



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of



DECISION

CWA/168698

PRELIMINARY RECITALS

Pursuant to a petition filed September 11, 2015, under Wis. Admin. Code § HA 3.03, to review a decision by the Bureau of Long-Term Support in regard to Medical Assistance, a hearing was held on November 12, 2015, at Racine, Wisconsin.

The issue for determination is whether the agency properly determined the Petitioner is no longer functionally eligible for the IRIS program because he does not meet the nursing home level of care.

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: Briita Welch
Bureau of Long-Term Support
1 West Wilson
Madison, WI

ADMINISTRATIVE LAW JUDGE:

Debra Bursinger
Division of Hearings and Appeals

FINDINGS OF FACT

- 1. Petitioner (CARES # [redacted]) is a resident of Racine County. He currently lives in an independent apartment.
2. Petitioner's diagnoses include cognitive impairment, arthritis, lumbrosacral facet arthropology, chronic back pain, fatigue, malaise and depression.

3. On March 30, 2015, the agency performed a Long-Term Care Functional Screen (LTCFS) for the Petitioner. The screener determined that the Petitioner met the Physical Disability (PD) Target Group and the Developmental Disabilities (DD) Target Group. The screener determined that the Petitioner required assistance with three Activities of Daily Living (ADLs): bathing, toileting and mobility. Regarding bathing, the screener noted that the Petitioner experiences pain getting in/out of the shower and transferring on/off the toilet. With regard to mobility, the screener noted that the Petitioner experiences pain when moving between locations in the home. In addition to ADLs, the screener determined that the Petitioner required assistance with three Instrumental ADLs (IADLs): money management, laundry/chores and transportation. Petitioner was noted to have a representative payee for financial transactions. He was reported to be able to complete small money transactions but needed assistance with other money management due to cognitive impairment. For laundry/chores, the screener noted the Petitioner has increased pain with housekeeping and laundry tasks. With regard to transportation, the Petitioner was noted to be able to drive a vehicle but his license had been suspended. He was also noted to need assistance with making new decisions or in new situations. Petitioner was found to be at a nursing home level of care.
4. On July 6, 2015, Petitioner saw his physician [REDACTED] for back pain. The progress note indicates that Petitioner had normal range of motion in his back and neck and exhibited tenderness in the lumbar spine and paraspinal muscles.
5. On July 10, 2015, the agency made contact with [REDACTED]. According to an agency case note, [REDACTED] opined that the Petitioner does not require assistance with ADLs or IADLs.
6. On September 4, 2015, the agency performed a LTCFS for the Petitioner. The screener determined that the Petitioner no longer meets the PD Target Group but does meet the DD Target Group. The screener determined that the Petitioner is independent with all ADLs. The screener noted that the Petitioner does experience some back pain with bathing/showering, dressing, toileting, transferring and mobility but he is able to complete all ADLs independently. Petitioner reported sometimes using a cane to assist with transfers. With regard to IADLs, the screener determined that the Petitioner is independent with all IADLs except money management and transportation. It was noted that Petitioner's cognitive impairment limits his ability to understand math so he requires assistance with budgeting, paying his bills and conducting large transactions. The Petitioner's driver's license was noted to remain suspended but that he will be able to reinstate his license after taking a class. It was further noted that Petitioner does not currently have a car. It was also noted that the Petitioner experiences some back pain during laundry/chores but he is able to complete the tasks without assistance. Petitioner was found to be independent with communication and cognition. Petitioner has a mental health diagnosis of depression but it was reported that this was situational after his brother's death in April, 2015. Petitioner was found to be at a non-nursing home level of care.
7. On September 8, 2015, the agency issued a Notice of Action to the Petitioner informing him that his eligibility for IRIS would terminate effective September 23, 2015 because he no longer meets the nursing home level of care.
8. On September 11, 2015, the Petitioner filed an appeal with the Division of Hearings and Appeals.
9. On October 23, 2015, Petitioner's physician [REDACTED] opined that the Petitioner has trouble performing ADLs due to chronic back pain. He specifically noted that the Petitioner requires help with grocery shopping and getting to medical appointments.

