



FH  
[REDACTED]

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

In the Matter of

[REDACTED]  
c/o [REDACTED]  
[REDACTED]  
[REDACTED]

DECISION

FCP- 172843

**PRELIMINARY RECITALS**

On March 16, 2016, the above petitioner filed a hearing request under , to challenge a decision by the Care Wisconsin First, Inc.. regarding Medical Assistance. The hearing was held on June 14, 2016, by telephone from Madison, Wisconsin. A hearing originally set for May 4, 2016, was rescheduled at petitioner's request.

The issue for determination is whether the Department erred in its determination that petitioner no longer meets the nursing home level of care in the Family Care Program (FCP

There appeared at that time the following persons:

**PARTIES IN INTEREST:**

Petitioner:

[REDACTED]  
c/o [REDACTED]  
[REDACTED]  
[REDACTED]

Respondent's Representative:

Attorney [REDACTED]  
Disability Rights Wisconsin  
[REDACTED]  
[REDACTED]

Respondent:

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

By: [REDACTED]  
Care Wisconsin First, Inc.  
PO Box 14017  
Madison, WI 53708-0017

**ADMINISTRATIVE LAW JUDGE:**

Peter McCombs  
Division of Hearings and Appeals

**FINDINGS OF FACT**

1. Petitioner (CARES # [REDACTED]) is a resident of Brown County.
2. Petitioner is a 50 year old male with diagnoses of Traumatic Brain Injury, Spinal Stenosis, Left-side paralysis, hearing loss, stroke, and depression. He is enrolled in the FCP. He was the subject of a Long-Term Care Functional Screen (LTCFS) on October 6, 2015, in which he was found to be eligible for the nursing home level of care.
3. The Department conducted Long-Term Care Functional Screens on March 8, 2016, and April 7, 2016. The results of those LTCFS's were that petitioner no longer met the nursing home level of care.
4. On March 8, 2016, the Department notified petitioner that his level of care would be changing.
5. Petitioner has a cognitive impairment and needs assistance with at least 4 IADL's.

**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, he 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.

Based on the record at hearing, petitioner has a cognitive impairment with a diagnosis of traumatic brain injury, among his other cognitive-related diagnoses. Therefore, per subsection (c)5 quoted above, he qualifies for the nursing home level of care if he cannot safely or appropriately perform 4 or more IADL's. See Wis. Adm. Code, §DHS 10.33(2)(c)5. The record demonstrates, *and the respondent's own LTCFS's conclude*, that petitioner needs assistance with medication administration/medication management, money management, work/functioning at a job site, and transportation.

I conclude that the agency's determination was not correct. He requires assistance with 4 IADL's and has a cognitive impairment. Under the Code, he qualifies for a nursing home level of care.

I note that the petitioner has requested that I address the permanence of this decision in order that petitioner will not have to appeal LTCFS's going forward. Unfortunately, I cannot do so. The program requires regular and repeated LTCFS's for participants in the FCP. As an Administrative Law Judge I am unaware of any authority to determine an FCP participant permanently eligible.

### **CONCLUSIONS OF LAW**

The Department did not meet its burden to prove that the change in level of care was proper because petitioner is cognitively impaired and cannot safely or appropriately perform 4 or more IADL's.

**THEREFORE, it is**

**ORDERED**

That this matter is remanded to the Department and its county agent with direction to reinstate petitioner's eligibility for the nursing home level of care retroactive to March, 2016. 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.

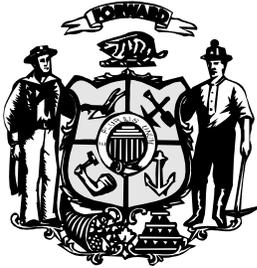
**APPEAL TO COURT**

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 [Click here to enter text.](#), 1 West Wilson Street, Room 651, **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 7th day of July, 2016

\s \_\_\_\_\_  
Peter 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 July 7, 2016.

Care Wisconsin First, Inc  
Office of Family Care Expansion  
Health Care Access and Accountability  
Attorney [REDACTED] [REDACTED]