



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of



DECISION

CWA/172326

PRELIMINARY RECITALS

Pursuant to a petition filed February 26, 2016, under Wis. Admin. Code § HA 3.03, to review a decision by the Rock County Department of Social Services in regard to Medical Assistance (MA), a hearing was held on April 06, 2016, at Janesville, Wisconsin.

The issue for determination is whether the Department correctly denied the petitioner's application for Medicaid Waiver funding programs because he does not meet level of care criteria.

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]
Rock County Department of Social Services
1900 Center Avenue
PO Box 1649
Janesville, WI 53546

ADMINISTRATIVE LAW JUDGE:

Peter McCombs (telephonically)
Division of Hearings and Appeals

FINDINGS OF FACT

- 1. Petitioner (CARES # [Redacted]) is a 50 year-old resident of Rock County. He applied at the county agency for a determination of eligibility for long term care through Medicaid Waiver funding programs.

2. The petitioner has extrinsic asthma with exacerbation, diabetes mellitus, and degenerative disk disease. He resides in a rented home with his girlfriend, PL.
3. On December 30, 2015, Rock County agency employee [REDACTED] performed an assessment of the petitioner using the Long Term Care – Functional Screen Report (assessment tool).
4. On February 3, 2016, [REDACTED] ran the Functional Screen Report on the Department’s level of care system, inputting the information obtained during her assessment, and the Department determined that the petitioner’s conditions returned a finding of no eligibility for COP level 3, HCBW, NAT, IRIS Waiver, or PACE/Partnership. Petitioner was found eligible for Family Care, but at a non-nursing home level of care.
5. On or about February 3, 2016, [REDACTED] issued a letter notice to the petitioner informing him that his application for Medicaid assistance through Home and Community Based Waiver programs services had been denied because he did not meet a level of care, i.e., he was “functionally ineligible”, and that he could appeal if she disagreed.
6. On February 26, 2016, the petitioner filed an appeal with the Division of Hearings & Appeals contesting the denial decision of the county agency.
7. The petitioner can ambulate, transfer, feed and dress himself, bathe, and perform his hygiene regimen without assistance. He can prepare simple meals, though he receives assistance with transporting groceries. He can fold laundry, but receives assistance with transporting laundry. He has no apparent memory deficits, communicates well, can use the telephone, and can manage his money and set up her medications if he desires to do so. He does not receive any medical cares like tube-feeding, catheterization, injections, etc., in the home; and does not use any medical or adaptive equipment in his home.

DISCUSSION

The respondent denied the petitioner’s request for long term care through Medicaid Waiver funding programs. These waiver programs are meant to enable elderly, disabled, or brain-injured persons who would otherwise be in a nursing home to live at home or in community settings typical of the arrangements of those who are not disabled. To qualify, adults must have been found disabled and require the level of care the MA program reimburses for those in a skilled nursing or an intermediate care facility. The MA Community Waiver Programs (e.g., Community Integration Program, Community Options Program - Waiver) are partially funded by the federal government through the Medical Assistance (MA) program. These Waiver programs must meet federal requirements, including MA regulations when applicable. To receive services through the Waiver programs, a person must be currently eligible for MA, fit within an elderly or disabled target group, and have institutional-level care needs. *Medicaid Eligibility Handbook (MEH)*, §28.1, available at <http://www.emhandbooks.wisconsin.gov/meh-ebd/meh.htm> and the *MA HCB Waivers Manual (Manual)*, at <https://www.dhs.wisconsin.gov/waivermanual/index.htm> . The burden of proving eligibility rests with the new applicant.

To meet the functional eligibility requirement (*i.e.*, to have institutional-level care needs), a person must require some sort of in-home care or therapy that reaches a level of nursing facility care. *Manual*, §2.07; 42 C.F.R. §§ 435.217 & 435.441.301(b). To be found or remain eligible, the applicant must undergo an assessment of his/her needs and functioning.

The Manual, § 2.07(c), goes on to explain:

The qualifying screen result means the person has a need for services and supports that is equivalent to the threshold level of care for nursing home admission. These needs may include assistance with activities of daily living (e.g., bathing, dressing, eating, mobility, etc.) and/or instrumental activities of daily living (meal preparation, medication

management and/or administration, money management, etc.) Identified needs may also include assistance with health related services including nursing assessment, skilled therapies and the like. Level of care eligibility rests then on the level of assistance/need identified on the functional screen, the frequency of assistance needed and the risk that without the provision of such assistance the person would face institutionalization.

No one disputes that the petitioner has physical problems. Petitioner testified that he is unable to walk very far, estimating that he could possibly manage one block. He also noted that he can't stand for long periods of time, and that it's hard to keep all of his medication straight. But to receive Medicaid Waiver funding programs benefits he must not only show that he is disabled, but that without the benefits he would have to live in an institution. His diabetes, asthma, and degenerative disk disease certainly affect his physical well-being. But remains able to bathe, dress himself, eat, move about his home, use the toilet, and transfer himself without assistance. He does not require any overnight care. Nor does he have any cognitive, communication, mental health or behavioral impairments. He can manage his own money. His medical records indicate that he is not at imminent risk of entering a nursing home. Based upon this, I find that the agency correctly determined that he does not meet the institutional level of care and, as a result, is not eligible for Medicaid Waiver funding programs.

CONCLUSIONS OF LAW

The petitioner is ineligible for COP-Waiver benefits because he does not require the level of care generally found in an institution.

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 Madison,
Wisconsin, this 18th day of May, 2016

\s\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 May 18, 2016.

Rock County Department of Social Services
Bureau of Long-Term Support