DISCUSSION

The IRIS program was developed pursuant to a Medical Assistance waiver obtained by the State of Wisconsin, pursuant to section 6087 of the Deficit Reduction Act of 2005 (DRA), and section 1915(j) of the Social Security Act. It is a self-directed personal care program.

The federal government has promulgated 42 C.F.R. §441.450 - .484 to provide general guidance for this program. Those regulations require that the Department's agent must assess the participant's needs and preferences (including health status) as a condition of IRIS participation. Id., §441.466. The Department's agent must also develop a service plan based on the assessed needs. Further, "all of the State's applicable policies and procedures associated with service plan development must be carried out ..." Id. §441.468.

An IRIS participant must be elderly, or an adult with physical or developmental disabilities. See IRIS General Information at www.dhs.wisconsin.gov/bdds/IRIS/general.htm. The physical disabilities must be such that the person requires a level of care equal to the level of a nursing home. DHS Medicaid Eligibility Handbook, §37.1.3. To qualify for a nursing home level of care a person must have a long-term care condition expected to last at least one year. See Overview of the Long Term Care Functional Screen, §1.2, found at www.dhs.wisconsin.gov/lcicare/FunctionalScreen/WebCT/instructions1.htm.

The Department has developed a computerized functional assessment screening system. The system relies upon a face-to-face interview with a quality assurance screener who has at least a bachelor of science degree in a health or human services related field, with at least one year of experience working with the target populations (or, if not, an individual otherwise specifically approved by the Department based upon like combination of education and experience). The screener asks the applicant, or a recipient at a periodic review, questions about his or 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 for the person to the Department's Division of Disability and Elder Services. The Department enters the Long Term Functional Screen data into a computer program to see if the person meets any of the required levels of care. If the assessor enters information into the functional screen correctly, then it is assumed that the computer will accurately determine the level of care.

The definition of comprehensive, nursing home level of care for IRIS is as set out in Wis. Admin. Code, §DHS 10.33(2)(c). Wis. Admin. Code, §DHS 10.33(2)(c) defines comprehensive functional capacity as follows:

(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... [No. 6 omitted as irrelevant to this case].

Comprehensive functional capacity level is equivalent to nursing home level. See Wis. Stat., §46.286. Although the above definition is found in the administrative code chapter relating to the Family Care

Program, Division of Hearings and Appeals administrative law judges have applied the definition to the IRIS program as well. In August, 2014, a Final Decision issued in DHA Case CWA-157032 held that the code definition does not apply to the IRIS program and that the results of the LTCFS would be the final word in the level of care determination. However, the decision in CWA-157032 was vacated by the Department of Health Services in April, 2015, as part of a settlement of a Circuit Court appeal of that case. Thus, in making a level of care determination, DHA is also required to look to the code definition in § DHS 10.33(2)(c) to determine if a Petitioner meets the nursing home level of care.

A. Activities of Daily Living (ADLs)

At the hearing, the agency asserted that the Petitioner is independent with all ADLs. Petitioner and his mother contend that he requires assistance with bathing, mobility, transferring and toileting.

1. Bathing

The LTCFS Instructions state the following for bathing:

4.7 Bathing

Definition: The ability to safely shower, bathe, or take a sponge bath for the purpose of maintaining adequate hygiene. The activity of bathing consists of the following components:

- Ability to get in and out of the bathtub/shower
- Turning on and off the faucets
- Regulating the water temperature
- Washing and drying self fully
- Shampooing hair

Check this for a person who:

Requires supervision, cueing, and/or hands-on assistance (partial or complete) with any of the above mentioned components of bathing.

Requires regular cueing or would not bathe, due to a cognitive impairment.

Gives themselves a sponge bath because they are unable to get in and out of tub/shower.

Is able to bathe themselves but it takes additional time to do so and results in a significant, negative health outcome. During the task of Bathing, a significant, negative health outcome is indicated when a person experiences any of the following results: out-of-breath, dizzy, chest pains, exhausted, incontinence, or increased pain, to the point that another person should be present to help with some or all of the task.

