



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of



DECISION

FCP/167452

PRELIMINARY RECITALS

Pursuant to a petition filed July 20, 2015, under Wis. Admin. Code § DHS 10.55, to review a decision by the iCare in regard to the Medical Assistance-related Family Care (FC) program, a hearing was held on September 9, 2015, by telephone.

The issue for determination is whether the petitioner is being correctly discontinued from the FC Partnership program due to her failure to meet level of care requirements.

There appeared at that time the following persons:

PARTIES IN INTEREST:

Petitioner:



Respondent:

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

By:

iCare
1555 N. Rivercenter Drive
Suite 206
Milwaukee, WI 53212

ADMINISTRATIVE LAW JUDGE:

Nancy J. Gagnon
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES #) is a resident of Milwaukee County.

2. To remain eligible for FC, the recipient must periodically undergo functional screening to determine whether she continues to have functional care needs at the requisite level. The petitioner underwent such functional screening on June 3, 2015.
3. As a result of the functional screening, the FC program determined that the petitioner was no longer functionally eligible for the program. On July 13, 2015, the FC agency issued notice to the petitioner advising her that she was no longer eligible for “nursing home level” FC benefits due to her failure to satisfy the nursing home related functional eligibility requirements of the program. The petitioner timely appealed, and aid has been continued pending decision issuance.
4. The petitioner, age 62, has diagnoses of GERD, osteoarthritis, kidney disease, bronchitis,, endometrial hyperplasia, and depression. For purposes of FC program eligibility, the petitioner has a “long-term condition.” She resides alone in a one bedroom apartment in the community.
5. *ADLs.* The petitioner is ambulatory and independent in bathing, dressing, grooming, eating, toileting, and transferring. When bathing, the petitioner uses a grab bar and has a shower chair that she does not use; the need to use a grab bar or shower chair does not make her dependent on a caregiver for that task. Although the petitioner has foot pain and an abnormal gait, she does not use a cane or walker for ambulation.
6. *Instrumental ADLs.* The petitioner manages and takes her medication independently. Assistance with money management is needed, and she requires help with grocery shopping due to pain during that activity. The petitioner does need physical assistance with laundry and household chores. The petitioner is capable of simple meal preparation. She is independent in the use of a telephone. The petitioner is not employed, and receives Social Security SSI benefits. She does not require overnight supervision, and no documentation from a medical provider of a diagnosis of a cognitive deficit has been submitted into this record. The petitioner is fully communicative, is not physically resistive to care, does not wander, has not demonstrated self-injurious behavior, is not violent towards others, and does not currently engage in substance abuse.

DISCUSSION

The Family Care program, which is supervised by the Department of Health Services, 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. Whenever the local Family Care program decides that a person is to be terminated from the program, the client is allowed to file a fair hearing request. The petitioner did so here.

In order to qualify for FC 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). Essentially, a person must require some sort of in-home care or therapy that reaches a level of nursing facility care. To be found eligible, the applicant must undergo an assessment of his/her needs and functioning.

I. THE DHS COMPUTERIZED SCREENING TOOL DETERMINED THAT THE PETITIONER IS NOT FUNCTIONALLY ELIGIBLE AT THE “NURSING HOME CARE LEVEL.”

The Wisconsin Department of Health Services has made efforts to improve the statewide accuracy of functional assessments by implementing a computerized functional assessment screening system. This system relies upon a face-to-face interview with a trained screener.

This screener asks the applicant/recipient questions about his/her medical conditions, needs, cares, skills, activities of daily living, and utilization of professional medical providers to meet these needs. The assessor then submits the “Functional Screen Report” to the Department’s Division of Long Term Care. The

Department then evaluates the Long Term Functional Screen data by computer programming to see if the applicant/recipient meets any of the nursing levels of care.

In the initial implementation of the "functional screen" process, the Department employed a statistical consultant to test the use of the "tool" (the Level of Care Functional Screen form, or "LOC" form) and the reliability of the outcomes obtained in using the tool and the computer analysis program. The consultant found that the use of the functional screen resulted in a high degree of reliability and consistency. Current policy requires the Department's local agent to utilize this system. See <http://dhs.wisconsin.gov/LTCare/FunctionalScreen/Index.htm>. The cross-referenced Level of Care (LOC) Functional Screen form reiterates the skeletal definitions from the federal Medicaid rules for Intermediate Nursing Care and institutional Developmental Disability facilities.

The petitioner's diagnoses are not in dispute, although the petitioner complains of worsening leg pain from her osteoarthritis. The agency assessor determined that the petitioner was able to perform all ADLs and most IADLs independently. 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 found to be ineligible going forward, consistent with the DHS-directed result.

II. INDEPENDENTLY OF THE DHS LOC ALGORITHM, I CONCLUDE THAT THE PETITIONER DOES NOT MEET THE COMPREHENSIVE FUNCTIONAL CAPACITY LEVEL AT THIS TIME.

The petitioner argues that she has care needs, due to her increasing leg and foot pain, which make the continuation of FC program benefits necessary for her.

Independently of the DHS computerized result, this ALJ's overall sense of the petitioner's care level is that it does not rise to the "comprehensive functional capacity level" required in the state code. In code, the verbally expressed standard, as opposed to a computer algorithm, for the requisite level of care is as follows:

DHS 10.33 Conditions of functional eligibility.

...

(2) DETERMINATION OF FUNCTIONAL ELIGIBILITY. (a) *Determination.* Functional eligibility for the family care benefit shall be determined pursuant to s. [46.286 \(1\)](#), Stats., and this chapter, using a uniform functional screening prescribed by the department. To have functional eligibility for the family care benefit, the functional eligibility condition under [par. \(b\)](#) shall be met and, except as provided under [sub. \(3\)](#), the functional capacity level under [par. \(c\)](#) or [\(d\)](#) shall be met.

(b) *Long-term condition.* The person shall have a long-term or irreversible condition.

(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.

(emphasis added)

Wis. Admin. Code §DHS 10.33(2)(a)-(c) (November 2009). IADLs are defined at §DHS 10.13(32). The petitioner can perform all ADLs unassisted.

Turning to IADLs, the petitioner has established that she cannot appropriately perform laundry/household chores (due to pain), manage money, and hold employment. The petitioner suggests that she cannot independently prepare simple meals because she has back pain after standing for a short time. Simple foods can be microwaved in less than 10 minutes. There is no medical documentation in this case to show that she cannot stand for 10 minutes. Further, the petitioner seems to be getting enough nutrition as she is not underweight. Further, there is no documentation of the petitioner's allegedly increasing leg pain. Because the petitioner does not lack the ability to perform five or more IADLs, she does not meet the code standard for the comprehensive functional capacity level of the functional eligibility test.

CONCLUSIONS OF LAW

1. The petitioner does not have care needs at the comprehensive functional capacity level at this time; therefore, she currently does not satisfy the functional eligibility requirements of the FC program.

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 Madison,
Wisconsin, this 13th day of October, 2015

\sNancy J. Gagnon
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 October 13, 2015.

iCare
Office of Family Care Expansion
Health Care Access and Accountability