



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of



DECISION

FCP/162922

PRELIMINARY RECITALS

Pursuant to a petition filed December 29, 2014, under Wis. Admin. Code § DHS 10.55, to review a decision by the Milw Cty Dept Family Care - MCO in regard to Medical Assistance, a hearing was held on February 10, 2015, at Milwaukee, Wisconsin.

The issue for determination is whether the agency correctly determined that the petitioner no longer meets a nursing home level of care, and although he is functionally eligible at the non-nursing home level of care, he does not any additional requirements for that level of care.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:



Respondent:

Department of Health Services
1 West Wilson Street, Room 651
Madison, Wisconsin 53703
By: Jefferlyn Harper-Harris
Milw Cty Dept Family Care - MCO
901 N 9th St
Milwaukee, WI 53233

ADMINISTRATIVE LAW JUDGE:

Corinne Balter
Division of Hearings and Appeals

FINDINGS OF FACT

- 1. The petitioner (CARES # [redacted]) is a resident of Milwaukee County.
2. On November 21, 2014 a previous Family Care interdisciplinary team completed a long term care functional screen. The result of this screen was that the petitioner was no longer functionally

eligible for the Family Care Program at the nursing home level of care. Although the petitioner was functionally eligible at the non-nursing home level, he did not meet the additional requirements including either being on a protective placement, or otherwise financially eligible.

3. On December 10, 2014 the current Family Care team from Jewish Family Services completed another long term care functional screen. The result of this screen was also that the petitioner was no longer functionally eligible for the Family Care Program at the nursing home level of care, but was eligible at the non-nursing home level of care. The screen showed that the petitioner was independent in all of his Activities of Daily Living (ADLs). The only two Instrumental Activities of Daily Living (IADLs) that the petitioner needed assistance with were money management and transportation. The petitioner was independent in all other IADLs.
4. On December 17, 2014 the Agency sent the petitioner a notice stating that he was no longer eligible for the Family Care Program because he no longer required the nursing home level of care.
5. On December 29, 2014 the Division of Hearings and Appeals received the petitioner's request for fair hearing.
6. Effective January 1, 2015 the petitioner was eligible and enrolled in the Community Waivers program. The notice stating this was mailed to the petitioner after he submitted his request for fair hearing.

### **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, he 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 he 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.

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.

In this case I find that the petitioner is no longer functionally eligible for the Family Care Program at the nursing home level of care. Family Care did two separate functional screens. Each screen showed that the petitioner was not eligible for the Family Care Program at the nursing home level of care. The family care team testified that the petitioner is independent in all of the ADLs. The only IADLs that the petitioner needs assistance with are money management and transportation, which makes him ineligible for Family Care at the nursing home level of care.

Although the petitioner testified that he needs assistance with many ADLs and IADLs, I do not find the petitioner's testimony credible. The petitioner testified that the stairs in his home prevent him from accomplishing many ADLs and IADLs. I note that the petitioner chose this residence with stairs. Further, the petitioner testified that he is the sole caregiver for a dog and that he takes his dog for walks. He reported to the family care team that some days he walks his dog up to 25 times. For these reasons I find the testimony of the Family Care team most persuasive, and conclude that the petitioner is not eligible for the Family Care Program at the nursing home level of care.

There is no dispute that the petitioner meets the functional requirements for the Family Care Program at the non-nursing home level of care. The results of two functional screens show that the petitioner is functionally eligible at this level. In addition to the functional requirements for the Family Care program at the non-nursing home level, the petitioner must either In addition, the Family Care team testified that

the petitioner needs help with money management and transportation. Money management is a critical IADL, which makes the petitioner functionally eligible for the non-nursing home level of care. Although the petitioner is functionally eligible, the petitioner must also be in need of adult protective services, be financially eligible for MA, or be grandfathered as described in §DHS 10.33(3). There was no evidence presented at the hearing that the petitioner meets these other requirements for reduced services at the non-nursing home level. Therefore, based on the record before me, I cannot find that the petitioner is eligible for family care at this non-nursing home level of care.

Following the hearing I checked the CARES system and the petitioner is no longer enrolled in the Family Care Program, but rather is enrolled in the Community Waivers Program. It appears that the petitioner has chosen the Community Waivers Program, and is receiving services through that program.

### CONCLUSIONS OF LAW

The agency correctly determined that petitioner no longer meets the nursing home level of care, and although he is functionally eligible for the non-nursing home level of care, the petitioner has not shown that he meets all of the requirements for those limited services at this reduced level of care.

**NOW, 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).

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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 February, 2015

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\sCorinne Balter  
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 20, 2015.

Milw Cty Dept Family Care - MCO  
Office of Family Care Expansion