



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

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In the Matter of

[REDACTED]  
[REDACTED]  
[REDACTED]

AMENDED DECISION

FCP/166464

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**PRELIMINARY RECITALS**

Pursuant to a petition filed June 04, 2015, under Wis. Admin. Code § DHS 10.55, to review a decision by the iCare in regard to Medical Assistance, a hearing was held on August 26, 2015, at Milwaukee, Wisconsin.

Following the hearing I issued a written decision dated October 7, 2015. On October 26, 2015 the petitioner requested a rehearing. I issued a written rehearing request order concluding that the petitioner had alluded to a mistake of fact in my decision. Based upon this I granted the rehearing request. The facts were fully developed and explored at the hearing. I do not believe that another hearing is necessary. This is an amended decision correcting my mistake.

The issue for determination is whether the agency correctly determined that the petitioner was no longer functionally eligible for services at the nursing home level of care.

There appeared at that time and place the following persons:

**PARTIES IN INTEREST:**

Petitioner:

[REDACTED]  
[REDACTED]  
[REDACTED]

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Respondent:

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

By: Attorney Liz Bartlett  
iCare  
1555 N. Rivercenter Drive  
Suite 206  
Milwaukee, WI 53212

**ADMINISTRATIVE LAW JUDGE:**

Corinne Balter  
Division of Hearings and Appeals

**FINDINGS OF FACT**

1. The petitioner (CARES # [REDACTED]) is a resident of Milwaukee County. The petitioner lives alone.
2. The petitioner was eligible for the Family Care Program (FCP). She received services through i-care.
3. On May 5, 2015 i-care completed a Long Term Care Functional Screen (LTCFS) to determine the petitioner's functional eligibility for the FCP.
4. The LTCFS showed that the petitioner needs assistance with dressing, meal preparation, laundry and chores. She is independent in all other Activities of Daily Living (ADLs) and Instrumental Activities of Daily Living (IADLs).
5. On May 5, 2015 i-care sent the petitioner a notice stating that there was a change in her level of care, and that she was no longer eligible for the FCP effective May 31, 2015.
6. On June 8, 2015 the Division of Hearings and Appeals received the petitioner's Request for Fair Hearing.
7. The petitioner is 76 years old. She soon will turn 77. She is diagnosed with Diabetes Mellitus, hypopotassemia, Vitamin D deficiency, Anemia, chest pain, Hypertension, Degenerate joint disease, Neuropathy, Asthma, and Uterine Fibroids.

**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.

The petitioner does not meet the standards for the nursing home level of care. The i-care team conducted a long-term-care functional screen. They found that the petitioner needed assistance with dressing, meal preparation, laundry and chores. She was independent in all other Activities of Daily Living (ADLs) and Instrumental Activities of Daily Living (IADLs).

The petitioner's testimony consisted nearly entirely of her disagreement with the program requirements and administration. She did not seem to understand that she had to be at a nursing home level of care in order to qualify for the level of service that she had been receiving. She found that to be degrading. She stated that she worked her entire life, and found the process to be "un-American." She put much of the blame on Scott Walker.

The issue is which ADLs and IADLs the petitioner needs assistance completing. There is no dispute that the petitioner needs assistance with dressing, meal preparation, laundry and chores. The screener concluded, and the petitioner agrees, that she needs assistance with dressing. On her bad days the petitioner is unable to clasp her bras. She wears tank tops on those days. I re-reviewed the hearing, and also note that the petitioner needs help putting on her TED stockings. Given these facts, the screener correctly concluded that the petitioner needs assistance with dressing. The petitioner also needs assistance with meal preparation, laundry and chores.

With respect to bathing, the petitioner testified that she is unable to transfer to the tub. The screener disagreed, and testified that the petitioner is able to get in and out of the tub on her good days. On her bad days when she is unable to get in and out of the tub she is able to give herself a sponge bath. Given these facts, the screener correctly concluded that the petitioner is independent in the area of bathing. I further

note that the petitioner was not particularly credible. She initially testified that she needed help with everything. She was later a bit more specific, but she was not nearly as specific, though, or neutral like the screener. For all of these reasons, I conclude that the petitioner is independent in the area of bathing.

The petitioner testified that she would not be able to get out of her bed in the event of an emergency. The issue is not if the petitioner could transfer quickly in an emergency event, but rather whether she is able to complete this task on her own without assistance. The LTCFS notes that the screener saw the petitioner transfer on and off a chair with no issues. The petitioner did not state any concerns about transferring in and out of bed at the time the screen was completed. The petitioner was further able to move about her home with a rollator walker. I find the LTCFS more credible than the petitioner's statement that she would not be able to get out of bed in the event of an emergency. Even when the petitioner received services through i-care at the nursing home level of care, she did not have a personal care worker all night long. There is no evidence that the petitioner is unable to transfer out of bed in the morning and into bed at night.

The petitioner offered no other testimony with respect to any other ADLs and IADLs. The LTCFS notes each ADL and IADL and described the petitioner's abilities in each of these areas. This is the most credible and through evidence. I conclude that the LTCFS is correct and that the petitioner is independent in all areas with the exception of dressing, meal preparation, laundry and chores. The FCP is designed for people who would be in a nursing home. The petitioner seemed to be insulted by the suggestion that she was an appropriate candidate for a nursing home.

Following the hearing I had a voicemail from a doctor who indicated that she was available to testify for the petitioner. The petitioner never called the doctor to testify during the hearing, and I did not receive the message until after the hearing. However, following the hearing the record remained open to allow the petitioner to submit additional medical documents. She provided those records during this open record period.

It appears that the petitioner is functionally eligible at the non-nursing home level of care. If the petitioner believes that she is also financially eligible at that level of care, she may request those services.

### **CONCLUSIONS OF LAW**

The agency correctly determined that the petitioner was no longer functionally eligible for services at the 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 18th day of December, 2015

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\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 December 18, 2015.

iCare  
Office of Family Care Expansion  
Health Care Access and Accountability