



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

Redact

DECISION

FCP/163635

PRELIMINARY RECITALS

Pursuant to a petition filed January 30, 2015, under Wis. Admin. Code, §DHS 10.55, to review a decision by ICare to discontinue eligibility for the Family Care Program (FCP), a hearing was held on April 1, 2015, by telephone. A hearing set for March 3, 2015 was rescheduled at the petitioner's request.

The issue for determination is whether the agency correctly determined petitioner's level of care.

PARTIES IN INTEREST:

Petitioner:

Redact

Respondent:

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

By: Atty. Redact
ICare
1555 N. RiverCenter Dr., Suite 206
Milwaukee, WI 53212

ADMINISTRATIVE LAW JUDGE:

Brian C. Schneider
Division of Hearings and Appeals

FINDINGS OF FACT

- 1. Petitioner (CARES # Redact) is a 59-year-old resident of Milwaukee County. He is a recipient of Supplemental Security Income (SSI).
2. Petitioner was enrolled in the FCP on November 1, 2011. Petitioner's primary diagnoses are shoulder pain caused by a rotator cuff tear and arthritis in his knees. He also has pain from tendonitis and chronic back pain. He has GERD (reflux) and post-traumatic stress disorder since childhood.

3. In December, 2014 an annual assessment was completed. An agency nurse completed a functional screen with petitioner. The screener found that petitioner needed some assistance with his activities of daily living (ADLs), specifically that he needed assistance getting into and out of the tub and with dressing his lower body. She found that he needed help with grocery shopping and with laundering heavy items such as bedding (both are instrumental activities of daily living, or IADLs). The screener rated him a risk level 2 (at imminent risk of institutionalization without assistance).
4. The result of the functional screen when entered into the state computer system was that petitioner no longer met the functional requirements for FCP. By a notice dated December 29, 2014, the agency informed petitioner of the change. Benefits have continued pending this decision.

### 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 cannot safely and appropriately bath without assistance getting into and out of the tub, and he needs assistance with dressing. He also cannot grocery shop or perform chores without assistance. It is true that he does not receive regular hands-on care. He receives incidental services such as supportive home care (the supportive home care worker is the person who helps him with bathing and dressing), transportation, and large meals. He would lose those services with the non-nursing home FCP package.

I conclude that although the functional screen conclusion was that petitioner no longer meets the nursing home level of care, he actually continues to meet it as it is defined in the Wisconsin Administrative Code.

### **CONCLUSIONS OF LAW**

Petitioner continues to meet the nursing home level of care for FCP purposes.

**THEREFORE, it is**

**ORDERED**

That the matter be remanded to the agency with instructions to continue petitioner's FCP eligibility 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 7th day of April, 2015

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\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 April 7, 2015.

Milwaukee Enrollment Services  
Office of Family Care Expansion