



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of



DECISION

CWA/164715

PRELIMINARY RECITALS

Pursuant to a petition filed March 18, 2015, under Wis. Admin. Code § HA 3.03, to review a decision by the Milwaukee Cty Disability Services Division-DSD in regard to Medical Assistance, a hearing was held on April 28, 2015, at Milwaukee, Wisconsin.

The issue for determination is whether the agency correctly determined that the petitioner was eligible for the Family Care Program (FCP) at the non-nursing home 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
Milwaukee Cty Disability Services Division-DSD
Attention: Mark Stein-DSD
1220 W. Vliet Street, Suite 300
Milwaukee, WI 53205

ADMINISTRATIVE LAW JUDGE:

Corinne Balter
Division of Hearings and Appeals

FINDINGS OF FACT

1. The petitioner (CARES # ) is a resident of Milwaukee County.
2. On February 10, 2015 Milwaukee County Disability Services Division completed a long-term care functional screen of the petitioner. The long term care functional screen showed that the

petitioner needs help getting in and out of the tub in order to complete bathing. The petitioner also needs assistance with laundry and chores. The petitioner is independent in all other respects.

3. Based upon the long-term care functional screen, the family care team determined that the petitioner was eligible at the non-nursing home level of care. The petitioner was then enrolled in the FCP at this non-nursing home level of care.
4. On February 15, 2015 the petitioner voluntarily dis-enrolled from the FCP. The petitioner only wants services through the IRIS (Include, Respect, I Self-Direct) Program. The IRIS program is only available to people who qualify for the nursing home level of care. Because the petitioner was not eligible for IRIS, she did not wish to participate in the FCP.
5. On March 18, 2015 the Division of Hearings and Appeals received the petitioner's 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, she 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 she 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.

In this case I find that the agency correctly determined that the petitioner was eligible for the FCP at the non-nursing home level of care. When conducting the long-term care functional screen, the screener comes into the petitioner's home, and observes the petitioner's abilities with respect to the activities of daily living (ADLs). In this case the screener noted that the petitioner only needed assistance with one ADL, bathing. She needed assistance getting in and out of the tub. The petitioner also needed assistance with two IADLs, laundry and chores. The Family Care team credibly testified that this screen was consistent with previous screens.

The petitioner testified that she needs assistance with cooking, daily chores, she needs help moving around her home because she has issues with falling, she has cancer, arthritis, muscle spasms, and at one point she fell, and was immobile for several days. I find the petitioner's testimony self-serving and not credible. The FCP was willing to provide services to the petitioner to assist her in the necessary areas, but she has refused those services. The petitioner has one objective in this appeal; to become functionally eligible at the nursing home level of care, so that IRIS can be her provider. The credible evidence is that the petitioner is eligible at the non-nursing home level of care.

CONCLUSIONS OF LAW

The agency correctly determined that the petitioner was eligible for the FCP at the non-nursing home level of care.

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 Milwaukee,
Wisconsin, this 26th day of May, 2015

\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 May 26, 2015.

Milwaukee Cty Disability Services Division-DSD
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williamc@drwi.org