



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of



DECISION
Case #: FCP - 189662

PRELIMINARY RECITALS

Pursuant to a petition filed on August 31, 2018, under Wis. Admin. Code § DHS 10.55, to review a decision by the Inclusa Inc/Community Link regarding Medical Assistance (MA), a hearing was held on December 3, 2018, by telephone. The hearing was rescheduled twice from October 15, 2018 and November 7, 2018 at the petitioner's request. The hearing record was held open for 11 days to allow the petitioner an opportunity to supplement the record with additional documentation, which was received.

The issue for determination is whether the agency correctly terminated the petitioner's supportive home care (SHC) services.

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: [Redacted]
Inclusa Inc/Community Link
3349 Church St Suite 1
Stevens Point, WI 54481

ADMINISTRATIVE LAW JUDGE:

Kristin P. Fredrick
Division of Hearings and Appeals

FINDINGS OF FACT

- 1. Petitioner (CARES # [Redacted]) is a 62 year old resident of Juneau County.

2. The petitioner is diagnosed with diabetes, obesity, hyperlipidemia, history of ankle fracture, chronic pain/migraines and anxiety/depression.
3. The petitioner previously received 60.25 hours of supportive home care (SHC) per month through the Family Care Program (FCP).
4. On August 16, 2018, the petitioner's Managed Care Organization (MCO), Inclusa, Inc. issued a *Notice of Action* which terminated the petitioner's SHC hours effective September 2, 2018.
5. The petitioner filed an appeal of the MCO's Notice of Action with the Division of Hearings and Appeals on August 31, 2018.
6. On September 26, 2018 a Long Term Care Functional Screen (LTCFS) was completed that determined that the petitioner requires assistance with the Activity of Daily Living (ADLs) of mobility and three Instrumental Activities of Daily Living (IADLs) of grocery shopping/meal prep, laundry/chores and transportation. The LTCFS found the petitioner eligible for FCP at a non-nursing home level of care.

DISCUSSION

The Family Care program is supervised by the Wisconsin Department of Health Services, and is designed to provide appropriate long-term care services for elderly or disabled adults. It is authorized at Wis. Stat. § 46.286, and is further described at Wis. Admin. Code, ch. DHS 10.

The MCO (also known as CMO in the regulations) must develop an individual service plan in partnership with the client. Wis. Admin. Code § DHS 10.44(2)(f). The member's plan must reasonably address all of the client's long-term needs to assist the client to be as autonomous as possible, while also being cost effective. While the client has input, the MCO does not have to provide all services the client desires if there are less expensive alternatives to achieve the same results. *Id.*, 10.44(1)(f). The member's service plan must be reviewed periodically. *Id.*, 10.44(j)(5).

The state code language on the scope of permissible services for the FCP reads as follows:

DHS 10.41 Family care services. ...

(2) SERVICES. Services provided under the family care benefit shall be determined through individual assessment of enrollee needs and values and detailed in an individual service plan unique to each enrollee. As appropriate to its target population and as specified in the department's contract, each CMO shall have available at least the services and support items covered under the home and community-based waivers under 42 USC 1396n(c) and ss.46.275, 46.277 and 46.278, Stat., In addition, a CMO may provide other services that substitute for or augment the specified services if these services are cost-effective and meet the needs of enrollees as identified through the individual assessment and service plan.

Note: The services that typically will be required to be available include adaptive aids; adult day care; assessment and case planning; case management; ... personal care services; ... supportive home care; ... and community support program services.

Wis. Admin. Code §DHS 10.41(2). Supportive home care (SHC) services are included in the list of covered services in the statutory note above. Having established that SHC hours can be a covered service, the question that remains is, whether SHC hours are essential to meeting the petitioner's needs?

The skeletal legal guidance that pertains to determining the type and quantity of daily care services that must be placed in an individualized service plan is as follows:

HFS 10.44 Standards for performance by CMOs.

...

(2) CASE MANAGEMENT STANDARDS. The CMO shall provide case management services that meet all of the following standards:

...

(f) The CMO, in partnership with the enrollee, shall develop an individual service plan for each enrollee, with the full participation of the enrollee and any family members or other representatives that the enrollee wishes to participate. ... The service plan shall meet all of the following conditions:

1. *Reasonably and effectively addresses all of the long-term care needs* and utilizes all enrollee strengths and informal supports identified in the comprehensive assessment under par. (e)1.
2. *Reasonably and effectively addresses all of the enrollee's long-term care outcomes* identified in the comprehensive assessment under par. (e)2 and assists the enrollee to be as self-reliant and autonomous as possible and desired by the enrollee.
3. *Is cost-effective compared to alternative services* or supports that could meet the same needs and achieve similar outcomes.

