



FH

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

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

FCP/164564

PRELIMINARY RECITALS

Pursuant to a petition filed March 11, 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 hearing was held on March 31, 2015, at Milwaukee, Wisconsin.

NOTE: After the hearing the Milwaukee County Department of Family Care submitted a Notice of Change in Level of Care dated February 24, 2015. Attorney Hartman did not object to its admission. Consequently, it has been marked as Exhibit 14 and entered into the record.

The issue for determination is whether the Milwaukee County Department of Family Care (the agency) correctly determined the Petitioner's Level of Care.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]

Petitioner's Representative:

[REDACTED]
[REDACTED]
Milwaukee, WI 53203

Respondent:

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

By: Jefferlyn Harper-Harris, Quality Improvement Coordinator
Milwaukee County Department of Family Care - MCO
901 N 9th St
Milwaukee, WI 53233

ADMINISTRATIVE LAW JUDGE:

Mayumi M. Ishii
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner is a resident of Milwaukee County.
2. On February 16, 2015, Interfaith, a care management unit contracted by the agency, completed a Long Term Care Functional Screen and determined that the Petitioner needed assistance with one activity of daily living (ADL) – dressing. It was also determined that Petitioner needed assistance with two instrumental activities of daily living (IADLs) – meal preparation and laundry and/or chores. (Testimony of Allison Cashner, Family Care Case Manager)
3. On February 24, 2015, the agency sent the Petitioner a Notice of Change in Level of Care, indicating that effective February 23, 2015, it determined the Petitioner to be at the non-nursing home level of care, which would mean a possible reduction in services. (Exhibit 14)
4. On March 9, 2015, the Petitioner filed a request for fair hearing. (Exhibit 1)
5. On March 12, 2015, the agency completed another Long Term Care Functional Screen that indicated the Petitioner needed assistance with two activities of daily living (ADLs)– bathing and dressing. It also indicated that the Petitioner needed assistance with three instrumental activities of daily living (IADLs) – meal preparation, laundry and/or chores, and transportation. (Exhibit 12)

DISCUSSION

There is no dispute concerning the accuracy of the March 12, 2015 Long Term Care Functional Screen. The parties dispute the interpretation of the screen’s results.

The terms “nursing home level of care” and “non-nursing home level of care” are given general definitions in Wis. Stats §46.286(1)(a):

- (a) Functional eligibility.** A person is functionally eligible if the person's level of care need, as determined by the department or its designee, is either of the following:
- 1m.** The nursing home level, if the person has a long-term or irreversible condition, expected to last at least 90 days or result in death within one year of the date of application, and requires ongoing care, assistance or supervision.
 - 2m.** The non-nursing home level, if the person has a condition that is expected to last at least 90 days or result in death within 12 months after the date of application, and is at risk of losing his or her independence or functional capacity unless he or she receives assistance from others.

In further defining levels of care for the Family Care Program, Wis. Admin. Code DHS§10.33(2)(c) and (d) refers to “nursing home level of care” as “Comprehensive functional capacity” and it refers to “non-nursing home level of care” as “intermediate functional capacity”:

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.

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.

Applying the above definitions to the results of the March 12, 2015 Long Term Care Functional Screen, Petitioner falls into the Comprehensive Functional Capacity/Nursing Home level of care under Wis. Admin. Code DHS§10.33(2)(c) paragraph 2, because she requires assistance with two ADLs- bathing and dressing and one or more IADLs – meal preparation, laundry and/or chores, and transportation. Thus, the agency incorrectly reduced the Petitioner's level of care to non-nursing home.

It should be noted that the Notice of Change in Level of Care issued by the agency on February 24, 2015, is defective, because it failed to provide ten days prior notice of adverse action, as required under Wis. Admin. Code §10.52(3) which states:

(3) NOTIFICATION OF INTENDED ACTION. Clients shall be given written notice of any intended adverse action at least 10 days prior to the date of the intended action.

(a) Notification shall be provided as follows:

1. By the county agency in every instance in which a client's eligibility or entitlement for family care will be discontinued, terminated, suspended or reduced, or in which the client's maximum cost sharing requirement will be increased.
2. By the CMO in every instance in which the CMO intends to reduce or terminate a service or deny payment for a service.

Indeed, the February 24, 2015 notice indicated that the effective date of the change in her level of care was February 23, 2015. Thus, for that reason also, the agency incorrectly reduced the Petitioner's level of care.

CONCLUSIONS OF LAW

The Milwaukee County Department of Family Care did not correctly determine that Petitioner’s level of care dropped to non-nursing home level of care.

THEREFORE, it is **ORDERED**

That the agency restore the Petitioner’s eligibility for Family Care at the Comprehensive / Nursing Home Level of Care, effective February 23, 2015. The agency shall take all administrative steps necessary to complete this task within ten 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 1st day of May, 2015.

\sMayumi M. Ishii
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 May 1, 2015.

Milw Cty Dept Family Care - MCO
Office of Family Care Expansion
Attorney April Hartman