



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of



DECISION
Case #: FCP - 173929

PRELIMINARY RECITALS

On April 22, 2016, the above petitioner filed a hearing request under Wis. Admin. Code § DHS 10.55, to challenge a decision by the ADRC of Columbia County regarding Medical Assistance. The hearing was held on June 24, 2016, by telephone.

The issue for determination is whether petitioner meets the criteria for the comprehensive level of care relating to long term care program eligibility.

There appeared at that time the following persons:

PARTIES IN INTEREST:

Petitioner:



Petitioner's Representative:

Disability Rights Wisconsin
131 W Wilson St Suite 700
Madison, WI 53703-3263

Respondent:

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

By: ADRC of Columbia County
PO Box 136
Portage, WI 53901-0136

ADMINISTRATIVE LAW JUDGE:

John P. Tedesco
Division of Hearings and Appeals

FINDINGS OF FACT

- 1. Petitioner (CARES # ) is a resident of Columbia County.

2. On March 16, 2016, a long term care functional screen was completed by the ADRC of Columbia County. That LTCFS determined that petitioner needed assistance with one activity of daily living (ADL) which was identified as bathing. The LTCFS also identified that petitioner needs assistance with four instrumental activities of daily living (IADL's) which were noted as: Meal preparation, medication administration/management, money management, and employment.
3. At the time of the determination, the agency did not assign petitioner the condition of "cognitive impairment."
4. On March 17, 2016 the ADRC of Columbia County sent a letter to petitioner informing him that he was not eligible for long term care waiver programs because he did not meet the required level of care.
5. Petitioner submitted a request for hearing.
6. On June 22, 2016, counsel for petitioner obtained detailed explanation and clarification from [REDACTED] who had completed a 2015 neuropsychological assessment of petitioner. That document is included in exhibit #2.
7. Petitioner is cognitively impaired.
8. Petitioner cannot safely and independently perform one activity of daily living: bathing; and four The LTCFS also identified that petitioner needs assistance with four instrumental activities of daily living: meal preparation, medication administration/management, money management, and employment.

### 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 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.

The Wisconsin Department of Health Services made efforts to improve the statewide efficacy of functional assessments by designing and implementing a computerized functional assessment screening system. This system relies upon a face-to-face interview with a trained quality assurance screener. The screener met with the petitioner as part of the reassessment process. Current policy requires the Department's local agent/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, consistent with the DHS-directed result.

However, the determination was based on petitioner NOT being cognitively impaired. The clarification provided by petitioner prior to hearing (see ex. #2 at pp. 28-32) is persuasive. At hearing, the agency conceded that it would be appropriate to designate petitioner as cognitively impaired and re-screen him. However, such a re-screen is not necessary as petitioner appears to clearly meet the criterion for the NH level of care in the Administrative Code DHS 10.33(2)(c)4 as quoted above.

### **CONCLUSIONS OF LAW**

The petitioner is cognitively impaired and requires assistance with one ADL and at least 3 IADL's and, thus, satisfies the criteria for the nursing home level of care under the Wisconsin Administrative Code.

**THEREFORE, it is**

**ORDERED**

That the petition be remanded to the agency with instructions to find that petitioner meets the nursing home level of care retroactive to the 3/16/16 functional screen. The agency shall redetermine eligibility for the requested waiver programs in accord with the Conclusion of Law above. This action shall be taken within 10 days of the date 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, **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 25th day of July, 2016

\s \_\_\_\_\_  
John P. Tedesco  
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 25, 2016.

ADRC of Columbia County  
Office of Family Care Expansion  
Health Care Access and Accountability

