



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

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

FCP/168655

PRELIMINARY RECITALS

Pursuant to a petition filed September 09, 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 October 01, 2015, at Milwaukee, Wisconsin.

The issue for determination is whether the agency correctly determined that the petitioner was no longer functionally eligible for the Family Care Program (FCP) at the nursing home level of care.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]

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.
2. The petitioner was previously found eligible for the Family Care Program. She was receiving services through i-care.

3. On August 28, 2015 i-care conducted a Long Term Care Functional Screen (LTCFS) of the petitioner to determine her continued functional eligibility for the FCP.
4. The LTCFS showed that the petitioner needed assistance with bathing, meal prep, laundry, and chores. She was independent in all other Activities of Daily Living (ADLs) and Instrumental Activities of Daily Living (IADLs).
5. On August 31, 2015 the agency sent the petitioner a notice stating that she no longer met the nursing home level of care, and therefore was functionally ineligible for the FCP through i-care.
6. On September 14, 2015 the Division of Hearings and Appeals received the petitioner's Request for Fair Hearing.
7. The petitioner is diagnosed with GERD, mitral valve disorder, chronic back pain, carpal tunnel, asthma, and allergies.

DISCUSSION

The Family Care program (FCP), 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 nursing home level of care. ADLs include bathing, dressing, eating, mobility, and transferring. Wis. Adm. Code, § DHS 10.13(1m). IADLs include meal preparation, medication management, money management, laundry and chores, telephone, and transportation. Critical IADLs include management of medications and treatments, meal preparation and nutrition, and money management.

The agency, i-care, conducted a Long Term Care Functional Screen (LTCFS). The LTCFS involves a screener coming to the petitioner's home, observing the petitioner, and talking with the petitioner. The screener determined that the petitioner needed assistance with one ADL, bathing, and two IADLs, meal preparation, and laundry and chores. The petitioner was independent with all other ADLs and IADLs. The LTCFS is the most complete and credible evidence. It lists each ADL and IADL describing the petitioner's ability with respect to each of these tasks. The screener observes and speaks to the petitioner about her abilities. That information is imputed into the screen, which later determines whether or not the petitioner is functionally eligible.

The majority of the petitioner's testimony consisted of dissatisfaction with the entire i-care organization. She stated that she was not happy with the screeners who came into her home. The petitioner offered very limited testimony about her ability to perform ADLs and IADLs. She stated that she uses some adaptive equipment to move around her home. This is somewhat consistent with the screen as the screeners noted adaptive equipment in the home. The screeners also saw the petitioner not using this equipment. However, if the petitioner has the ability to be independent with the adaptive equipment, it does not change the result of the LTCFS. The petitioner also stated that she cannot use stairs. This is not an issue as there is no mention of stairs in her home. The petitioner further testified that she needs help with meal preparation. This is consistent with the LTCFS, and not an issue in this appeal. The petitioner offered no other specific information with respect to any other ADLs or IADLs. It is only after the petitioner learned she was no longer functionally eligible that she mentioned that the LTCFS was completed on a good day. I find this testimony not credible and self-serving. Thus, I must find that the petitioner is functionally ineligible for the FCP at the nursing home level of care.

It appears that the petitioner is functionally eligible at the non-nursing home level of care. The petitioner may contact the agency to determine whether or not she is financially eligible. If she is financially eligible, she may be able to obtain limited services through the FCP at the non-nursing home level of care.

CONCLUSIONS OF LAW

The agency correctly determined that the petitioner was no longer functionally eligible for the Family Care Program (FCP) 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 12th day of October, 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 October 12, 2015.

iCare
Office of Family Care Expansion
Health Care Access and Accountability