...

Wis. Admin. Code §DHS 10.44(2)(f) (*emphasis added*).

The Long Term Care Functional Screen (LTCFS) is a computer program used by the Department to determine an individual's level of care, which is also known as a functional level, and ultimately, the individual's eligibility for Family Care services. Wis. Admin. Code. § DHS 10.33(2)(a). MCOs use a person's functional level of care to determine whether a service will be covered. Generally, the level of supportive home care services depends upon whether a person is determined to require a nursing home level of care or non-nursing home level of care.

The terms "nursing home level of care" and "non-nursing home level of care" are given general definitions in Wis. Stats §46.286(1)(a):

- (a) Functional eligibility.** A person is functionally eligible if the person's level of care need, as determined by the department or its designee, is either of the following:
- 1m.** The nursing home level, if the person has a long-term or irreversible condition, expected to last at least 90 days or result in death within one year of the date of application, and requires ongoing care, assistance or supervision.
 - 2m.** The non-nursing home level, if the person has a condition that is expected to last at least 90 days or result in death within 12 months after the date of application, and is at risk of losing his or her independence or functional capacity unless he or she receives assistance from others.

In further defining levels of care for the Family Care Program, Wis. Admin. Code §10.33(2)(c) and (d) refers to "nursing home level of care" as "Comprehensive functional capacity" and it refers to "non-nursing home level of care" as "intermediate functional capacity":

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.

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.

Activities of daily living, or ADLs, refer to “bathing, dressing, eating, mobility, transferring from one surface to another such as bed to chair and using the toilet.” Wis. Admin. Code, §DHS 10.13(1m). Instrumental activities of daily living, or IADLs, refer to “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, § 10.13(32).

In the present matter, the MCO concluded that the petitioner’s condition had improved and that she was independent with her ADLs and IADLs, that she could receive natural/informal supports from friends and family to meet her long term care outcomes set forth in her member centered plan without SHC and therefore terminated the petitioner’s SHC. A subsequent LTCFS determined that that the petitioner met a non-nursing home level of care due to her level of functioning with ADLs and IADLs. The screener noted that the petitioner required assistance with one ADL (mobility) and that she required assistance with three IADLs (grocery shopping/meal prep, laundry/chores and transportation). There is no evidence that the petitioner has a cognitive impairment. The result was that the petitioner only met a non-nursing home level of care. In order to remain eligible for SHC under the FCP, the petitioner must meet a nursing home level of care.

The petitioner's member centered plan sets forth the following long term care outcomes: living independently in her own apartment, working part time, transportation to medical appointments, affordable safe housing and monitoring/managing her chronic medical conditions.

The petitioner testified that she has difficulty walking up and down stairs due to her ankle and her apartment is on the second floor. She also uses a walker on bad days. The petitioner also testified that she still has medical issues that will require further intervention. Post hearing the petitioner submitted medical documentation including foot surgery discharge instructions, a referral for rehabilitation due to bursitis and doctor's note dated 8/23/18 that states "patient named above has a [sic] ankle fusion and is not able to go up and down stairs." Although the petitioner asserted that she was unable to work due to a disability she submitted no evidence or medical documentation to support this assertion. It is undisputed that the petitioner relies upon others to drive her places largely because she does not have a vehicle even though she has a driver's license. Finally, the petitioner testified that she needs assistance carrying items when she does laundry and grocery shopping. The petitioner's testimony corroborates the findings of the LTCFS and further confirms a non-nursing home level of care because she only requires assistance with one ADL and three IADLs but has no cognitive impairment.

Although the petitioner may benefit from support, the MCO correctly pointed out that the petitioner has natural supports from family and friends to rely upon to complete routine laundry and shopping tasks. Based upon a preponderance of evidence, I find that the MCO correctly terminated the petitioner's SHC due to her no longer requiring the same level of care.

CONCLUSIONS OF LAW

The MCO correctly terminated the petitioner's SHC services.

THEREFORE, it is **ORDERED**

That the 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

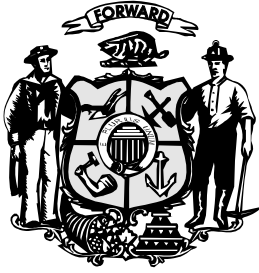
You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Health Services, 1 West Wilson Street, Room 651, **and** on those identified in this decision 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 14th day of January, 2019

\s _____
Kristin P. Fredrick
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 January 14, 2019.

Inclusa Inc/Community Link
Office of Family Care Expansion
Health Care Access and Accountability