



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

CWA/161235

PRELIMINARY RECITALS

Pursuant to a petition filed October 14, 2014, under Wis. Admin. Code, §HA 3.03, to review a decision by the Rock County Dept. of Social Services to deny Community Waiver eligibility, a hearing was held on November 13, 2014, by telephone.

The issue for determination is whether petitioner meets the level of care requirement for Community Waivers eligibility.

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]

Respondent:

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

By: Shannon Smith
ADRC of Rock County
1900 Center Avenue
Janesville, WI 53546

ADMINISTRATIVE LAW JUDGE:

Brian C. Schneider
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner is an 85-year-old resident of Rock County.
2. Petitioner applied for a Community Waiver program in the summer, 2014. A referral for a functional assessment was received by the agency on August 27, 2014.
3. Petitioner's primary medical diagnoses are coronary artery disease, chronic pain/fatigue, and legal blindness. The assessor found that petitioner is independent in bathing, dressing, toileting,

mobility, and transferring. He has adaptive equipment to use for bathing, toileting, and mobility. He needs some assistance with eating.

4. Petitioner needs some assistance with meal preparation and grocery shopping, medication administration, laundry and chores, and transportation.
5. By a notice dated October 1, 2014, the agency informed petitioner that he did not meet the nursing home level of care for Community Waiver eligibility.

DISCUSSION

Petitioner applied for an “MA waiver” program. There are four such programs in Wisconsin that use Medical Assistance funds to facilitate community placement for disabled persons who otherwise would be institutionalized. They are CIP-1A, CIP-1B, CIP II, and COP-W. The policies for the programs are set forth in the department’s Medicaid (MA) Home & Community-Based Waivers Manual. The manual is found on the internet at www.dhs.wisconsin.gov/ltc_cop/waivermanual/index.htm. Specifically CIP-II and COP-W are for elderly and disabled individuals; the other two are for developmentally disabled individuals. Petitioner would fall within COP-W or CIP-II.

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 questions about his 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. The screener showed that petitioner was independent in activities of daily living but noted his use of a grab bars and a cane. The instrumental activities of daily living also were compiled correctly, noting in particular petitioner’s need for help with preparing meals and his total need for assistance with transportation. Petitioner’s need for assistance with other various activities also was noted.

With those entries the computer determined that petitioner does not need at least an ICF level of care, and I must agree. The Department formerly used a “paper” manual called the MA Waivers Manual. Although that manual has been discontinued, I note its description of the ICF level of care. It described the types of services generally provided for ICF-2 level individuals to include administration of medication, performance of special nursing techniques, prophylactic and palliative skin care, routine care in connection with assistive devices such as casts and braces, and instructing patients in basic health needs. Obsolete MA Waivers Manual, Appendix F, page 171. On the other hand, that same MA Waivers Manual, in the same appendix, described a person who does not meet the required level of care: "No nursing care is needed. Emphasis is on activities/social services. Simple medications may be self-administered. Independently performs most personal cares. Independently mobile." Id., page 172.

It is clear that petitioner’s primary needs are supportive, such as meal preparation, laundry, and chores. Those are not the types of cares that would necessitate nursing home placement. Petitioner’s condition is much like the second example mentioned in the obsolete manual mentioned above – he does not receive nursing care, he independently performs his personal cares, and he is independently mobile. I fully appreciate that petitioner needs the supportive services, but to be eligible for the programs at issue he would need more hands on assistance than simply help with meal preparation, laundry, and chores. I must conclude that the denial was correct.

CONCLUSIONS OF LAW

The agency correctly determined that petitioner does not meet the level of care required for Community Waivers 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 20th day of November, 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 November 20, 2014.

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