



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

FCP/164527

PRELIMINARY RECITALS

Pursuant to a petition filed March 10, 2015, under Wis. Admin. Code § DHS 10.55, to review a decision by the Milw Cty Dept Family Care - MCO in regard to Medical Assistance, specifically the Family Care Program (FCP), a hearing was held on May 12, 2015, at Milwaukee, Wisconsin.

The issue for determination is whether the agency correctly seeks to terminate petitioner's Supportive Home Care (SHC) service because she does not meet the level of care requirements.

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: Jefferlyn Harper-Harris
Milw Cty Dept Family Care - MCO
901 N 9th St
Milwaukee, WI 53233

ADMINISTRATIVE LAW JUDGE:

Kelly Cochrane
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner is a resident of Milwaukee County.
2. Petitioner is enrolled in the FCP, and has been so for approximately 10 years. Prior to the February 2015, screening, her functional eligibility had been determined to be at the nursing home level of care.

3. The agency performed an annual reassessment in February, 2015. Based on that assessment, the agency found that the petitioner no longer met the nursing home level of care. On February 26, 2015, the county agency issued written notice to the petitioner advising that she was no longer eligible for her nursing home level of care service, SHC, effective March 13, 2015. The rationale for discontinuance was failure to meet level of care requirements.
4. The petitioner's diagnoses include, but are not limited to, diabetes mellitus, arthritis, scoliosis, chronic pain, renal failure, hypertension, neuropathy, cataracts, anxiety and depression.
5. Per the February 2015 reassessment, the petitioner is not independent in the performance of two activities of daily living (ADLs): bathing and mobility, and is not independent in two instrumental activities of daily living (IADLs): meal preparation and laundry/chores.

DISCUSSION

The Family Care Program (FCP) is supervised by the Department of Health Services (DHS) and 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. In order to qualify for FCP 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). To be found eligible, the applicant must undergo an assessment of his/her needs and functioning.

The DHS has made efforts to improve the statewide efficacy 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 screener met with the petitioner as part of the assessment process. Current policy requires the Department's local agent/screener to enter the assessment data into the Department's functional screen computer program. See <http://dhs.wisconsin.gov/LTCare/FunctionalScreen/Index.htm>. 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. Thus, the petitioner was denied FCP coverage, consistent with the DHS-directed result.

However, the computer program infrequently yields a result that is not consistent with state code. Wis. Admin. Code § DHS 10.33(2)(c) describes comprehensive (a/k/a nursing home) 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.

Activities of Daily Living (ADLs) include: bathing, dressing, eating, mobility, toileting and transferring. See Wis. Adm. Code, §DHS 10.13(1m). Instrumental activities of daily living (IADLs) means management of medications and treatments, meal preparation and nutrition, money management, using the telephone, arranging and using transportation and the ability to function at a job site. See Wis. Adm. Code, §DHS 10.13(32).

The petitioner presented more information at hearing than she may have given at the assessment, however, I do not need to even address this as the screen results show enough to make a determination. As evidenced by the February 2015 screen, the petitioner falls within the comprehensive functional capacity definition – she is not independent in two ADLs (bathing and mobility) and two IADLs (meal prep and laundry/chores). Thus, per Code, she meets the comprehensive/nursing home level of care. See Wis. Admin. Code §DHS 10.33(2)(c)2. Therefore, although the screening personnel followed their DHS instructions correctly, the denial of the petitioner’s FCP eligibility due to failure to meet the level of care requirement was incorrect. This decision is in accord with prior decisions, FCP/140354 (Wis. Div. of Hearings & Appeals July 6, 2012, ALJ Gagnon)(DHS), FCP-11/113325 (Wis. Div. of Hearings & Appeals October 26, 2010, ALJ Schneider)(DHS), FCP-44/115906 (Wis. Div. of Hearings & Appeals April 5, 2011, ALJ Schneider)(DHS), and Rehearing FCP/130316 (Wis. Div. of Hearings & Appeals September 29, 2011, ALJ O’Brien)(DHS).

CONCLUSIONS OF LAW

The petitioner remains at the nursing home level of care as defined in the FCP chapter of the Wisconsin Administrative Code.

THEREFORE, it is

ORDERED

That this matter is remanded to the Department and its county agent with direction to reinstate petitioner’s eligibility for the nursing home level of care and the SHC service retroactive to March 13, 2015. This action must be completed within 10 days 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 Milwaukee,
Wisconsin, this 8th day of July, 2015

\sKelly Cochrane
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 July 8, 2015.

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