Requires assistance with the aspects of bathing but can be left alone to soak in the tub.

Do not check this for a person who:

...

Is able to bathe independently but doesn't bathe unless a family member/staff is present somewhere in the home, "just in case."

Is able to bathe independently but it takes additional time to do so WITHOUT significant hardship or negative outcomes.

At the hearing, the agency testified that during the most recent LTCFS, both the Petitioner and his mother reported that he is independent with bathing. He was not reported to have experienced any falls in the previous 6 months. The agency testified that it was reported that the Petitioner experiences some pain getting in/out of the tub but this was reported not to be so significant as to require that the Petitioner have assistance. The screener testified that she went over the results of the LTCFS three times with the

Petitioner and his mother because of the changes from the previous LTCFS. The screener testified that the Petitioner and his mother agreed that he did not require assistance with bathing. The screener further testified that she had collateral contacts with the IC and nurses who did not indicate Petitioner needed assistance with bathing.

The Petitioner and his mother testified that Petitioner needs cueing during bathing as a result of his cognitive impairment and that he needs physical assistance getting in/out of the tub and assistance with washing due to back pain. The Petitioner's mother also testified that the Petitioner did not report accurately at the time of the home visit because he is ashamed or embarrassed about the things he cannot do.

The medical records establish that the Petitioner does experience chronic low back pain. The information from [REDACTED] is inconsistent about whether the Petitioner requires specific help with bathing as a result of the low back pain and if so, what type of assistance is required. I conclude that there is insufficient evidence to establish that the Petitioner requires assistance with bathing. There was no evidence in either LTCFS or in the medical records to support the Petitioner's assertion that he cannot complete the task due to his cognitive impairment. While there is evidence that the Petitioner experiences pain, there is not sufficient evidence to establish that Petitioner has a significant negative health outcome such that he cannot complete the task of bathing. Based on the evidence and the LTCFS instructions, I conclude the agency properly found the Petitioner to be independent with bathing.

2. Mobility

The LTCFS instructions state the following for mobility:

4.10 Mobility

Definition: The ability to move between locations (including stairs) in the individual's living space. Living space is defined as kitchen, living room, bathroom, and sleeping area. A person's living space does not include the basement, attic, garage, yard, and places outside of the home. Excluded from the task of Mobility in Home is the need for assistance with a transfer to get up to a standing position to walk (this need is captured in Module 4.12 Transferring).

For an individual able to independently move about the home while using one of the types of equipment listed below, select 0 - Person is independent in completing the activity safely. Then check the corresponding box to indicate what equipment the individual uses.

The only equipment that can be counted under Mobility in Home includes:

Walker

Cane/quad cane*

Crutches

Wheelchair (used in the home)

Scooter (used in the home)

Artificial foot or leg(s)

The evidence establishes that the Petitioner experiences chronic low back pain but that he is able to move about his home without assistance of another person. The Petitioner was observed by the screener to walk up and down stairs independently and his gait appeared to be stable and normal. The screener noted that the Petitioner sometimes uses a standard cane.

The Petitioner and his mother testified that he has good and bad days. On bad days, he tires easily. He testified that he needs to use his cane on those days.

Based on the evidence and the LTCFS instructions, I conclude the agency properly determined the Petitioner is independent with mobility.

3. Transferring

The LTCFS instructions state the following with regard to transferring:

4.12 Transferring

Definition: The physical ability to move between surfaces. The task of Transferring includes the ability to move from a bed, usual sleeping place, chair, to a wheelchair, or up to a standing position. Excluded from the task of Transferring is the need for assistance with a transfer to bathe or use a toilet (these needs are captured in Module 4.7 Bathing and 4.11 Toileting).

For an individual able to transfer independently, while using one of the types of equipment listed below, select 0 - Person is independent in completing the activity safely and check the corresponding box to indicate what equipment the individual uses. An example of when the selection of a 1 - Help is needed to complete the task safely but helper does not have to be physically present throughout the task, would be applicable is for a person who needs assistance at night when they are fatigued from the day, but for the rest of the day, complete all other transfers independently.

