



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of



DECISION
Case #: FCP - 208522

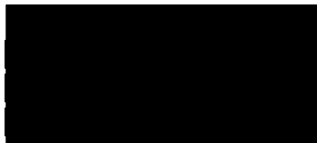
PRELIMINARY RECITALS

Pursuant to a petition filed May 3, 2023, under Wis. Admin. Code, §DHS 10.55, to review a decision by the ADRC of Douglas County to deny a nursing home level of care for Family Care Program (FCP) purposes, a hearing was held on June 21, 2023, by telephone.

The issue for determination is whether petitioner meets the level of care requirement for FCP eligibility.

PARTIES IN INTEREST:

Petitioner:



Respondent:

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

By: Erika Johnson
ADRC of Douglas County
1316 N 14th St
Superior, WI 54880

ADMINISTRATIVE LAW JUDGE:

Brian C. Schneider
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner is a 49-year-old resident of Douglas County.
2. Petitioner has a number of health conditions including legal blindness, asthma, chronic kidney disease, hearing loss, chronic shoulder and leg pain, history of a stroke, and arthritis.

3. Petitioner applied for the FCP in the spring, 2023, and a functional screen was completed on April 21 by Alexis Johnson.
4. The assessor found that petitioner needs assistance with the activity of daily living (ADL) bathing, but that petitioner is independent in other ADLs. She needs assistance in instrumental ADLs meal preparation, laundry/chores, transportation, and potentially employment (although petitioner is not employed and is not intending to become employed).
5. When the functional screen was entered into the state system, the result was that petitioner met only the non-nursing home level of care. Although thus eligible for the FCP, it would be at a lower level that would not cover her most desired services such as laundry/chore assistance and meal assistance.

DISCUSSION

I note at the outset that although I discuss this case in terms of the FCP, a finding of nursing home level of care could also entitle petitioner to be eligible for the IRIS or PACE/Partnership program. The standards for level of care are the same for all of the programs.

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 thoroughly in the Wisconsin Administrative Code, Chapter DHS 10.

Wis. Admin. 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 managed care organization (MCO), including Medical Assistance (MA). Wis. Admin. Code, §DHS 10.36(1)(a). If the person meets the intermediate (non-nursing home) level, she is eligible for full services only if she is in need of adult protective services or she is financially eligible for MA. Wis. Admin. Code, §DHS 10.36(1)(b). A person eligible under the non-nursing home level is eligible for less FCP services.

Wis. Admin. 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.

Wis. Admin. Code, §DHS 10.33(2)(d) describes intermediate functional capacity:

d) *Intermediate functional capacity level.* A person is functionally eligible at the intermediate level if the person is at risk of losing his or her independence or functional capacity unless he or she receives assistance from others, as is evidenced by a finding from application of the functional screening that the person needs assistance to safely or appropriately perform either of the following:

1. One or more ADL.
2. One or more of the following critical IADLs:
 - a. Management of medications and treatments.
 - b. Meal preparation and nutrition.
 - c. Money management.

ADLs include bathing, dressing, eating, mobility, and transferring. Wis. Admin. Code, §DHS 10.13(1m). IADLs include meal preparation, medication management, money management, laundry and chores, telephone, transportation, and the ability to function at a job site. Admin. Code, §DHS 10.13(32).

The Department has developed 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). The screener asks the applicant, or a recipient at a periodic review, 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 person to the Department's Division of Disability and Elder Services. The Department enters the Long-Term Functional Screen data into a computer program to see if the person meets any of the required levels of care.

If the screener enters information into the functional screen correctly, then it is assumed that the computer will accurately determine the level of care.

After reviewing the record and accounting for petitioner's testimony, I must affirm the determination made by the ADRC. At most, petitioner is unable to safely perform one ADL and four IADLs, but she does not have a cognitive impairment that would qualify her under number 4 or 5 listed above. Just the opposite, she is intelligent and well-spoken. As I mentioned during the hearing, petitioner is negatively impacted by her self-sufficiency. She dresses and toilets herself even with some difficulties, for example. Nevertheless, under the standards for a finding of nursing home level of care, I have to conclude that petitioner does not meet that high a level, and thus is ineligible for the full-service FCP or the other programs mentioned above.

CONCLUSIONS OF LAW

Petitioner does not meet the functional requirements for FCP.

THEREFORE, it is **ORDERED**

That the petition for review is hereby dismissed.

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).

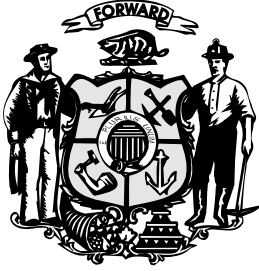
The process for Circuit Court Appeals may be found at Wis. Stat. §§ 227.52 and 227.53. A copy of the statutes may be found online or at your local library or courthouse.

Given under my hand at the City of Madison,
Wisconsin, this 28th day of June, 2023



\s _____

Brian C. Schneider
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 June 28, 2023.

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