



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[Redacted]
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DECISION

FCP/161718

PRELIMINARY RECITALS

Pursuant to a petition filed November 5, 2014, under Wis. Admin. Code, §DHS 10.55, to review a decision by Community Care Inc. in regard to Family Care Program (FCP) eligibility, a hearing was held on December 3, 2014, by telephone.

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

PARTIES IN INTEREST:

Petitioner:

[Redacted]
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Petitioner's Representative:

[Redacted]
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Respondent:

Department of Health Services
1 West Wilson Street, Room 651
Madison, Wisconsin 53703
By: Heather Neumann
Community Care Inc.
205 Bishops Way
Brookfield, WI 53005

ADMINISTRATIVE LAW JUDGE:

Brian C. Schneider
Division of Hearings and Appeals

FINDINGS OF FACT

- 1. Petitioner (CARES # [Redacted]) is a resident of Milwaukee County.
2. In early October, 2014, petitioner requested that he be screened for FCP eligibility (he previously had been screened and been denied). On October 20, 2014, two agency representatives met with him to do the screening. By a notice dated October 22, 2014, the agency denied the request after the functional screening concluded that he did not meet a nursing home level of care.

3. Petitioner has a number of diagnoses including heart disease, esophagitis, vitamin D deficiency, and anemia. He uses depends on continuous oxygen treatment.
4. Petitioner requires occasional assistance with bathing and dressing, particularly on bad days. He otherwise is independent in activities of daily living (ADLs).
5. Petitioner requires assistance in meal preparation, laundry/chores, and transportation, which are instrumental activities of daily living (IADLs).

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, he 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, he is eligible for full services only if he is in need of adult protective services or he 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 he cannot safely and appropriately perform two ADLs and at least one IADL. In this case petitioner is listed as needing assistance with two ADLs and more than one IADL, yet the functional screen has found him to be short of the nursing home level of care. Perhaps the difference lies in the definition of "safely and appropriately." Is a person who needs assistance only some of the time able to safely and appropriately handle his own ADLs most of the time and thus not at the nursing home care level? In reviewing a number of decision by this office, however, that distinction is not made, and I know of no Department direction suggesting that a person needing assistance some of the time does not meet the administrative code requirements.

Based on the above, I conclude that petitioner needs assistance with two ADLS and three IADLs, which puts him at the nursing home (comprehensive) care level.

CONCLUSIONS OF LAW

Petitioner meets the nursing home level of care for FCP purposes.

THEREFORE, it is

ORDERED

That the matter be remanded to the agency with instructions to process petitioner's October, 2014 FCP application with petitioner classified at the comprehensive (nursing home) level of care. The agency shall implement this decision within 10 days of its date.

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 11th day of December, 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 December 11, 2014.

Community Care Inc.
Office of Family Care Expansion

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