Check this for a person who:

Needs to wear a gait belt that is used during transfers.

Needs hand-on assistance to complete safe transfers.

Does not need assistance with transfers but it takes them a significant amount of time to do so and results in a significant, negative health outcome. During the task of Transferring, a significant, negative health outcome is indicated when a person experiences any of the following results: out-of-breath, dizzy, chest pains, exhausted, incontinence, or increased pain, to the point that another person should be present to help with some or all of the task.

Needs cueing or step-by-step directions to transfer.

Has a lift chair or other mechanical device (e.g., electric hospital bed), and cannot independently transfer without it.

Do NOT check this for a person who:

Has a lift chair or other mechanical device (e.g., electric hospital bed), but can independently transfer without it.

Is independent with transfers by pushing on chair arms, other furniture, wheelchair, walker, or cane.

Is independent with transfers after rocking back and forth to gain momentum to get up from a seated position.

Is independent with transfers but needs additional times to do so WITHOUT significant hardship or negative outcomes.

Gets up independently when prompted.

Requires transfer assistance getting in or out of a vehicle.

Doesn't transfer in the home unless a family member/staff is present somewhere in the home, "just in case."

At the most recent screen, the Petitioner reported to the screener that he gets in/out of bed without assistance. He also reported that he uses his cane approximately 3x/week to assist in getting up due to

increased stiffness and soreness in his lower back. The screener observed the Petitioner transfer from sit/stand and stand/sit from the couch several times without difficulty. In the previous screen, it was noted that the Petitioner experiences pain when transferring but that he was able to complete the task independently.

The Petitioner and his mother testified that the Petitioner requires daily assistance from his mother to help him to get out of bed or transfer from the couch.

The evidence supports the Petitioner's assertion that he has pain during transfers. However, the evidence does not support that he is unable to transfer independently or that he suffers any significant, negative outcome as a result of the pain. I conclude the agency properly determined the Petitioner is independent with transfers.

4. Toileting

The LTCFS Instructions state the following regarding toileting:

4.11 Toileting

Definition: The ability to use the toilet, commode, bedpan, or urinal for bowel and/or bladder management. The activity of toileting consists of the following components:

- Locating the bathroom facility
- Transferring on/off the toilet, commode, bedpan, or urinal
- Maintaining regular bowel program*
- Cleansing of self
- Changing of menstrual products and/or incontinence products (if applicable)
- Managing a condom catheter or the ostomy or urinary catheter collection bag (including the emptying and/or rinsing the collection bag)
- Adjusting clothes
- Emptying the commode, bedpan, or urinal

Check this for a person who:

Requires supervision, cueing, and/or hands-on assistance (partial or complete) with any of the above mentioned components of toileting.

Requires regular assistance or cueing to use the bathroom or would be incontinent.

Is incontinent and requires assistance with changing incontinence pads.

The screener testified that the Petitioner reported pain with getting on/off the toilet but that the pain is not so significant that he cannot complete the task independently. The Petitioner reported during the screen that he is able to complete the task independently.

At the hearing, the Petitioner and his mother testified that he requires assistance 3 – 4x/week with cleaning and with getting off the toilet.

Again, I conclude there is insufficient evidence to establish that the Petitioner requires assistance with this task. Though he may have some pain, there is no evidence to indicate that it is significant enough to prevent him from completing the toileting task independently.

Overall, for ADLs, I find the agency's observations and the reports by the Petitioner and his mother during the screens to be credible and consistent with the medical records submitted. It is not credible that the Petitioner and his mother would not report his abilities accurately during the home visit. Their reports during the home visit are consistent with the screener's observations. Based on the evidence, I conclude the agency properly determined the Petitioner is independent with ADLs.

B. Instrumental ADLs (IADLs)

The agency asserts that the Petitioner is independent with all IADLs except Money Management. The Petitioner and his mother contend that he requires assistance with meal preparation, medication management/administration, laundry/chores and transportation.

