



FH  
[REDACTED]

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

---

In the Matter of

[REDACTED]  
[REDACTED]  
[REDACTED]

DECISION

FCP/161087

---

**PRELIMINARY RECITALS**

Pursuant to a petition filed October 02, 2014, under Wis. Admin. Code § DHS 10.55, to review a decision by the Community Care Inc. in regard to Medical Assistance, a hearing was held on January 13, 2015, at Kenosha, Wisconsin.

The issue for determination is whether the agency correctly determined that petitioner no longer meets the level of care required for FCP eligibility.

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: Terri Ramage  
Community Care Inc.  
205 Bishops Way  
Brookfield, WI 53005

**ADMINISTRATIVE LAW JUDGE:**

Corinne Balter  
Division of Hearings and Appeals

**FINDINGS OF FACT**

1. The petitioner (CARES # [REDACTED]) is a resident of Kenosha County.
2. The petitioner was receiving services through the Family Care Program (FCP).

3. On June 27, 2014 [REDACTED], an RN in the FCP conducted a long term care functional screen to determine the petitioner's eligibility for the FCP. The screen showed that the petitioner was independent in all of her ADLs and most of her IADLs. The petitioner needed assistance with transportation and heavy cleaning. Otherwise, the petitioner was independent.
4. On September 17, 2014 [REDACTED] completed a second long term care functional screen. This screen yielded the same results as the first screen.
5. On October 9, 2014 [REDACTED] completed a third long term care functional screen. This screen yielded the same results as the first and second screens.
6. FCP provided notice to the petitioner that they were terminating her from the FCP because she no longer met the level of care required for FCP eligibility.
7. On October 10, 2014 the Division of Hearings and Appeals received the petitioner's request for fair hearing.
8. The petitioner has two other appeals. These other appeals address other issues related to family care including whether Family Care correctly terminated the petitioner's meals on wheels and ensure. Those issues are addressed in the other decisions.

### 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. Adm. 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, she is eligible for full services through a care management organization (CMO), including Medical Assistance (MA). Wis. Adm. 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, he is financially eligible for MA, or she is grandfathered as described in §DHS 10.33(3). Wis. Adm. Code, §DHS 10.36(1)(b). A person eligible under the non-nursing home level is eligible for less FCP services.

Wis. Adm. 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. Adm. 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.

The petitioner does not meet either level under those standards. ADLs include bathing, dressing, eating, mobility, and transferring. Wis. Adm. Code, § DHS 10.13(1m). IADLs include meal preparation, medication management, money management, laundry and chores, telephone, and transportation. Critical IADLs include management of medications and treatments, meal preparation and nutrition, and money management. Family Care did three separate functional screens. Each screen showed that the petitioner was independent in all ADLs and critical IADLs. The petitioner needs help with some IADLs, but none of the critical IADLs. This screen was completed by an RN from Family Care. I find all the screens and the RNs testimony credible.

I have reviewed all of the evidence in this case, and there is no credible evidence that the petitioner needs help with one or more ADL or one or more critical IADL. In looking at the ADLs and IADLs most of these are physical in nature. By all accounts the petitioner is in fairly good physical shape. She testified that she has pain in her face at times, which limits her ability to go outside. However, the ADLs and IADLs are completed inside the home. There is no credible evidence that the pain in the petitioner's face and eyes would inhibit the petitioner from completing her ADLs and IADLs on a regular basis.

I note that the medical records submitted by the petitioner corroborate Family Care's functional screen and testimony that the petitioner is independent with her ADLs and critical IADLs. The petitioner appears to have relatively routine medical conditions with the exception of her mental health history. There is nothing in the medical records that would tend to show that this petitioner needs assistance with ADLs or critical IADLs. In addition, the pictures sent by the petitioner show that the petitioner is well-kept in a well-kept home. Her cats by all accounts are very well cared for.

The petitioner suffers from mental illness. The medical records show that the petitioner takes medication for her mental health diagnosis. The petitioner exhibited some bizarre behavior. For example, one week the petitioner called my direct phone number 60 times. Although I did not listen to the petitioner's

messages, the beginning of the messages were ramblings. At one point during the hearing the petitioner repeatedly referred to a Little Red Riding book. She then called another ALJ in my office to inquire about her Little Red Riding Hood book. Despite this bizarre behavior, the petitioner appears fairly well oriented when talking about the present. The petitioner knew where she was, when her appointments were, she knew about her case, and the significance of this case. The petitioner was also able to obtain a large volume of documents that she submitted for my review.

I do not believe that the petitioner's inconsistent and at times difficult to follow testimony is enough to meet her burden in showing that family care incorrectly determined that she no longer meets the level of care required for FCP eligibility. At one point the petitioner testified that she was unable to prepare her own meals. At a different point she said that she could prepare her own meals. Some of the petitioner's incredibility was due to her own confusion. However, Family Care did three separate screens where an RN observed the petitioner complete ADLs and IADLs. The medical records do not mention that the petitioner needs assistance with ADLs or critical IADLs. The petitioner's testimony is not enough to overcome three separate functional screens.

The petitioner has mental health issues, but these issues are not to a level where she would qualify for the FCP. The petitioner may contact the Kenosha County Human Services Department to see if there are other community resources available to help her.

### CONCLUSIONS OF LAW

Family Care correctly determined that petitioner no longer meets the level of care required for FCP eligibility.

**THEREFORE, it is**

**ORDERED**

That the petition 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 Milwaukee,  
Wisconsin, this 20th day of January, 2015

---

\sCorinne Balter  
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](mailto:DHAmail@wisconsin.gov)  
Internet: <http://dha.state.wi.us>

The preceding decision was sent to the following parties on January 20, 2015.

Community Care Inc.  
Office of Family Care Expansion