



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

Redact

DECISION

FCP/164038

PRELIMINARY RECITALS

Pursuant to a petition filed February 18, 2015, under Wis. Admin. Code § DHS 10.55, to review a decision by the Milwaukee County Department of Family Care - MCO in regard to Medical Assistance, a telephonic hearing was held on April 14, 2015, at Milwaukee, Wisconsin. A hearing previously scheduled for March 19, 2015, was rescheduled at petitioner’s request. The record was held open to allow petitioner’s representative to submit a summation. That summation was received.

The issue for determination is whether the agency correctly determined that the petitioner does not satisfy the functional eligibility requirement for the Family Care program (FC).

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

Redact

Petitioner's Representative:

Redact

Respondent:

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

By: *Redact*, RN
Milw Cty Dept Family Care - MCO
901 N 9th St
Milwaukee, WI 53233

ADMINISTRATIVE LAW JUDGE:

Peter McCombs
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner is a resident of Milwaukee County.

2. Petitioner was previously determined to meet the requisite nursing home level of care, and participated in the FC program. See, Exhibit 5-III
3. To be eligible for Family Care (FC) or IRIS, the recipient must undergo an annual functional screening to determine whether she has functional care needs at the requisite level. The petitioner underwent such a functional screening in January, 2015, and another in February, 2015. Exhibits 5-IV and 5-V.
4. As a result of the January and February, 2015, screenings, the FC program determined that the petitioner is no longer functionally eligible for the program. On January 22, 2015, the Department issued notice to the petitioner advising that she was not eligible for “nursing home level” FC benefits due failure to satisfy the program’s nursing home-related functional eligibility requirement. Exhibit 4. The petitioner appealed, seeking certification as meeting a nursing home level of care. Exhibit 1.
5. The petitioner, age 69, has diagnoses of diabetes mellitus, non-alcoholic cirrhosis, non-alcoholic steatohepatitis, GERD, irritable bowel disease, hyperlipidemia, congestive heart failure, hypertension, osteoarthritis, osteopenia, TMJ, torn rotator cuff, chronic pain, fibromyalgia, degenerative disc disease, neuropathy, COPD, chronic bronchitis, cataracts, partial hearing deficit, conjunctivitis, and insomnia. Exhibit 6. For purposes of FC program eligibility, the petitioner has a “long-term condition.”
6. *ADLs*. The petitioner is independent in bathing, dressing, eating, mobility, toileting, and transferring. Exhibits 5-IV and 5-V.
7. *Instrumental ADLs*. The 2015 screenings established that the petitioner requires assistance with the Instrumental ADLs of meal preparation and laundry. She is independent in taking medication, money management, and telephone use. Regarding transportation, petitioner does not have a car or insurance so she does not currently drive. Exhibits 5-IV and 5-V.
8. The 2015 screenings established that the petitioner meets “Risk 1,” stating that “[d]ue to her physical disability, she cannot make larger meals to obtain sufficient nutrition. Member has uncontrolled diabetes and is at risk of falls due to impaired gait and history of hip fracture. ...” Exhibits 5-IV and 5-V.

DISCUSSION

The Family Care 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 Family Care program decides that a person has not met the program’s requirements for a “nursing home” care level, the client is allowed to file a fair hearing request. The petitioner did so here.

In order to qualify for FC 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). In the FC code parlance, this is described as having a “comprehensive functional capacity level.” To be found eligible, the applicant must undergo an assessment of his/her needs and functioning.

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 quality assurance screener. The petitioner met with a screener twice as part of the assessment process. Policy requires the screener to then enter this data into the Department’s functional screen computer program. See,

<http://dhs.wisconsin.gov/LTCare/FunctionalScreen/Index.htm>.

The Level of Care (LOC) Functional Screen form and program are supposed to reiterate the skeletal definitions from the federal Medicaid rules for Intermediate Nursing Care and institutional Developmental Disability facilities. When the petitioner's functional ability scores were entered into the DHS algorithm, the result was a DHS conclusion that the petitioner does not have care needs at the nursing home level. The petitioner was then found to be ineligible, consistent with the DHS-directed result.

In the code, the standard 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:
 - 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)(a)-(c). The petitioner has not established any error in the respondent's determination that petitioner can perform her ADL's independently.

IADLs are defined at §DHS 10.13(2). The parties agree that the petitioner cannot perform IADLs of meal preparation and laundry unassisted. The petitioner further contends that she cannot perform the IADL of transportation because, even though she does not drive or own a car, she would need assistance even if she did.

Based upon the record before me, I cannot conclude that the petitioner has successfully refuted the respondent's findings on the January and February, 2015, screenings. Because the petitioner's ADL and IADL needs, or any combination thereof, do not meet any of the qualifying criteria under DHS 10.33, cited above, I find that she does not presently meet the comprehensive, or nursing home, level of care. Of note, petitioner's representative argued credibly that petitioner does present with certain mental conditions or cognitive impairments, but she concedes that petitioner has not been assessed, nor diagnosed with, any such condition. As such, I am unable to make any finding in this regard.

CONCLUSIONS OF LAW

The Department correctly determined that petitioner does not have care needs at the nursing home level of care as defined in the Wisconsin Administrative Code; therefore, she currently does not satisfy the functional eligibility requirements of the FC program.

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 Madison,
Wisconsin, this 23rd day of June, 2015.

\sPeter McCombs
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 June 23, 2015.

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

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