1. Medication management/administration

The LTCFS Instructions state the following for medication management/administration:

4.14 Medication Management and Administration

If the person needs someone to give them their medications, there are three general possibilities that are included under this row:

1. Medication Administration: This is a skilled task in which the nurse or someone trained by a nurse administers the medications.
2. Assistance with Pre-Selected Medications: An unskilled person (without the judgment about giving or holding a medication) can 'assist' with medications that have been pre-selected – that is, the proper medication and dosage have been selected in advance by a pharmacist, nurse, or someone trained by a nurse. Qualifying assistance here could include a son calling his elderly mother to remind her to take her medications. Verbally cueing a person to take their medication, due to a physical or cognitive impairment, is a need for assistance with Medication Administration.
3. Assistance with Self-Medication: This is when a self-directing person has the cognitive ability to select the proper medication and dosage.

I.) MEDICATION ADMINISTRATION

Definition of Medication Administration: A person's need for assistance from another person to take or be given a medication by any route except intravenously (IV). This could be by mouth, under the tongue, injection, onto or into the body, rectally, vaginally, or by feeding tube. The person's need for assistance from another person in order to use a prescribed medication that is regularly scheduled and used should be captured here.

The person's need for assistance from another person in order to use a prescribed as needed (PRN) medication, that is regularly and frequently taken, can also be treated the same as a regularly scheduled and used prescription medication, and should be captured here. Conversely, a person's need for assistance from another person in order to use a prescribed PRN medication, that is not regularly and frequently taken, should not be captured here.

II.) MEDICATION MANAGEMENT

Definition of Medication Management: A person's need for assistance from another person to set-up or monitor their prescribed and regularly taken medications.

Definition of Medication Set-Up: To separate out the proper dosage and set it aside in an assigned place for later use.

Medication set-up is completed for two reasons. One reason is to ensure the proper medication, at the proper dosage is selected when the individual is unable to select it due

to a physical or cognitive limitation. The second reason is to arrange the medications to help the person remember to take them at proper times and to make it easier to tell that medications were or were not taken.

Examples of medication set-ups:

Medication boxes with compartments labeled for different times and each day of the week, into which pills that are placed.

Any other 'set-up' system in which medications and dosages are pre-selected by another person.

Medication dispensing machines (e.g., a CompuMed) that can be programmed (often weekly) to dispense pills.

Pre-filling of syringes (e.g., insulin syringes).

Medication Boxes

A medication box is commonly used for convenience in organizing and remembering one's medications, even by people with no cognitive or physical impairments. When a person uses a medication box, the screener needs to determine whether due to a cognitive or physical impairment the person needs to use the medication box, and/or needs the assistance of another person to fill it.

2a: Needs help at least once a day 3-7 days per week-CAN DIRECT the task

CHECK this for a person who:

Due to a physical impairment, needs someone to assist them with their prescribed and regularly taken medication.

Is self-directing and has the cognitive ability to select the proper medication and dosage and also has the judgment to understand the medications' purpose, side effects, and report problems, but needs someone to physically assist with the medication. An example of this is a person with quadriplegia who instructs their helper, "Please put 1 of those 3 pills on my tongue and give me a drink."

Needs assistance to crush their medication or assistance to put their medication in food (e.g., applesauce) in order for it to be taken.

At the hearing, the screener testified that the Petitioner demonstrated during the home visit that he could take his medications 3x/day without reminders or other assistance. Both the Petitioner and his mother reported at the home visit that the Petitioner required no assistance with this task.

The Petitioner and his mother testified that the Petitioner uses a medication box. Petitioner's mother testified that she comes to his house and tells him which medications to take and actually puts them in his hand. She also testified that he cannot read well so he needs assistance with this task.

