



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of



DECISION

FCP/166234

PRELIMINARY RECITALS

Pursuant to a petition filed May 22, 2015, under Wis. Admin. Code § DHS 10.55, to review a decision by the MY Choice Family Care and Milwaukee Enrollment Services in regard to Medical Assistance, a hearing was held on August 13, 2015, at Milwaukee, Wisconsin.

The issue for determination is whether My Choice Family Care and Milwaukee Enrollment Services correctly ended the Petitioner's Family Care benefits effective June 1, 2015.

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, Quality Improvement Coordinator
MY Choice Family Care
901 N. 9th St.
Milwaukee, WI 53233

ADMINISTRATIVE LAW JUDGE:

Mayumi M. Ishii
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # ) is a resident of Milwaukee County.
2. On May 30, 2014, Community Care, on behalf of the Milwaukee County Department of Family Care (now known as My Choice Family Care), completed a Long Term Care Functional Screen Report a.k.a. LTCFS. (Exhibit 6, attachment 3)

3. The May 30, 2015 LTCFS indicated that the Petitioner needed assistance with two Activities of Daily Living (ADLs), bathing and dressing. It also indicated the Petitioner needed assistance with four Instrumental Activities of Daily Living (IADLs), meal preparation, medication administration, laundry and chores, and transportation. (Exhibit 6, attachment 3)
4. On March 30, 2015, a new LTCFS was completed by Milwaukee County. This time, the agency determined the Petitioner to be independent with all ADLs and all IADLs, except transportation. (Exhibit 6, attachment 4)
5. The Petitioner was deemed functionally ineligible for the Family Care. (Id.)
6. On May 1, 2015, Milwaukee Enrollment Services sent the Petitioner a notice indicating that effective June 1, 2015, he would no longer be enrolled in the Family Care waiver program, because he did not meet the level of care requirements. (Exhibit 6, attachment 2)
7. The Petitioner filed a request for fair hearing that was received by the Division of Hearings and Appeals on May 22, 2015. (Exhibit 1)
8. On June 11, 2015, Milwaukee County did a rescreen. This time, the Petitioner was found to be independent with all ADLs, but in need of assistance with three IADLs, meal preparation, laundry and chores and transportation. (Exhibit 6, attachment 5)
9. Petitioner is 61 years old and has a long list of health issues, including arthritis, congestive heart failure, coronary artery disease, diabetes, high blood pressure, obesity, stage 3 kidney failure, gout, chronic back pain, and asthma. Petitioner requires a variety of medications, both pills and injections, on a daily basis. (Exhibit 3 and Exhibit 6, attachment 1)

DISCUSSION

The Petitioner is contesting the level of care determination because, if he is found functionally ineligible for the Family Care Program, he will be forced to move from his current residence, which is a supported living arrangement.

The Family Care Program is a subprogram of Wisconsin's Medical Assistance (MA) program and is intended to allow families to arrange for long-term community-based health care and support services for older or impaired family members without resort to institutionalization, *Wis. Stats.* §46.286; *Wis. Admin. Code* §DHS 10.11; *Medicaid Eligibility Handbook (MEH)*, §29.1.

Wis. Adm. Code, §DHS 10.33(2) and *Wis. Stat.* §46.286 provide that a Family Care applicant must have a functional capacity level of comprehensive a.k.a. nursing home level of care or intermediate a.k.a. non-nursing home level of care.

If the person meets the comprehensive (nursing home) level, he is eligible for full services through a managed care organization (MCO), 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 services only if he is in need of adult protective services, he is financially eligible for MA, or he is grandfathered as described in §DHS 10.33(3). *Wis. Adm. Code*, §DHS 10.36(1)(b).

It is a well-established principle that a moving party generally has the burden of proof, especially in administrative proceedings. *Wis. Admin. Code HA 3.09(4)*; *State v. Hanson*, 295 N.W.2d 209, 98 Wis. 2d 80 (Wis. App. 1980). The court in *Hanson* stated that the policy behind this principle is to assign the burden to the party seeking to change a present state of affairs. Thus, the burden falls upon My Choice Family Care to prove that it had a reasonable basis upon which to reduce Petitioner's functional capacity/level of care.

To determine an individual's functional capacity, the MCO, in this case, My Choice Family Care, gathers information through an extensive interview of the applicant/participant and his family. The information is then entered into a computer program that produces a Functional Screen Report, which determines the individual's functional capacity. However, the ultimate determination of functional capacity must be based upon existing law.

Wis. Adm. Code, §DHS 10.33(2)(c) and (d) define the criteria for comprehensive and intermediate levels of care:

(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.

(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” or “ADLs” are defined as bathing, dressing, eating, mobility, transferring from one surface to another such as bed to chair and using the toilet. *Wis. Adm. Code §DHS 10.13(1m)*.

"Instrumental activities of daily living" or "IADLs" are defined as 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. *Wis. Admin. Code §DHS 10.13 (32)*

The Petitioner testified that he is able to bathe himself. The Petitioner testified that he is able to dress himself, but has difficulty with ties, buttons and TED stockings. At the hearing, the Petitioner did not report any difficulties with grooming or feeding himself. The Petitioner testified that he is able to ambulate safely in his home, with the use of a cane. The Petitioner also testified that he is able to get out of bed or out of a chair on his own and that he is able to use the bathroom on his own.

At the hearing, the Petitioner indicated that he is able to cook and wash dishes for himself, but he has trouble carrying groceries. The Petitioner testified that he is able to handle his money, and that he usually can administer his medications himself, but sometimes needs reminders for a time, when his medications are adjusted or changed. The Petitioner testified that he would need assistance with laundry and chores, because he cannot take his laundry down the stairs to the washing machine and he would not be able to engage in lawn care or snow removal. The Petitioner testified that he can use a phone, but could use one with bigger buttons. He also testified that he does not drive.

Looking at Petitioner's testimony it appears that, at most, he might need some assistance with one ADL, dressing and that he needs assistance with 3-4 IADLs, meal preparation, laundry and chores, transportation, and medication administration.

Wis. Admin. Code §DHS 10.33(2)(c)4., states that a person who needs assistance with one or more ADLs and three or more IADLs can qualify under a comprehensive / nursing home level of care, but only if the person has a cognitive impairment. There is no evidence of this and the Petitioner makes no assertion that he suffers from a cognitive impairment. As such, the Petitioner does not qualify for the Family Care Program, under a nursing home / comprehensive level of care.

While Petitioner would be at the intermediate / non-nursing home level of care, under Wis. Adm. Code §DHS 10.33(2)(d)2., he would only be eligible for Family Care, if he was also financially eligible for Medicaid. It appears from Exhibit 6, attachment 2, that the Petitioner will not be financially eligible for Medicaid until he meets a \$4,502.58 deductible. As such, he is not eligible for the Family Care Program, at this time.

CONCLUSIONS OF LAW

My Choice Family Care and Milwaukee Enrollment Services correctly ended the Petitioner's Family Care benefits, effective June 1, 2015.

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 11th day of September, 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 September 11, 2015.

MY Choice Family Care
Office of Family Care Expansion
Health Care Access and Accountability