



FH

Redact

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

In the Matter of:

Redact

DECISION

CWA/160227

PRELIMINARY RECITALS

Pursuant to a petition filed August 28, 2014, under Wis. Admin. Code § HA 3.03, to review a decision by the Rock County Department of Social Services ["County"] in regard to Medical Assistance ["MA"], a Hearing was held via telephone on December 9, 2014. At petitioner's request Hearings scheduled for November 25, 2014 and October 14, 2014 were rescheduled.

The issue for determination is whether petitioner is eligible for MA Community Options Program Waiver ["COP-W"] services.

There appeared at that time via telephone the following persons:

PARTIES IN INTEREST:

Petitioner:

Redact

Respondent:

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

BY: Jodi Timmerman, Deputy Corporation Counsel
Rock County Department of Social Services
1900 Center Avenue
PO Box 1649
Janesville, WI 53546

ADMINISTRATIVE LAW JUDGE:

Sean P. Maloney
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # Redact; 69 years old) is a resident of Rock County, Wisconsin.
2. Petitioner applied at the County for COP-W services; by a letter dated August 25, 2014 entitled *Human Services Agency Action Notice* the County notified petitioner that his application for COP-W services was denied because he did not meet a nursing home level of care.
3. Petitioner has diagnosis of diabetes, thyroid disease, GERD, peptic ulcer, hyperlipidemia, pituitary adenoma, hypertension, arthritis, COPD, bipolar disorder, and paranoid schizophrenia.
4. On August 22, 2014 the County completed a *Long Term Care Functional Screen Report* ["LTCFSR"] for petitioner; in completing that report the County used all the information that was available to it but the available information was limited because petitioner would not sign all of the release of information forms that were requested of him.
5. The LTCFSR was completed after a visit with petitioner in his home on August 11, 2014 when he was observed bending, walking, standing up, and holding items and found that he is independent with: bathing (he states that he needs help standing, holds grabs bars, and sometimes faints), dressing (he states that he must stand or lean against something), eating, mobility in home (he states that he sometimes must hold onto the wall when he walks and has problems falling down, fainting, and blacking out), toileting (he is not incontinent), transferring (he states that he sometimes gets dizzy); meal preparation (he states that he gets exhausted quickly when standing); money management; telephone; transportation (he drives and has his own car); the LTCFSR found that petitioner needs help 1 to 2 days per week or less with medication (he gets confused) and needs help 1 time per week or less with laundry; petitioner requires assistance with mowing and snow removal.

DISCUSSION

COP-W is run according to the terms of waivers that were granted to the State of Wisconsin by the United States government. The waivers allow the State of Wisconsin to operate COP-W without following all of the rules that normally apply to MA. Wis. Stat. §§ 46.27(11) (2011-12); See also, 42 U.S.C.A. § 1396n(c) (2000 Supplementary Pamphlet) and 42 C.F.R. §§ 435.217, 440.180 & 441.300 et. seq. (2012).

COP-W is a source of funding for long-term support for people who would otherwise face institutional care. COP-W was developed to provide eligible persons a safe community alternative to institutional placement. *Medicaid Home & Community-Based Waivers Services Manual* ["Waivers Manual"], §§ 1.01, 2.01.2 & 2.07.C. (January 2010).

In order to qualify for COP-W services, with certain exceptions not applicable here, a person's functioning must be such that they would otherwise require institutional care. Wis. Stat. §§ 46.27(11), & 46.27(6r)(b) (2011-12); Waivers Manual, §§ 2.01.2 & 2.07.C. (January 2010). The evidence in the record of this matter is that petitioner's functioning is not such as to make him in need of institutional care. Therefore, the County's denial of COP-W services to petitioner must be upheld.

Petitioner disputes many of the findings contained in the LTCFSR. He states that the denial is "based on incorrect medical [sic] and clinical information." He states that the LTCFSR "does not include a brain tumor which was operated on 12-3-2010 and still exists." However, the LTCFSR was completed after a visit with petitioner in his home when he was observed bending, walking, standing up, and holding items. Further, the information available for the LTCFSR was limited because petitioner did not sign all of the release of information forms that were requested of him. Petitioner may, if he wishes, request that another LTCFSR be completed if he is now willing to sign all of the requested releases.

Finally, it is noted that petitioner provided a note from a medical doctor dated July 8, 2013 stating that "he needs a live in aide / home care provider to help with ADLs." However, the determination of a person's level of care must be based on their current functional status, not merely on a conclusory statement made a medical doctor. Further, the note provided by petitioner is over a year old.

CONCLUSIONS OF LAW

For the reasons discussed above, petitioner is not eligible for MA COP-W services.

NOW, 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 15th day of December, 2014

\sSean P. Maloney
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 December 15, 2014.

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