



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

██████████
██████████
██████████

DECISION
Case #: FCP - 208424

PRELIMINARY RECITALS

Pursuant to a petition filed on April 25, 2023, under Wis. Admin. Code § DHS 10.55, to review a decision by the ADRC of Marquette County regarding Medical Assistance (MA), a hearing was held on June 14, 2023, by telephone.

The issue for determination is whether the agency correctly determined that Petitioner did not meet a “nursing home” level of care for FCP enrollment purposes.

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: Kay Martin
ADRC of Marquette County
428 Underwood Ave
Montello, WI 53949

ADMINISTRATIVE LAW JUDGE:

Peter McCombs
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner is a 75 year old resident of Marquette County.

2. Petitioner has diagnoses including but not limited to: diabetes (type II), hypothyroidism, hyperlipidemia, vitamin D deficiency, arteriosclerotic disease, carotid stenosis, claudication, hypertension, elevated PSA, and history of a cerebral vascular accident in 2012.
3. Petitioner has no cognitive impairment.
4. Petitioner requires no assistance to safely and appropriately perform his activities of daily living (ADLs).
5. Petitioner requires assistance to safely and appropriately perform the following instrumental activities of daily living (IADL): laundry/chores and transportation.
6. The respondent completed a Long Term Care Functional Screen (LTCFS) in March 2023. The LTCFS directed a finding that Petitioner requires only a non-nursing home level of care.
7. On March 13, 2023, the agency issued a written notice to Petitioner advising him that he was found to meet a non-nursing home level of care and that he was eligible to enroll in Family Care and receive a limited benefit package if he met financial eligibility requirements.
8. On April 25, 2023, Petitioner filed an appeal.

DISCUSSION

The Family Care and Family Care Partnership (FCP) programs, supervised by the Department of Health Services (DHS), are designed to provide appropriate long-term care services for individuals with physical and developmental disabilities and elderly individuals. See Wis. Stat. §46.286, and Wis. Admin. Code ch. DHS 10.

An individual must meet both financial and functional eligibility criteria to receive FCP benefits. To be found functionally eligible, an individual must require a “nursing home” (also referred to as “comprehensive”) level of care. See Wis. Admin. Code §DHS 10.33(2), Wis. Stat. §46.286, and *Contract*, Article III, Sec. A.3. at <https://www.dhs.wisconsin.gov/familycare/mcos/fc-fcp-2020-generic-final.pdf>.

Wis. Admin. Code §DHS 10.33(2)(c) defines 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 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). In addition, the LTCFS tool lists “Laundry and/or Chores” as an IADL. It is thus clear that departmental policy considers the performance of laundry and chores to be an IADL. This is consistent with federal Medicaid regulations which indicate that IADLs include the performance of essential household chores. See 42 C.F.R. § 441.505.

To determine an individual’s “level of care” (LOC), a trained screener meets with the applicant and gathers relevant information. This information is then entered into a computer program that “calculates” the individual’s LOC; however, the logic built into that computer program has been proven to sometimes direct a LOC finding that is inconsistent with the definition of “nursing home” LOC included in applicable state administrative code provisions. See Wis. Admin. Code §DHS 10.33(c). Where such a conflict occurs, the existing code provisions must control the outcome. See, e.g., DHA Case No. FCP-197060 (Wis. Div. of Hearings and Appeals February 10, 2020) (DHS), 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).

In this case, the LTCFS tool directed a finding of non-nursing home level of care. The respondent contends that Petitioner does not need any assistance with any ADLs, but Petitioner contended at hearing that he requires full assistance with 2 ADLs (bathing and mobility). The LTCFS notes that staff at Petitioner’s CBRF reported to the screener that Petitioner is able to wash, dry and regulate the water temperature. He was also observed ambulating at the time of his screening. Unfortunately, the record before me simply fails to corroborate his asserted limitations in these two areas.

I note that, pursuant to Wis. Admin. Code §DHS 10.33(2)(c)2, petitioner only needs to establish the need for assistance with two ADLs, as it is undisputed that Petitioner cannot safely and appropriately perform 2 IADLs (laundry/chores and transportation). He is encouraged to pursue a new screening in the future in order to present his most current health status for review.

Petitioner has not established that he is functionally eligible for Family Care at the nursing home level of care pursuant to Wis. Admin. Code §DHS 10.33(2)(c).

CONCLUSIONS OF LAW

Petitioner is not functionally eligible for Family Care at the nursing home level of care, as he requires assistance with no ADLs and two IADLs.

THEREFORE, it is ORDERED

That Petitioner’s appeal 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

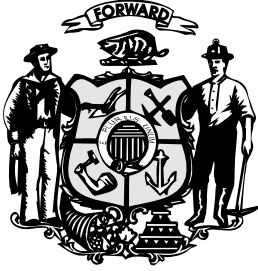
You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Health Services, 1 West Wilson Street, Room 651, **and** on those identified in this decision 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 10th day of July, 2023



\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 July 10, 2023.

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