



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION
Case #: FCP - 206000

PRELIMINARY RECITALS

Pursuant to a petition filed on August 15, 2022, under Wis. Admin. Code § DHS 10.55, to review a decision by the Lac Du Flambeau Tribal Agency regarding Medical Assistance (MA), a hearing was held on October 11, 2022, by telephone.

The issue for determination is whether petitioner is functionally eligible for Family Care.

There appeared at that time the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

Respondent:

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

By: XX

Lac Du Flambeau Tribal Agency
418 Little Pines
PO Box 67
Lac Du Flambeau, WI 54538

ADMINISTRATIVE LAW JUDGE:

Jason M. Grace
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES #) is a 44-year-old resident of Oneida County. She currently resides at a group home. The group home provides meals, supervision, and administers medications. She has a corporate guardian of person and estate.
2. Petitioner has diagnoses that include Major Neurocognitive Disorder due to a Medical Condition, Paranoid Schizophrenia, and Major Depressive Disorder, Obesity, Type-2 Diabetes, and Lumbar-Disc Degeneration.
3. Per a neuropsychological evaluation conducted on June 8, 2022, petitioner meets the criteria for Major Neurocognitive Disorder due to Schizophrenia. Petitioner’s cognitive profile suggested frontal-subcortical dysfunction with slowed processing speed, variable attention, poor attention to detail, reduced cognitive flexibility, impaired abstract reasoning, and inefficient learning/memory.
4. Petitioner has substantial limitations in caring for herself, learning, and capacity for independent living.
5. On or about July 27, 2022, a Long Term Care Functional Screen (LTCFS) was administered to petitioner. It was noted petitioner needed assistance with 1 Activity of Daily Living (bathing) and at least 5 Instrumental Activities of Daily Living (meal preparation, medication management, money management, laundry/chores, and transportation). At hearing, it was also noted that petitioner needed assistance with the IADL of job site functioning. The LTCFS identified petitioner’s target group as Severe and Persistent Mental Illness.
6. Based on the LTCFS, petitioner was found functionally ineligible for Family Care due to not meeting the target group requirement.
7. Petitioner, by her guardian, appealed.

DISCUSSION

Petitioner seeks Family Care benefits. The Family Care program is authorized in the Wisconsin Statutes, §46.286, and is described comprehensively in the Wisconsin Administrative Code, Chapter DHS 10. Family Care is intended to meet the long term care and health care needs of the following “target groups”: frail elders; individuals age 18 and older who have physical disabilities, as defined in Wis. Stat. §15.197 (4) (a) 2.; and individuals age 18 and older who have developmental disabilities, as defined in Wis. Stat. §51.01 (5) (a). Wis. Stat. §46.286(1).

To be functionally eligible for Family Care, a person must fall within one of the specified target groups. If they meet that requirement, then the next step is to determine if they need comprehensive/nursing home level of care. There was no dispute that petitioner meets the comprehensive/nursing home level of care as she needs assistance with 1 ADL (bathing) and 6 IADLs (medication management, meal preparation, money management, transportation, job site, and laundry/chores). See, Wis. Admin. Code, §DHS 10.33(2)(c)(3).

The issue in dispute at hearing was whether petitioner meets the “target group” requirement for the Family Care program. To determine an individual’s functional eligibility, including whether they fall within one of the three target groups served by the long term care waiver programs, a trained screener meets with the applicant and gathers relevant information—as the screener did in this case. This information is then entered into the long term care functional screen, a computer program that “calculates” the individual’s target group and level of care—two components relevant to a finding of functional eligibility. The logic upon which the LTCFS is built has proven to sometimes direct findings

that are inconsistent with relevant legal authority. Where such a conflict occurs, the relevant legal authorities must control the outcome. See, e.g., DHA Case No. FCP-168914 (Wis. Div. of Hearings & Appeals January 6, 2016) (DHS) and DHA Case No. FCP-166950 (Wis. Div. of Hearings & Appeals October 6, 2015) (DHS).

The functional screen completed by the respondent placed petitioner in the target group of Severe and Persistent Mental Illness, which is NOT one of the eligible target groups for Family Care. There was no dispute that petitioner is not physically disabled or considered elderly, so to qualify for Family Care benefits she must meet the developmental disability target group.

The definition of “developmental disability” applicable to Family Care is set forth in Wis. Stats, § 51.01(5)(a). See, Wis. Stats. §46.286(1). That definition is as follows:

“Developmental disability” means a disability attributable to brain injury, cerebral palsy, epilepsy, autism, Prader-Willi syndrome, intellectual disability, or another neurological condition closely related to an intellectual disability or requiring treatment similar to that required for individuals with an intellectual disability, which has continued or can be expected to continue indefinitely and constitutes a substantial handicap to the afflicted individual. “Developmental disability” does not include dementia that is primarily caused by degenerative brain disorder.

Wis. Stats, § 51.01(5)(a).

Petitioner has a diagnosis of major neurocognitive disorder. I find that neurological condition meets the above state definition for developmental disability. There was no dispute at hearing that her neurological condition was expected to continue indefinitely and that it constitutes a substantial handicap as it results in the need for assistance with 1 ADL and 6 IADLs.

Based on the foregoing, I find that petitioner meets the state definition for the developmental disability target group for Family Care and that she requires care at a comprehensive/nursing home level.

CONCLUSIONS OF LAW

1. The petitioner meets one of the target groups for Family Care because she meets the state definition of a developmental disability.
2. The petitioner requires care at the nursing home level.

THEREFORE, it is

ORDERED

That this matter is remanded to the respondent with instructions that within 10 days of the date of this decision it find petitioner functionally eligible for Family Care.

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, 4822 Madison Yards Way, 5th Floor North, 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

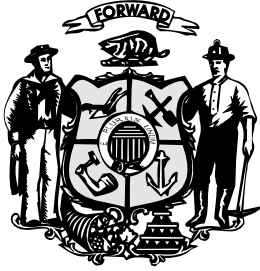
You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Health Services, 1 West Wilson Street, Room 651, **and** on those identified in this decision 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 28th day of October, 2022



\s _____
Jason M. Grace
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

Brian Hayes, Administrator
5th Floor North
4822 Madison Yards Way
Madison, WI 53705-5400

Telephone: (608) 266-3096
FAX: (608) 264-9885
email: DHAmail@wisconsin.gov
Internet: <http://dha.state.wi.us>

The preceding decision was sent to the following parties on October 28, 2022.

Lac Du Flambeau Tribal Agency
Office of Family Care Expansion
Health Care Access and Accountability

