 3.03, to review a decision by the Bureau of Long-Term Support in regard to Medical Assistance, a telephone hearing was held on October 07, 2014, at Milwaukee, Wisconsin.

The issue for determination is whether petitioner continues to meet the level of care requirement for IRIS.

There appeared at that time the following persons:

PARTIES IN INTEREST:

Petitioner:



Petitioner's Representative:



Respondent:

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

By: Amanda Justman
Bureau of Long-Term Support
1 West Wilson
Madison, WI

ADMINISTRATIVE LAW JUDGE:

Peter McCombs
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # ) is a resident of Milwaukee County. He suffers from Chronic Obstructive Pulmonary Disease and shortness of breath.

2. Following petitioner's annual Long Term Care Functional Screen, the respondent notified the petitioner on August 20, 2014, that the results of the Functional Screen indicate that he no longer meets the nursing home level of care.
3. The petitioner can bathe, dress himself, eat, and use the toilet, without assistance.
4. The petitioner requires assistance with mobility in home, and presently uses a cane and a power wheelchair in his home. The petitioner also requires assistance with transferring. See, Exhibit R-3.
5. The petitioner can manage his medication independently. Exhibit R-3
6. The petitioner needs assistance with obtaining groceries, money management, laundry and household chores, and transportation.
7. The petitioner does not have a developmental disability that requires specialized services; impaired cognition exhibited by memory deficits or disorientation to person, place or time; or impaired decision-making ability exhibited by wandering, physical abuse of self or others, self-neglect or resistance to needed care.

DISCUSSION

The petitioner seeks to continue enrollment in the Wisconsin IRIS program, a fee-for-service alternative to the Family Care and Partnership programs for individuals requesting a long-term care support program in Family Care counties. *Medicaid Eligibility Handbook*, § 37.1.1. IRIS, which stands for "Include, Respect, I Self-Direct," requires potential recipients to reside in a county with Family Care, have a nursing home level of care, and meet MA Waiver financial and non-financial criteria. *Id.*, 37.1.3. The agency contends the petitioner no longer meets the required 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. Adm. 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.

Wis. Adm. Code, § DHS 10.33(2)(c).

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. Adm. 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. Adm. Code, § 10.13(32)

Agencies must determine eligibility using a uniform functional screening tool prescribed by the Department. Wis. Adm. Code, § DHS 10.33(2)(a). The problem with this requirement is that the Department has changed the screening tool to better comply with the federal government’s long-term waiver provisions, but it has not changed the administrative code to reflect these changes. *See DHA Decision No. CWA/155857*. Because the administrative code has the force of law, I must follow it rather than the screening tool.

As noted in Findings of Fact number 4 and number 6, petitioner cannot safely or appropriately perform 2 ADLs and four IADL’s. As such, he meets the nursing home level of care requirements set forth in the Wisconsin Administrative Code. Wis. Admin. Code, § DHS 10.33(2)(c)2. The record does not disclose whether petitioner meets all other IRIS eligibility criteria. This matter shall be remanded to the respondent to determine that petitioner does meet the nursing home level of care and to continue its eligibility determination process from there.

CONCLUSIONS OF LAW

The petitioner meets the nursing home level of care.

THEREFORE, it is

ORDERED

That this matter is remanded to the county agency with instructions that it (1) determine that petitioner meets the nursing home level of care, and (2) re-determine petitioner’s IRIS eligibility, and provide petitioner with written notice of the re-determination results. All actions required by this Order shall be completed within 10 days following the date of this 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 10th day of November, 2014.

\sPeter McCombs
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

Brian Hayes, Administrator
Suite 201
5005 University Avenue
Madison, WI 53705-5400

Telephone: (608) 266-3096
FAX: (608) 264-9885
email: DHAmail@wisconsin.gov
Internet: <http://dha.state.wi.us>

The preceding decision was sent to the following parties on November 10, 2014.

Bureau of Long-Term Support
elizabethm@drwi.org