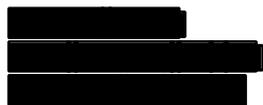




STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of



DECISION
Case #: FCP - 175205

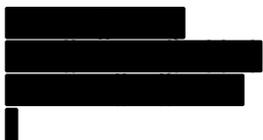
PRELIMINARY RECITALS

Pursuant to a petition filed June 27, 2016, under Wis. Admin. Code, §DHS 10.55, to review a decision by iCare to discontinue Wisconsin Partnership Program (WPP) eligibility, a hearing was held on September 20, 2016, by telephone. A hearing set for August 10, 2016 was rescheduled at the petitioner's request.

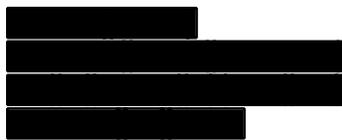
The issue for determination is whether petitioner continues to meet a level of care for WWP eligibility.

PARTIES IN INTEREST:

Petitioner:



Petitioner's Representative:



Respondent:

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

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

ADMINISTRATIVE LAW JUDGE:

Brian C. Schneider
Division of Hearings and Appeals

FINDINGS OF FACT

- 1. Petitioner (CARES # [Redacted]) is a resident of Dane County.
2. Petitioner has been eligible for the WPP under a nursing home level of care. iCare is her partnership organization.

3. On May 18, 2016 iCare completed an updated functional screen to determine ongoing level of care eligibility. The result of the screen was that petitioner no longer met the nursing home level of care.
4. By a notice dated June 6, 2016 iCare informed petitioner that WPP eligibility would end June 30, 2016 because the functional screen found her to be at the non-nursing home level of care. Benefits have continued pending this decision.
5. iCare conducted a rescreen on June 24, 2016. The result of the rescreen also was that petitioner was at the non-nursing home level of care.
6. The rescreen found that petitioner needs assistance with bathing and that she uses a shower chair. She was found to be independent with mobility, but it was noted that she uses both a cane and walker to get around. She needs assistance with meal preparation and laundry/chores, and it was noted that although she drives a car there are serious safety concerns.

DISCUSSION

The Wisconsin Partnership Program is a demonstration project authorized by the United States Department of Health & Human Services under a waiver of the Social Security Act. See 42 U.S.C. §§ 1396n(a), (b). The project is designed to save money for the federal and state governments by integrating long-term care and acute care services under one roof. In essence, the Department of Health Services will pre-pay a uniform fee per person served by the WPP organization, and the organization will provide all Medicaid and Medicare covered medical services each individual is determined to need. It is also designed to maximize the ability of enrolled members to live in a setting of their own choice, to participate in community life, and to participate in making decisions regarding their own care.

The department, operating under a federal waiver, must provide or arrange for all Medicaid *and* Medicare covered services required by participating recipients, i.e., “members,” including nursing facility, primary, acute, and long-term care services utilizing Medicaid and Medicare certified providers. See 42 U.S.C. §1315. The target group for such members is the “frail elderly” and persons “under 65 years of age with disabilities”. Wisconsin Partnership Program Waiver, Section IV, B, effective January, 1999. The department performs this task by delegating the responsibility of service delivery to a private provider known as the “partnership organization.” Petitioner’s current organization is iCare.

The WPP is a sub-program of Medical Assistance (MA). MA and WPP reimburse the partnership organization for the costs of otherwise eligible persons who require one of several defined “levels of [nursing] care.” The department has made efforts to improve the state-wide efficacy of level of care assessments by designing and implementing 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), who has been trained and met all requirements to do so by completing a department sanctioned web-based training program, and has experience working with long term care consumers.

The screener asks the applicant, or a recipient at a periodic review, a multitude of 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 screener then submits the “Functional Screen Report” for the applicant to the department’s Division of Disability and Elder Services. The department then reviews the Long Term Functional Screen data (or “tool”) by computer programming to see if the applicant meets any of the nursing levels of care, as outlined above in detail.

The department's computer program in this case found that petitioner did not meet a level of care, based upon the entries on the form. The definition of the level of care requirement is found in the Wisconsin Administrative Code, §DHS 10.33(2)(c). Petitioner asserts that the criterion under which she should be eligible is number 2: "The person cannot safely or appropriately perform 2 or more ADLs and one or more [IADLs]."

It is without question that petitioner needs assistance with the ADL of bathing and with at least two IADLs. Petitioner asserts that because she requires a cane and walker to ambulate, she also needs assistance with the ADL of mobility. Circuit court decisions have upheld the idea that the use of adaptive aids amounts to the need for assistance with the ADL, and the Department's Deputy Secretary recently addressed the issue in Final Decision FCP-169534, dated September 7, 2016:

In the instant case, the hearing record confirms that petitioner requires the use of adaptive aids for the three ADLs of bathing, mobility in the home, and toileting, and that petitioner requires assistance with two IADLs.... [T]he Department was advised that clarification of the [functional screen] instructions was needed, and to date the Department has made no such clarification. Therefore, based upon the almost identical fact situations to the petitioner's in the above two recent Court Decisions, I conclude that petitioner would continue to qualify for nursing home level of care due to inclusion of her use of adaptive aids.

Just as in that case, the functional screen instructions have not been updated; the most recent instructions are dated October 8, 2015. See Exhibit 1 of iCare's documents. In this case petitioner needs adaptive aids for mobility in her home. Thus based upon the reasoning of the Deputy Secretary, she would continue to meet the nursing home level of care because she needs assistance with two ADLs and at least one IADL. Atty. Bartlett noted a distinction between petitioner's situation and the "D.B." Circuit Court case cited in the Final Decision, but I believe the distinction is without consequence. The key is that both of the court decisions and Final Decision FCP-169534 conclude that if a person requires adaptive aids to perform an ADL, she cannot safely or appropriately perform the ADL as defined in Wis. Admin. Code, §DHS 10.33(2)(c).

CONCLUSIONS OF LAW

The petitioner continues to meet the nursing home level of care for WPP eligibility.

THEREFORE, it is

ORDERED

That the matter be remanded to the iCare with instructions to continue petitioner's WPP eligibility under the nursing home level of care, 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, **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 30th day of September, 2016

\s _____
Brian C. Schneider
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin \DIVISION OF HEARINGS AND APPEALS

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Internet: <http://dha.state.wi.us>

The preceding decision was sent to the following parties on September 30, 2016.

iCare
Office of Family Care Expansion
Health Care Access and Accountability