Based on the evidence, I conclude the agency properly found he is independent with medication administration. As with the ADLs, I find it troubling that the information provided by the Petitioner and his mother at the home visit is so different from that provided at the hearing. The testimony of the Petitioner and his mother at the hearing describes extensive assistance with medications but they reported at the home visit that he needs no assistance and he was able to demonstrate to the screener that he could manage without assistance. Based on the inconsistency in the Petitioner's reports, I affirm the agency's determination based on the home visit observations and reports that he is independent with medication management/administration.

2. Laundry/Chores

The LTCFS instructions state the following for laundry/chores:

4.16 Laundry and/or Chores

Definition: The physical and cognitive ability to complete one's personal laundry, routine housekeeping, and basic home maintenance tasks, including the tasks of snow shoveling and lawn mowing.

Assistance with some Laundry and/or Chores tasks is not typically provided on a daily basis. On the rating system, a 1 would be selected for the frequency of assistance needed with the following Laundry and/or Chores tasks:

- Laundry (unless the person is incontinent and in need of more frequent laundry assistance)
- Snow shoveling
- Lawn mowing
- Vacuuming (unless the person has a documented medical reason and need for more frequent vacuuming)
- Floor washing (unless the person has incontinence or other documented medical reason and is in need of more frequent floor washing)

The screener testified at the hearing that the Petitioner and his mother reported at the home visit that the Petitioner can do basic house cleaning and laundry without assistance. The Petitioner did report that he has pain in his back. The pain was not reported as preventing him from doing basic housecleaning. The Petitioner did report that laundry facilities are in the basement and going up and down the stairs is difficult due to the pain. The screener noted that she did observe Petitioner walk up and down stairs during the visit so she concluded that he is able to get to the basement to do laundry.

At the hearing, the Petitioner and his mother affirmed that it is difficult for him to go up and down stairs due to the pain in his back. The Petitioner conceded that his house is not big and there is not much to clean. The Petitioner's mother testified that she comes every day to dust and do dishes and that she does Petitioner's laundry 1x/week.

There is insufficient evidence to demonstrate that the pain in Petitioner's back prevents him from dusting, doing dishes or other light housecleaning. Also, the screener observed the Petitioner go up and down stairs. Though going up and down the stairs with laundry is more difficult, there is insufficient evidence presented to conclude that he cannot complete the task. I find that the agency properly determined he is independent with laundry/chores.

3. Meal Preparation

4.13 Meal Preparation

Definition: The physical and cognitive ability to obtain and prepare basic routine meals, including the task of grocery shopping. What constitutes a meal is an individual choice. Meal Preparation includes the ability to make a simple meal, such as cereal, sandwich, heat frozen foods, or reheat food prepared by others.

Meal Preparation does not include needed transportation to and from a grocery store or assistance with the money transaction to pay for the groceries. (These needs are captured in Module 4.18 Transportation and Module 4.15 Money Management.)

The activity of Meal Preparation may include the following components:

- Open food containers
- Open the refrigerator and freezer
- Safely use their kitchen appliances
- Prepare a simple meal, such as cereal, sandwich, heat frozen foods, or reheat foods prepared by others
- Safely place food on a plate or in a cup, and carry it to a table
- Proper food preparation and storage
- Obtain groceries

The activity of obtaining groceries may include the following components:

- Selecting the food from the store shelves
- Moving items between a basket or cart to the checkout counter.
- The money transaction to pay for the groceries. (This need is captured in Module 4.15 Money Management).
- Bagging the food
- Getting the bags to a vehicle
- Getting the bags into the home
- Putting the groceries away

Check this for a person who:

Has a physical or cognitive limitation impairing their ability to complete the task of Meal Preparation independently.

Is able to independently complete the tasks involved in preparing a meal and grocery shopping but doing so results in a significant, negative health outcome.

...

Needs assistance placing food on plate or with carrying a plate and/or cup to the table.

Needs assistance to open food containers, even with adaptive aids (e.g., electric can opener).

Due to a physical impairment, needs assistance opening their refrigerator or freezer, even with adaptive aids.

Needs assistance preparing meals due to their inability to stand long enough to cook food even when taking breaks to sit down during the task of making a meal.

