



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of



DECISION

Case #: FCP - 208068

PRELIMINARY RECITALS

Pursuant to a petition filed on March 16, 2023, under Wis. Admin. Code § DHS 10.55, to review a decision by the ADRC of La Crosse County regarding Medical Assistance (MA), a hearing was held on July 12, 2023, by telephone.

The issue for determination is whether the agency correctly found that petitioner is functionally ineligible for Long-Term Care program benefits.

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:

ADRC of La Crosse County
300 4th St. N
La Crosse, WI 54601

ADMINISTRATIVE LAW JUDGE:

Beth Whitaker
Division of Hearings and Appeals

FINDINGS OF FACT

- 1. Petitioner (CARES # [redacted]) is an adult resident of La Crosse County enrolled in the MAPP medical assistance program.

2. Petitioner is diagnosed with schizophrenia and since June 2022 has resided in the community in an assisted living community.
3. On January 30, 2023, a neuropsychological evaluation of petitioner was performed resulting in diagnoses of cognitive disorder, mild neurocognitive disorder and schizophrenia.
4. On February 6, 2023, [REDACTED] with the ADRC of La Crosse County completed petitioner's Long Term Care Functional Screen.
5. On March 9, 2023, the agency issued to petitioner a Notice of Adverse Benefit Determination denying her request for Long Term Care because she was functionally ineligible.
6. On March 21, 2023, the Division received petitioner's request for hearing by U.S. Mail, postmarked March 16, 2023.

### DISCUSSION

The Family Care Program (FCP) and other Long-Term Care programs, supervised by the Department of Health Services, are 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 comprehensively in the Wisconsin Administrative Code, Chapter DHS 10. Family Care (FC) is intended to meet the long term care and health care needs of the following "target groups": frail elders; individuals aged 18 and older who have physical disabilities, as defined in Wis. Stat. §15.197 (4) (a) 2.; and individuals aged 18 and older who have developmental disabilities, as defined in Wis. Stat. §51.01 (5) (a). Wis. Stat. §46.286(1).

Petitioner was denied benefits because she was not found to be in any of these target groups. The ADRC on behalf of the agency conducted a Long-Term Care Functional Screen and reviewed medical records and found that petitioner is not a frail elder and does not have physical disabilities or developmental disabilities. Her primary long-term diagnosis is schizophrenia. A recent neuropsychological evaluation found that her cognitive impairments were functions of her mental health diagnosis and were not a developmental disability or dementia with causes other than schizophrenia.

Petitioner's father, [REDACTED], testified that petitioner was treated by a physician at one time who stated that she had Lyme disease at some time in the past, possibly 30 years earlier. [REDACTED] speculated that Lyme disease caused petitioner's schizophrenia. Petitioner was diagnosed with schizophrenia at age 22, approximately 30 years ago. [REDACTED] argued that, if this were true, petitioner's schizophrenia should be considered a physical disability, and petitioner would fall within one of the Long-Term Care target groups.

Wis. Admin. Code, §DHS 10.33(2) provides that a Long-Term Care participant must have also demonstrate a functional capacity level of comprehensive or intermediate; Wis. Stat., §46.286, uses the terms "nursing home" and "non-nursing home" levels. If the person meets the comprehensive (nursing home) level, he 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, he is eligible for full services only if he is in need of adult protective services or he 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. Petitioner's Long Term Care Functional Screen found that he did not meet the criteria for nursing home care and determined that he is functionally ineligible.

Conditions for functional eligibility for Wisconsin's Long Term Care programs including IRIS and Family care, are included in the instructions for completing a LTC Functional Screen, which the ADRC did in this case. The instructions regarding functional eligibility are:

- 1) the person must have a long-term care condition or have a condition that is expected to result in death within one year.

- 2) The person's condition must meet one or more of the target group definitions that are eligible for publicly funded long-term care programs in Wisconsin. These eligible target groups are:
  - o Frail elder
  - o Physical disability
  - o Intellectual/developmental disability per FEDERAL definition
  - o Intellectual/developmental disability per STATE definition but NOT federal definition of Alzheimer's disease or other irreversible dementia (onset any age)
  - o A terminal condition with death expected within one year from the date of this screening
- 3) The person whose condition meets a target group definition must have a need for assistance from another person to complete ADLs, IADLs, or HRS tasks that are directly related to the condition(s) that qualified the person for a target group.
- 4) Except for diagnoses of Alzheimer's disease, other irreversible dementias, and terminal illness, a diagnosis alone is not sufficient to qualify an individual to meet a definition of any statutory target group.

Wisconsin Long Term Care Functional Screen Instructions, 2.1 LTCFS Target Groups.

The instruction manual includes this relevant example: "A person may need assistance with an ADL, IADL, or HRS task, but not be eligible for a long-term care program if he or she does not meet one of the eligible target group definitions. For example, a person with schizophrenia and no other condition would not be functionally eligible for a long-term care program in Wisconsin."

ID. 2.1

The cognitive declines noted in the neuropsychological evaluation are attributed by the physician to schizophrenia and are not defined as an intellectual/developmental disability. There is no statement regarding Lyme disease or an assertion of an underlying physical disease. Petitioner is not in the developmentally disabled target group. Petitioner's father's theory of physical disability is speculative and not supported by any reliable evidence, medical or other, in this record. It was not shown that petitioner is in the physically disabled target group. The agency relied on a thorough LTCFS and an in-depth neuropsychological evaluation with detailed documentation. The medical evidence is thorough and internally consistent and was found to be reliable. Its conclusions articulate clearly that the evaluation detected no physical or developmental disability. All reliable evidence in this record supports the conclusions that petitioner is not a frail elder and does not have a physical or developmental disability. She does not meet any criteria for functional eligibility for Long-Term Care.

In the event that petitioner finds this decision unfair, it is the long-standing position of the Division of Hearings & Appeals that the Division's hearing examiners lack the authority to render a decision on equitable arguments. See, *Wisconsin Socialist Workers 1976 Campaign Committee v. McCann*, 433 F.Supp. 540, 545 (E.D. Wis.1977). I cannot decide an issue based on any fairness argument. This office must limit its review to the law as set forth in statutes, federal regulations, and administrative code provisions. I find no error in the agency's determination.

### **CONCLUSIONS OF LAW**

The agency correctly found that petitioner was functionally ineligible for Long-Term Care programs.

**THEREFORE, it is**

**ORDERED**

That the petition for review is 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, 5<sup>th</sup> 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).

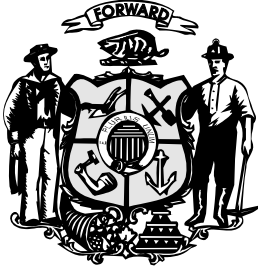
The process for Circuit Court Appeals may be found at Wis. Stat. §§ 227.52 and 227.53. A copy of the statutes may be found online or at your local library or courthouse.

Given under my hand at the City of Madison,  
Wisconsin, this 9th day of August, 2023



\s \_\_\_\_\_

Beth Whitaker  
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 August 9, 2023.

ADRC of La Crosse County  
Office of Family Care Expansion  
Health Care Access and Accountability