



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of



DECISION

FCP/170878

PRELIMINARY RECITALS

Pursuant to a petition filed December 19, 2015, under Wis. Admin. Code § DHS 10.55, to review a decision by iCare in regard to Medical Assistance, a hearing was held on January 26, 2016, at Milwaukee, Wisconsin. The record was held open post-hearing to allow the parties to submit written closing summations. Timely submissions were received from both parties.

The petitioner objected to the respondent's post-hearing summation, requesting that the submission and its attendant exhibits be disregarded as the summation contained factual assertions not made at hearing and hearsay exhibits not presented at the time of hearing. Closing statements are clearly not the time to provide additional documentary evidence or factual assertions. The additional factual assertions and the additional exhibits are improperly presented post-hearing, and will not be considered for purposes of this decision.

The issue for determination is whether the petitioner continues to meet the nursing home level of care.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:



Petitioner's Representative:



Respondent:

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

By: Attorney [Redacted]
iCare
1555 N. Rivercenter Drive
Suite 206
Milwaukee, WI 53212

ADMINISTRATIVE LAW JUDGE:

Peter McCombs
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Milwaukee County.
2. Petitioner is enrolled in FCP. She was the subject of a LTCFS on November 16, 2015; On December 10, 2015, the respondent issued to petitioner a Notice of Change in Level of Care, indicating that she was found to be ineligible for the nursing home level of care (NH LOC). See, Exhibits R-6 and 7.
3. Petitioner has been diagnosed with hoarding disorder, severe and persistent bipolar disorder, anxiety, depression, diabetes, anemia, hypertension, asthma, fibromyalgia and rheumatoid arthritis. See, Exhibits P-6 and 7.
4. Petitioner appealed on December 19, 2015.

DISCUSSION

The Family Care program, 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 she 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.

Based on the record at hearing, petitioner suffers from severe and persistent hoarding disorder, as noted by testimony provided by her psychologist. The petitioner established that this disorder constitutes a complicating condition that limits petitioner's ability to independently meet her needs. Therefore, per subsection (c)6 quoted above, she qualifies for the NH LOC if she requires frequent medical or social intervention to safely maintain an acceptable health or developmental status and has impaired decision making ability exhibited by self-neglect. See Wis. Adm. Code, §DHS 10.33(2)(c)6.

The record demonstrates that petitioner needs assistance with maintaining her health and preventing self-neglect. Petitioner's psychologist testified that she continues to see the petitioner for weekly sessions, and that these sessions are in addition to petitioner's sessions with her psychiatrist. She noted that petitioner's depression and anxiety negatively impacts her hoarding disorder, and that petitioner has regressed since being informed of the decision that she longer meets the NH LOC. Based upon her knowledge of petitioner's disabilities, she opined that without the FCP services petitioner presently receives, within the next 6 months she will again be living in squalor.

I conclude that the agency's determination was not correct. Petitioner continues to be eligible for FCP as she continues to qualify at the NH LOC. Petitioner has a persistent and severe hoarding disorder that limits her ability to independently meet her needs. She requires frequent medical intervention, as exhibited by her regular psychology and psychiatry sessions, to safely maintain an acceptable health status, and she continues to have impaired decision making ability, as exhibited by her history of and propensity for self-neglect. Under the Code, she qualifies at the NH LOC.

CONCLUSIONS OF LAW

The Department did not meet its burden to prove that the change in level of care was proper because petitioner has a persistent and severe hoarding disorder that limits her ability to independently meet her needs.

THEREFORE, it is

ORDERED

That this matter is remanded to the Department and its county agent with direction to rescind its determination that petitioner is ineligible for FCP benefits at the NH. This action must be completed within 10 days of this decision.

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 5th day of April, 2016

\sPeter McCombs
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 April 5, 2016.

iCare
Office of Family Care Expansion
Health Care Access and Accountability
Attorney [REDACTED] [REDACTED]