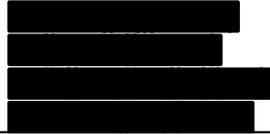




STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of



DECISION

FCP/168238

PRELIMINARY RECITALS

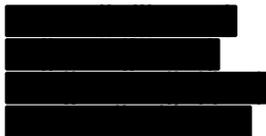
Pursuant to a petition filed August 24, 2015, under Wis. Admin. Code § DHS 10.55, to review a decision by the Aging & Disability Resource Center of Dane County- in regard to Medical Assistance, a hearing was held on October 06, 2015, at Madison, Wisconsin.

The issue for determination is whether the agency erred in its denial of petitioner's application for the COP waiver program.

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: [Redacted]
Aging & Disability Resource Center of Dane County
2865 N Sherman AV
Madison, WI 53704-3016

ADMINISTRATIVE LAW JUDGE:

John P. Tedesco
Division of Hearings and Appeals

FINDINGS OF FACT

- 1. Petitioner (CARES # [Redacted]) is a resident of Dane County.
2. Petitioner has breast cancer and being treated with chemotherapy.

3. In early October, the medical providers reported to the agency that petitioner's chemotherapy regimen would be reduced to a single chemotherapy drug and petitioner's needs will normalize after that.
4. The provider anticipates that the drug regimen would be changed imminently.
5. Petitioner applied for the COP waiver program.
6. The agency denied the application on the basis that petitioner does not meet any of the waiver target groups.

DISCUSSION

The MA Waiver Programs (e.g., Community Integration Program, Community Options Program - Waiver) are partially funded by the federal government through the Medical Assistance (MA) program. Therefore, the following restrictions have been placed on the use of these funds: (1) an individual must be elderly or physically disabled; and (2) an individual must currently be eligible for MA. These Waiver programs must meet federal requirements, including MA regulations when applicable. See, Wis. Stat. § 46.27(11); see also, 42 U.S.C.A. § 1396n(c); 42 C.F.R. §§ 435.217, 440.180 & 441.300 et. seq.

Each MA Waiver program is designed to serve a particular "target group." The target groups are frail elders, or persons with: a physical disability that interferes with at least one major life activity; a developmental disability; dementia; a terminal condition, or a severe and persistent mental illness is present. See Wis. Stat. § 15.197(4)(a)2; 42 C.F.R. § 435.1009; Wis. Stat. § 51.01(5)(a); Wis. Stat. § 46.87(1)(a); and Wis. Admin. Code § DHS 63.02(7).

If an applicant or recipient's conditions do not meet any of these target group criteria, then he or she is to be classified "NO TARGET GROUP", meaning that the person does not meet any of the statutory definitions of the target group and is not eligible for any of the Waiver programs.

CIP II and COP-W are two such MA Waiver programs. Each has the same target group. The target group includes persons age 65 and over with long-term or irreversible illness or disability that impairs daily functioning; adults with physical disabilities that impair major life activities; and the developmentally disabled not requiring active treatment. A long-term condition is one that is expected to last more than one year. See, Medicaid Waivers Manual, Chapter II, p. II-1, § 2.02.

The petitioner is not 65 years old, or over. She is not developmentally delayed. While it is true that she has some medical problems, the agency credible argued that any difficulties are a result of her cancer treatment and not a direct result of a medical problem. The agency argues that the condition is not expected to be a long term condition lasting at least a year as her chemotherapy regimen will be changed very soon.

Petitioner merely explained that she is tired. She made no argument that her condition is of a long-term nature.

The Department correctly determined that she does not meet target group criteria and is not eligible. Her CIP II and and COP-W services were correctly discontinued.

CONCLUSIONS OF LAW

The Department's agents correctly determined that the petitioner does not meet eligibility criteria for the Community Options Program – Waivers (COP-W) or the Community Integration Program II (CIP II), and denied her eligibility.

NOW, THEREFORE, it is ORDERED

That the petition herein be 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 2nd day of November, 2015

\sJohn P. Tedesco
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

Brian Hayes, Administrator
Suite 201
5005 University Avenue
Madison, WI 53705-5400

Telephone: (608) 266-3096
FAX: (608) 264-9885
email: DHAmail@wisconsin.gov
Internet: <http://dha.state.wi.us>

The preceding decision was sent to the following parties on November 2, 2015.

Aging & Disability Resource Center of Dane County-ARC
Office of Family Care Expansion
Health Care Access and Accountability