Is unable to safely use at least one of their appliances to cook or heat food.

...

Is unable to determine when food is spoiled.

Do NOT check this for a person who:

Does not have a physical or cognitive limitation impairing their ability to complete the task of Meal Preparation independently.

Chooses to only eat cold foods.

Is able to independently complete the tasks involved in preparing a meal and grocery shopping but it takes additional time to do so WITHOUT causing significant hardship or negative outcomes.

Needs assistance planning a menu, making a grocery shopping list, requires transportation to the grocery store, or wants to grocery shop more than once a week.

...

Can make a simple meal (cereal, sandwich, etc), can heat food (frozen, leftovers, or food prepared by others), or chooses to only eat cold foods.

...

Can shop independently when their groceries are bagged in smaller and lighter bags so they can manage them.

...

Can prepare a meal if they take breaks to sit down during the task.

Is only able to cook or heat up food in a microwave oven.

Needs assistance cleaning up after a meal. (This need is captured in Module 4.16 Laundry and/or Chores.)

...

Needs assistance with the money transaction to pay for the groceries with cash, credit card, debit card, gift card, personal check, or by store charge account. (This need is captured in Module 4.15 Money Management.)

...

The screener reported that the Petitioner stated he is able to make dinners in the microwave and cook some things on the stove or in the oven. He reported being able to get items out of the refrigerator and to make simple meals such as sandwiches or cereal. He reported that he assists with grocery shopping but his mother helped with his grocery list. He also reported he is able to shop by getting items from the shelf, carrying light bags and putting items away.

At the hearing, the Petitioner stated that heating up TV dinners is not a meal. He conceded he is able to use the microwave to heat up food. He testified that his mom helps him to prepare meals.

The Petitioner concedes he is able to use a microwave to heat up meals so I find he is independent with meal preparation. With regard to grocery shopping, the Petitioner stated he needs help making a grocery list. He also needs help with money transactions. The money transaction involved with shopping is captured under money management/administration. The agency concedes he requires assistance with this task. With regard to other aspects of grocery shopping, there is no evidence that Petitioner requires assistance. I conclude the agency properly found the Petitioner to be independent with meal preparation/set-up.

4. Transportation

4.18 Transportation

Definition: At the time of the screening, the person is physically and cognitively capable of driving a regular or adapted vehicle.

TRANSPORTATION RATING SYSTEM

1a: Person drives regular vehicle

1b: Person drives adapted vehicle

1c: Person drives regular vehicle, but there are serious safety concerns

1d Person drives adapted vehicle, but there are serious safety concerns

2: Person cannot drive due to physical, psychiatric, or cognitive impairment

3: Person does not drive due to other reasons

Select 3: Person does not drive due to other reasons; if at the time of the screening, the person does not have a physical, psychiatric, or cognitive impairment limiting their ability to drive, but the only reason they do not drive is because the person:

Never learned to drive.

Lacks a valid driver license due to a reason other than a physical, psychiatric, or cognitive impairment.

Does not own a vehicle or have access to one.

Cannot afford to maintain a vehicle.

Cannot afford vehicle insurance coverage.

Only utilizes mass transit or taxi service.
 By choice, is only driven by family members or friends.
 Adheres to an age, gender, or cultural norm.

The Petitioner does not drive because he has a suspended driver's license and he does not currently own a car. The agency properly concluded that the Petitioner is cognitively and physically able to drive but does not drive for reasons not related to his physical or cognitive impairments.

Based on the evidence, I conclude the agency properly determined that the Petitioner requires assistance with one IADL (money management/administration) but is independent with all ADLs and all other IADLs. Therefore, the Petitioner does not meet the nursing home level of care and is functionally ineligible for the IRIS program.

CONCLUSIONS OF LAW

The agency properly determined that the Petitioner does not meet the nursing home level of care and is functionally ineligible for the IRIS program.

THEREFORE, it is **ORDERED**

That the Petitioner's appeal 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 14th day of January, 2016

\sDebra Bursinger
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 January 14, 2016.

Bureau of Long-Term Support