



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

██████████
████████████████████
████████████████████

DECISION
Case #: CWA - 208939

PRELIMINARY RECITALS

Pursuant to a petition filed on June 13, 2023, under Wis. Admin. Code § HA 3.03, to review a decision by the Bureau of Long-Term Support regarding Medical Assistance (MA), a hearing was held on July 26, 2023, by telephone.

The issue for determination is whether Department/TMG properly determined that the Petitioner does not require a nursing home level of care.

There appeared at that time the following persons:

PARTIES IN INTEREST:

Petitioner:

██████████
████████████████████
████████████████████

Petitioner's Representative:

Paula Brettingen
Disability Rights Wisconsin
217 W Knapp St
Rice Lake, WI 54868

Respondent:

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

By: TMG

Bureau of Long-Term Support
PO Box 7851
Madison, WI 53707-7851

ADMINISTRATIVE LAW JUDGE:

Jason M. Grace
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES #) is a 54 year-old resident of [REDACTED]. She has medical diagnoses that include hypothyroidism, nonalcoholic steatohepatitis, obesity, sinus tachycardia, diastolic dysfunction, atherosclerosis hypertensive heart disease, osteoarthritis of bilateral hips and left knee, osteoarthritis, neck pain, back pain, hip pain, migraines, asthma, nephrolithiasis, lichen sclerosis, and tobacco abuse.
2. On June 8, 2023, the Department issued a Notice of Action to the Petitioner that indicated she was being disenrolled from the IRIS program as her most recent Long Term Care Functional Screen (LTCFS) indicated that she did not meet the level of care required for the program.
3. On June 13, 2023, the Petitioner filed an appeal with the Division of Hearings and Appeals.
4. On June 23, 2023, a new LTCFS of Petitioner was completed by TMG. The screener determined the Petitioner requires assistance with 1 activity of daily living (ADL): mobility. The screener noted that the Petitioner also requires the use of an adaptive aid (i.e., grab bars) for bathing and toileting. The screener determined the Petitioner requires assistance with 2 instrumental ADLs (IADLs): meal preparation and laundry/chores. Petitioner was found to meet criteria for the Physical Disability target group but found to be at a non-nursing home level of care.

DISCUSSION

To be functionally eligible for IRIS program benefits, an individual must be a member of one of the following “target groups”: frail elderly; adult with a physical disability; or adult with a developmental disability, as that term is defined by 42 U.S.C. § 15002(8), and must also require a “nursing home” level of care. See *IRIS Policy Manual*, §2.1 at <https://www.dhs.wisconsin.gov/publications/p0/p00708.pdf>.

To assess an individual’s functional eligibility, an extensive interview regarding her functional abilities and limitations is conducted. The assessment also entails a review of relevant collateral material, such as the applicant’s medical records. The information gathered from the assessment is then inputted into a computer program which ultimately determines the person’s functional eligibility and level of care. As noted previously by the Division of Hearings and Appeals (DHA), there are times when the logic or algorithm used by the computer program produces results that are at odds with the state regulations that govern the Family Care and IRIS programs. When such conflict is present, the regulations, not the computer program, control the outcome. See, DHA Case No. FCP-192455 (Wis. Div. Hearing and Appeals April 10, 2019)(DHS); DHA Case No. FCP-188090 (Wis. Div. Hearing and Appeals September 17, 2018)(DHS); DHA Case No. CWA-183951 (Wis. Div. Hearing and Appeals February 16, 2018)(DHS); and DHA Case No. FCP-176611 (Wis. Div. Hearing and Appeals October 18, 2016) (DHS).

Wis. Admin. Code § DHS 10.33(2)(c) defines nursing home level of care as the following:

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.

Activities of daily living (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” (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 10.313(32). The LTCFS report also includes as an IADL “Laundry and/or Chores.” This indicates department policy is to include the performance of laundry and chores as a separate IADL.

The use of adaptive aids has been determined to be the equivalent to requiring human assistance and therefore is sufficient to find that the petitioner requires assistance with the related ADL. See DHS Deputy Secretary Final Decision FCP-169534 (Sept. 7, 2016); DHA Decision Case No. 178455 (April 13, 2017); DHA Decision Case No. CWA-181224 (Aug. 3, 2017); DHS Deputy Secretary Final Decision FCP-191912 (Feb. 15, 2019); and DHA Decision Case No. CWA-196041 (Jan. 2, 202).

In this case, I conclude that the Petitioner meets the criteria of DHS 10.33(2)(c)1 and 2 because it is undisputed from the LTCFS that the Petitioner requires assistance with 3 ADLs (bathing, mobility, and toileting) and 2 IADLs (meal prep and laundry/chores). Therefore, she is functionally eligible for the IRIS program at a nursing home level of care.

CONCLUSIONS OF LAW

The Petitioner is functionally eligible for the IRIS program at a nursing home level of care.

THEREFORE, it is

ORDERED

That this matter is remanded to the agency to take all administrative steps necessary to revise its records to reflect that the Petitioner is functionally eligible for the IRIS program at a nursing home level of care. These actions shall be completed within 10 days of the date of this decision.

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

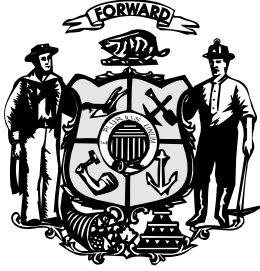
You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Health Services, 1 West Wilson Street, Room 651, **and** on those identified in this decision 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 21st day of August, 2023



\s _____
Jason M. Grace
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin \DIVISION OF HEARINGS AND APPEALS

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Madison, WI 53705-5400

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The preceding decision was sent to the following parties on August 21, 2023.

Bureau of Long-Term Support

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