



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

██████████
████████████████████
████████████████████

DECISION
Case #: CWA - 206378

PRELIMINARY RECITALS

Pursuant to a petition filed on September 19, 2022, under Wis. Admin. Code § HA 3.03, to review a decision by the ADRC of Milwaukee County regarding Medical Assistance (MA), a hearing was held on October 27, 2022, by telephone.

The issue for determination is whether the ADRC of Milwaukee County correctly determined the petitioner's functional eligibility/level of care.

There appeared at that time the following persons:

PARTIES IN INTEREST:

Petitioner:

██████████
████████████████████
████████████████████

Respondent:

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

By: Catherine Moe
ADRC of Milwaukee County
Aging Resource Ctr-Suite 300
1220 W Vliet St
Milwaukee, WI 53205

ADMINISTRATIVE LAW JUDGE:

Peter McCombs
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner is a 75-year-old resident of Milwaukee County.
2. Petitioner's medical diagnoses include dehydration, high cholesterol, hypertension, arthritis, joint disorder, chronic leg pain, asthma, and anxiety. The Long Term Care Functional Screen (LTFSC)

also reports diagnoses of schizophrenia and depression reported by petitioner's daughter, but notes that they are unconfirmed. Exhibit R-1.

3. On July 18, 2022, the ADRC of Milwaukee County completed an LTCFS of petitioner. The LTCFS indicates that petitioner requires assistance with the following Instrumental Activities of Daily Living (IADLs): Meal Preparation, Medication Administration/Management, Laundry and/or Chores, Telephone, and Transportation.
4. By letter dated August 5, 2022, the ADRC informed petitioner that based on the LTCFS he was found functionally ineligible for Family Care.
5. Petitioner timely appealed asserting that he is functionally eligible for Family Care at a Nursing Home Level of Care.

DISCUSSION

The Family Care program, which is supervised by the Department of Health Services, is designed to provide appropriate long-term care services for individuals who fall within the following “target groups”: 1. Frail elders; 2. individuals aged 18 and older who have physical disabilities, as defined in Wis. Stats. § 15.197(4)(a)2; and 3. individuals aged 18 and older who have developmental disabilities. See, Wis. Stats. §46.286. To be eligible for enrollment in Family Care, an individual must fall within one of these target groups AND need a “nursing home” (referred to as comprehensive) or “non-nursing home” (referred to as intermediate) level of care. See, Wis. Stats. §46.286(1)(a). In this case, petitioner was found to fall within one of the target groups.

To assess an individual’s functional eligibility for Family Care, an extensive interview regarding his functional abilities and limitations is conducted. The assessment also entails a review of relevant collateral material, such as the applicant’s medical records. The information gathered from the assessment is then input into a computer program which ultimately determines the person’s functional eligibility and level of care. As noted previously by the Division of Hearings and Appeals (DHA), there are times when the logic or algorithm used by the computer program produces results that are at odds with the state regulations that govern the Family Care program. When such conflict is present, the regulations, not the computer program, control the outcome. See, DHA Case No. FCP-192455 (Wis. Div. Hearing and Appeals April 10, 2019)(DHS); DHA Case No. FCP-188090 (Wis. Div. Hearing and Appeals September 17, 2018)(DHS); and DHA Case No. FCP-176611 (Wis. Div. Hearing and Appeals October 18, 2016) (DHS).

Wis. Admin. Code § DHS 10.33(2)(c) defines nursing home level of care as the following:

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.

“Instrumental activities of daily living” are 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 10.313(32). The LTCFS report also includes as an IADL “Laundry and/or Chores.” This indicates department policy is to include the performance of laundry and chores as a separate IADL. Moreover, Federal Medicaid regulations include the performance of essential household chores within the definition of IADLs. See, 42 C.F.R. § 441.505. The DHA has previously issued decisions recognizing that laundry and chores are an IADL for purposes of determining level of care. See, DHA Case No. FCP-192455 (Wis. Div. Hearing and Appeals April 10, 2019)(DHS); DHA Case No. FCP-188090 (Wis. Div. Hearing and Appeals September 17, 2018)(DHS); and DHA Case No. FCP-176611 (Wis. Div. Hearing and Appeals October 18, 2016) (DHS).

In this case, petitioner’s LTCFS indicates that he needs assistance with five IADLs: meal preparation, medication administration/management, laundry and/or chores, telephone, and transportation. According to Wis. Admin. Code § DHS 10.33(2)(c)3, petitioner qualifies for nursing home level of care.

CONCLUSIONS OF LAW

Petitioner is functionally eligible for Family Care at the comprehensive/nursing home level of care.

THEREFORE, it is

ORDERED

That this matter is remanded to the ADRC of Milwaukee County to amend the Long Term Care Functional Screen to reflect that petitioner has a nursing home/comprehensive level of care. This shall be done within ten 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, 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

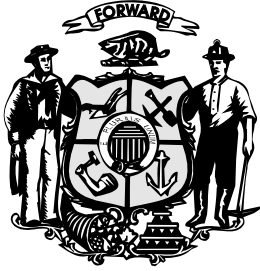
You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Health Services, 1 West Wilson Street, Room 651, **and** on those identified in this decision 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 5th day of December, 2022



\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 December 5, 2022.

ADRC of Milwaukee County
Bureau of Long-Term Support