



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

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

FCP/161105

PRELIMINARY RECITALS

Pursuant to a petition filed October 7, 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 22, 2015, by telephone. Hearings set for November 25, 2014 and January 8, 2015 were rescheduled at the petitioner's request.

The issue for determination is whether the agency correctly determined that the petitioner no longer satisfies the functional eligibility requirement for the Family Care (FC)/Partnership program.

There appeared at that time the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]

Petitioner's Representative:

[REDACTED]
[REDACTED]
[REDACTED]

Respondent:

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

By: [REDACTED] Comm. Care Lead Screener
Community Care Inc.
205 Bishops Way
Brookfield, WI 53005

ADMINISTRATIVE LAW JUDGE:

Nancy J. Gagnon
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Outagamie County.

2. The petitioner has been a recipient of FC/Partnership benefits for several years. To remain eligible, the recipient must periodically undergo functional screening to determine whether she continues to have functional care needs at the requisite level. The petitioner underwent such functional screenings on August 27 and September 24, 2014 (September screening at petitioner's request).
3. As a result of both 2014 functional screenings, the FC program determined that the petitioner was no longer functionally eligible for the program. On September 25, 2014, the agency issued notice to the petitioner advising her that she was no longer eligible for "nursing home level" FC/Partnership benefits due to her failure to satisfy the nursing home related functional eligibility requirements of the program. The petitioner timely appealed.
4. The petitioner, age 59, has diagnoses of anemia, anxiety disorder, depression, memory loss, arthritis, atrial fibrillation, blood clotting issues, obesity, edema, sleep apnea, asthma, hypertension, and history of total knee replacements and gastric bypass surgery. For purposes of program eligibility, the petitioner has a "long-term condition."
5. *ADLs*. The petitioner is ambulatory and independent in bathing, eating, toileting, transferring and grooming. When bathing, the petitioner uses a grab bar and shower chair, but that does not make her dependent on a caregiver for that task. The petitioner occasionally uses a walker for ambulation in her residence.
6. *Instrumental ADLs*. The petitioner is able to ingest medication independently, but frequently forgets to take medication. The petitioner needs physical assistance with laundry/household chores and meal preparation. She is independent in money management and the use of a telephone, and drives an automobile, although she frequently forgets where she is going. Other memory lapses have been observed, such as forgetting her son's middle name. The petitioner is not employed or employable. She does not require overnight supervision. The petitioner is fully communicative, is not physically resistive to care, does not wander, has not demonstrated self-injurious behavior, is not violent towards others, and does not engage in substance abuse.

DISCUSSION

The Family Care Partnership program, which is supervised by the Department of Health Services, is designed to provide appropriate long-term care services for physically/developmentally disabled or elderly adults. *See*, Wis. Stat. §46.286, and Wis. Admin. Code ch. DHS 10. Whenever the local program decides that a person is to be terminated from the program, the client is allowed to file a fair hearing request. The petitioner did so here.

In order to qualify for FC/Partnership services, with certain exceptions not applicable here, a person's functioning must be such that they would otherwise require institutional care. Wis. Stat. §46.286(1)(a). Essentially, a person must require some sort of in-home care or therapy that reaches a level of nursing facility care. To be found eligible, the applicant must undergo an assessment of his/her needs and functioning.

I. THE DHS COMPUTERIZED SCREENING TOOL DETERMINED THAT THE PETITIONER IS NOT FUNCTIONALLY ELIGIBLE AT THE "NURSING HOME CARE LEVEL."

The Wisconsin Department of Health Services has made efforts to improve the statewide accuracy of functional assessments by designing and implementing a computerized functional assessment screening system. This system relies upon a face-to-face interview with a trained screener.

This screener asks the applicant/recipient questions about his/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 applicant to the Department’s Division of Long Term Care. The Department then evaluates the Long Term Functional Screen data by computer programming to see if the applicant/recipient meets any of the nursing levels of care.

