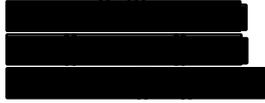




STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of



DECISION
Case #: CWA - 175613

PRELIMINARY RECITALS

Pursuant to a petition filed on July 19, 2016, under Wis. Admin. Code § HA 3.03, to review a decision by the Aging & Disability Resource Center of Dane County-ARC regarding Medical Assistance (MA), a hearing was held on August 30, 2016, by telephone.

The issue for determination is whether the Aging & Disability Resource Center of Dane County properly determined that the petitioner is functionally ineligible for Medicaid home and community based waiver programs.

There appeared at that time the following persons:

PARTIES IN INTEREST:

Petitioner:



Petitioner's Representative:



Respondent:

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

By: [Redacted]
Aging & Disability Resource Center of Dane County-ARC
2865 N Sherman AV
Madison, WI 53704-3016

ADMINISTRATIVE LAW JUDGE:

Teresa A. Perez
Division of Hearings and Appeals

FINDINGS OF FACT

- 1. Petitioner (CARES # [Redacted]) is a resident of Dane County.

2. For an unspecified period of time prior to January of 2016, petitioner was eligible for and enrolled in the Partnership program, a Medicaid home and community based long term care waiver program. Sometime in January of 2016, petitioner was incarcerated and consequently disenrolled from the Partnership Program.
3. On or about June 27, 2016, petitioner contacted the Aging & Disability Resource Center of Dane County and indicated that he was no longer incarcerated and seeking re-enrollment into the Partnership Program.
4. On or about June 30, 2016, the ADRC completed a long term care functional screen which indicated that the petitioner is not functionally eligible for home and community based waiver services. Sometime thereafter, the ADRC notified the petitioner of this result.
5. Petitioner has a cognitive impairment. He suffered a traumatic brain injury in 2004 and as a result, has both short and long term memory loss.
6. Petitioner requires assistance to safely and appropriately perform the following activity of daily living: dressing.
7. Petitioner requires assistance to safely and appropriately perform the following instrumental activities of daily living: money management; meal preparation; and employment.
8. On July 19, 2016, petitioner filed an appeal regarding the ADRC's finding that petitioner is not functionally eligible for home and community based waiver services.

DISCUSSION

Neither the petitioner nor the respondent offered a copy of any notice regarding a denial of eligibility. However, respondent acknowledged that, on or about June 30, 2016, the agency determined that the petitioner was not functionally eligible for home and community based long term care waiver services generally and the Partnership Program specifically.

Home and community based long term care waiver programs (e.g., Community Options Program – Waiver, Wisconsin Partnership Program, etc.) are partially funded by the federal government through the Medical Assistance (MA) program. To receive comprehensive long term care services through these waiver programs, a person must be found “functionally eligible” by demonstrating that s/he needs a “nursing home” or “comprehensive” level of care. *Medicaid Eligibility Handbook*, §28.1; 38.1; 38.3.

To determine an applicant's functional eligibility, a trained screener meets with the applicant and gathers relevant information. This information is then entered into a computer program that ultimately determines the individual's level of care and that produces a Long Term Care Functional Screen Report. While the information gathered during the screening process and the contents of the Long Term Care Functional Screen Report are clearly relevant at a fair hearing when an applicant's level of care is in dispute, the logic or algorithm built into that computer program can direct a level of care finding that is inconsistent with the definition of “nursing home” or “comprehensive” level of care that is set forth in applicable state regulation. As the Division of Hearings and Appeals has observed in several previous hearing decisions, where such a conflict occurs, the existing regulations must control the outcome. See, e.g., DHA Case # FCP-168914 (January 6, 2016) and DHA Case #FCP-166950 (October 6, 2015).

Wis. Adm. Code, §DHS 10.33(2)(c) describes the nursing home level of care as follows:

A person is functionally eligible at the comprehensive level [i.e., nursing home level of care] 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.

“Activities of Daily Living” or “ADLs” are, in turn, defined as bathing, dressing, eating, mobility, transferring from one surface to another such as bed to chair and using the toilet. Wis. Adm. Code §DHS 10.13(1m).

"Instrumental activities of daily living" or "IADLs" are, in turn, defined as management of medications and treatments, meal preparation and nutrition, money management, using the telephone, arranging and using transportation, and the ability to function at a job site. Wis. Admin. Code §DHS 10.13 (32).

It is undisputed that the long term care functional screen conducted on or about June 30, 2016 revealed that the petitioner cannot safely and appropriately perform 1 ADL and three IADLs and that the petitioner has a cognitive impairment. Petitioner thus satisfies the standard for “nursing home” or “comprehensive” level of care that is set forth in the Wisconsin Administrative Code.

CONCLUSIONS OF LAW

Petitioner satisfies the definition of “comprehensive” (i.e., “nursing home”) level of care set forth in the Wisconsin Administrative Code and is therefore functionally eligible for home and community based long term care Medical Assistance waiver services.

THEREFORE, it is

ORDERED

That the petition be remanded to the Aging and Disability Resource Center of Dane County and that the agency amend the Long Term Care Functional Screen to reflect that the petitioner has a nursing home / comprehensive level of care. The ADRC shall take steps to do this within ten days.

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 6th day of September, 2016

\s _____
Teresa A. Perez
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin \DIVISION OF HEARINGS AND APPEALS

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Madison, WI 53705-5400

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FAX: (608) 264-9885
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The preceding decision was sent to the following parties on September 6, 2016.

Aging & Disability Resource Center of Dane County-ARC
Bureau of Long-Term Support

