



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[Redacted case name]

DECISION

FCP/169681

PRELIMINARY RECITALS

Pursuant to a petition filed October 28, 2015, under Wis. Admin. Code § DHS 10.55, to review a decision by the iCare in regard to Family Care Partnership, a Medical Assistance-related program, a hearing was held on November 24, 2015, by telephone.

The issue for determination is whether the agency correctly determined that the petitioner no longer satisfies the functional eligibility requirement for the Family Care Partnership (FC) program.

There appeared at that time the following persons:

PARTIES IN INTEREST:

Petitioner:

[Redacted petitioner name]

Respondent:

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

By: Atty. [Redacted]
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 # [Redacted]) is a resident of Milwaukee County. She is Medical Assistance eligible.

2. The petitioner has been a recipient of FC benefits for several years. 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 a functional screening in October 12, 2015.
3. As a result of the 2015 screening, the FC program determined that the petitioner was no longer functionally eligible for the program. On October 15, 2015, the agency issued a notice to the petitioner advising that she was no longer eligible for “nursing home level” FC benefits due failure to satisfy the program’s nursing home-related functional eligibility requirement. The petitioner timely appealed, and aid has been continued pending decision issuance.
4. The petitioner, age 65, has diagnoses of diabetes, hyperlipidemia, sleep apnea, and a history of heart disease. She is not cognitively impaired, and is not seeking employment. For purposes of FC program eligibility, the petitioner has a “long-term condition.”
5. *ADLs*. The petitioner is ambulatory and independent in bathing, dressing, grooming, eating, toileting, transferring and medication administration.
6. *Instrumental ADLs*. The 2015 screening established that the petitioner requires assistance with the following instrumental ADLs: meal preparation, laundry/chores, and transportation.

### 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). To be found eligible, the applicant must undergo an assessment of his/her needs and functioning.

To improve the statewide accuracy of functional assessments, the Department of Health Services implemented a computerized functional assessment screening system. This system relies upon a face-to-face interview with a trained quality assurance screener. The petitioner met with a screener as part of the reassessment process. In this case, the petitioner and screener agree as to the screener’s findings of the petitioner’s ADL and IADL needs. Policy requires the local screener to then enter this data into the Department’s functional screen computer program. *See* <http://dhs.wisconsin.gov/LTCare/FunctionalScreen/Index.htm>. The Level of Care (LOC) Functional Screen form and program reiterate the skeletal definitions from the federal Medicaid rules for Intermediate Nursing Care and institutional Developmental Disability facilities. 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.

However, the computer program infrequently yields a result that is not consistent with state code. In the code, the standard 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). IADLs are defined at §DHS 10.13(32). The petitioner can perform all ADLs unassisted, and cannot perform three IADLs unassisted (meal preparation, laundry/chores, transportation). She is able to perform the IADLs of medication management, money management, and telephone use.

Thus, per code, she does not meet the comprehensive/nursing home level of care. The code has the force of law, and must be followed. Discontinuance of the petitioner's FC Partnership eligibility for failure to meet the level of care requirements was correct.

### **CONCLUSIONS OF LAW**

1. The petitioner is no longer at the nursing home level of care as defined in the FC chapter of the Wisconsin Administrative Code; therefore, she does not currently 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 2nd day of December, 2015

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\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 December 2, 2015.

iCare  
Office of Family Care Expansion  
Health Care Access and Accountability