In the initial implementation of the "functional screen" process, the Department employed a statistical consultant to test the use of the “tool” (the Level of Care Functional Screen form, or "LOC" form) and the reliability of the outcomes obtained in using the tool and the computer analysis program. The consultant found that the use of the functional screen resulted in a high degree of reliability and consistency. Current policy requires the Department’s local agent to utilize this system. See <http://dhs.wisconsin.gov/LTCare/FunctionalScreen/Index.htm>. The cross-referenced Level of Care (LOC) Functional Screen form reiterates the skeletal definitions from the federal Medicaid rules for Intermediate Nursing Care and institutional Developmental Disability facilities.

The petitioner’s diagnoses are not in dispute, with the possible exception of the petitioner’s assertion of memory loss. The agency assessor determined in August and September 2014 that the petitioner was able to perform all ADLs independently. This was a change from her 2013 screening, in which the petitioner was scored as needing physical assistance with the ADL of bathing, due to pain and dizziness. I agree with the assessor’s finding that the petitioner was capable of performing all ADLs in August/September 2014. When the petitioner’s functional ability scores were entered into the DHS algorithm in 2014, the result was a DHS conclusion that the petitioner does not have care needs at the nursing home level. Thus, the petitioner was found to be ineligible going forward, consistent with the DHS-directed result.

II. RELYING ON STATE CODE, I CONCLUDE THAT THE PETITIONER DOES MEET THE COMPREHENSIVE FUNCTIONAL CAPACITY LEVEL AT THIS TIME.

The petitioner argues that she has care needs which make the continuation of FC program benefits necessary for her.

Independently of the DHS computerized result, it is noted that state code contains a standard for defining “comprehensive functional capacity level.” In code, the verbally expressed standard, as opposed to a computer algorithm, for the requisite level of care is as follows:

DHS 10.33 Conditions of functional eligibility.

...

(2) DETERMINATION OF FUNCTIONAL ELIGIBILITY. (a) *Determination.* Functional eligibility for the family care benefit shall be determined pursuant to s. 46.286 (1), Stats., and this chapter, using a uniform functional screening prescribed by the department. To have functional eligibility for the family care benefit, the functional eligibility condition under par. (b) shall be met and, except as provided under sub. (3), the functional capacity level under par. (c) or (d) shall be met.

(b) *Long-term condition.* The person shall have a long-term or irreversible condition.

(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:
- 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.
 - 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.

(emphasis added)

Wis. Admin. Code §DHS 10.33(2)(a)-(c). ADLs are defined at § DHS 10.13(1m); IADLs are defined at § DHS 10.13(32). The petitioner can perform all ADLs without physical assistance, but cannot perform several IADLs unassisted.

Turning to IADLs, the code defines them for level of care determination purposes as: medication management, meal preparation, money management, using the telephone, arranging/using transportation, and ability to function at a job site. The petitioner has established that she cannot appropriately perform medication administration/management (due to memory loss), perform meal preparation, and hold employment. There is no dispute that the petitioner can manage money and use the telephone independently. Thus, this case outcome hangs on whether she cannot safely perform the task of arranging/using transportation. The screener acknowledged that there were serious safety concerns with the petitioner's driving, related to her disorientation and memory loss. I will therefore conclude that the petitioner cannot safely use transportation. Because the petitioner lacks the ability to safely perform four IADLs and has a cognitive impairment (she needs reminder help even with routine functions), she *does* meet the code standard for the comprehensive functional capacity level of the functional eligibility test.

CONCLUSIONS OF LAW

1. The petitioner has care needs at the comprehensive functional capacity level at this time; therefore, she currently satisfies the functional eligibility requirements of the FC/Partnership program.

THEREFORE, it is

ORDERED

That the petition is *remanded* to the agency with instructions to continue the processing of the petitioner's annual FC/partnership review, consistent with the Conclusion of Law above. Commencement of resumption of the review processing shall occur within 10 days of 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 14th day of February, 2015

\sNancy J. Gagnon
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 February 16, 2015.

Community Care Inc.
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