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STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION
Case #: FCP - 206782

PRELIMINARY RECITALS

Pursuant to a petition filed on November 7, 2022, under Wis. Admin. Code § DHS 10.55, to review a decision by the ADRC of Milwaukee County regarding Medical Assistance (MA), a hearing was held on December 20, 2022, by telephone.

The issue for determination is whether the agency correctly determined the petitioner is not functionally eligible for the Family Care program.

There appeared at that time the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]

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:

Debra Bursinger
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner is a resident of Milwaukee County. She is 55 years old. Her diagnoses include hypertension, dyskinesia, anxiety disorder, bipolar disorder, depression, schizophrenia, episodic mood disorder, psychosis, vitamin D deficiency, hypothyroidism, hyperlipidemia, and hypertriglyceridemia. She has acute ankle pain due to a fall.
2. On October 26, 2022, the agency completed a Long Term Care Functional Screen (LTCFS) for the Petitioner. The screener found the following the Petitioner requires assistance with one activity of daily living (ADL) – bathing. The screener determined the Petitioner requires assistance with five Instrumental ADLs – meal prep, medication administration/management, money management, laundry/chores, and transportation. The screener determined the Petitioner requires overnight supervision/care. The screener determined the Petitioner would require assistance with employment; however, she is not currently employed and is not interested in employment. The screener found the Petitioner’s conditions are expected to last more than 12 months. The screener determined the Petitioner may have memory impairments due to schizophrenia. She requires assistance with daily decision-making. The screener noted the Petitioner has a history of wandering and suicidal ideation.
3. On October 27, 2022, the agency issued a Notice of Adverse Benefit Determination to the Petitioner informing her that she is not functionally eligible for any long-term care programs based on the results of the LTCFS.
4. On November 7, 2022, an appeal was filed with the Division of Hearings and Appeals.

DISCUSSION

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 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).

The Petitioner’s primary conditions are mental health diagnoses. She does have some physical conditions such as hypertension, hyperlipidemia, hypothyroidism, vitamin D deficiency, and hypertriglyceridemia. She also has pain from an ankle injury. However, the agency determined that she requires assistance with ADLs and IADLs because of her mental health conditions rather than her physical medical conditions. Because she does not require assistance as a frail elder, an individual with physical disabilities or an individual with developmental disabilities, the agency determined she does not meet the required target groups and is not functionally eligible.

At the hearing, the Petitioner’s representatives did not disagree that she requires assistance with ADLs and IADLs because of her mental health conditions. They questioned why her need for assistance due to mental health rather than physical condition should disqualify her from the program. Thus, their quarrel is with the administrative code and statutory provisions that govern the determination of eligibility. But an administrative law judge has no authority to modify those provisions. I understand the frustration of the Petitioner’s family and their desire to find appropriate assistance for her. However, I do not have the authority to grant the equitable relief that they are seeking in order to find that she is eligible for the FC program even though she does not satisfy the legal criteria for any of the specific target groups.

CONCLUSIONS OF LAW

The agency correctly determined the Petitioner is not eligible for FC because she does not meet the criteria as a frail elder, individual with physical disability or individual with developmental disability.

THEREFORE, it is ORDERED

That the Petitioner’s appeal 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 5th Floor, 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.

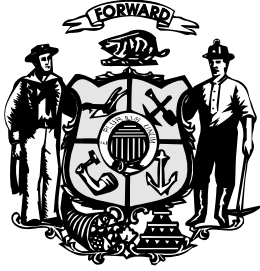
APPEAL TO COURT

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 Milwaukee,
Wisconsin, this 11th day of January, 2023

\s _____
Debra Bursinger
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 11, 2023.

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