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**STATE OF WISCONSIN**  
**Division of Hearings and Appeals**

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In the Matter of

██████████  
██████████  
██████████

**DECISION**  
Case #: FCP - 215954

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**PRELIMINARY RECITALS**

Pursuant to a petition filed November 18, 2024, under Wis. Admin. Code, §DHS 10.55, to review a decision by the ADRC of Douglas County regarding Community Waivers eligibility, a hearing was held on December 11, 2024, by telephone.

The issue for determination is whether petitioner meets a level of care for community waivers.

**PARTIES IN INTEREST:**

Petitioner:

██████████  
██████████  
██████████

Respondent:

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

By: Chelsea Thompson  
ADRC of Douglas County  
1316 N 14th St  
Superior, WI 54880

**ADMINISTRATIVE LAW JUDGE:**

Brian C. Schneider  
Division of Hearings and Appeals

**FINDINGS OF FACT**

1. Petitioner is a █████-year-old resident of Douglas County.
2. Petitioner applied for Community Waivers Medical Assistance in October, 2024. The ADRC of Douglas County conducted a functional screening on October 11. The result of the screen was that petitioner did not meet a nursing home level of care. By a notice dated November 6, 2024,

she was informed that she was eligible for only limited-service Family Care, and that she was not eligible for the IRIS program.

3. Petitioner's diagnoses include chronic pain caused by spondylosis, stenosis, obesity, and arthritis, along with Vitamin D deficiency, hypertension, visual impairment, PTSD, and lupus.
4. The screener found that petitioner was independent in all activities of daily living (ADLs) but noted that she uses a shower chair and grab bar to bathe, grab bars for toileting, and a walker for mobility and for transferring. She needs assistance with instrumental ADLs (IADLs) meal preparation/groceries, laundry/chores, and transportation (she is unable to drive).

## 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. The IRIS program was developed pursuant to a Medical Assistance waiver obtained by the State of Wisconsin, pursuant to section 6087 of the Deficit Reduction Act of 2005 (DRA), and section 1915(c) of the Social Security Act. It is a self-directed personal care program. Both programs are under the umbrella of the Community Waivers structure.

Wis. Admin. Code, §DHS 10.33(2) provides that an FCP applicant must have a functional capacity level of comprehensive or intermediate; I note here that Wis. Stat., §46.286, uses the terms "nursing home" and "non-nursing home" levels just as the agency in this case. If the person meets the comprehensive (nursing home) level, she 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, she is eligible for full services only if she is in need of adult protective services or she 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. To be eligible for IRIS, a person must have a nursing home level of care. IRIS Policy Manual, §1.2B.2

Wis. Admin. Code, §DHS 10.33(2)(c) describes comprehensive functional capacity:

(c) *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. [Not applicable to petitioner's situation]

ADLs include bathing, dressing, eating, mobility, and transferring. Wis. Admin. Code, §DHS 10.13(1m). IADLs include meal preparation, medication management, money management, laundry and chores, telephone, transportation, and the ability to function at a job site. Admin. Code, §DHS 10.13(32).

The Department has developed a computerized functional assessment screening system. The system relies upon a face-to-face interview with a quality assurance screener who has at least a bachelor of science degree in a health or human services related field, with at least one year of experience working with the target populations (or, if not, an individual otherwise specifically approved by the Department based upon like combination of education and experience). The screener asks the applicant, or a recipient at a periodic review, questions about his or her medical conditions, needs, cares, skills, activities of daily living, and utilization of professional medical providers to meet these needs. The screener then submits the Functional Screen Report for the person to the Department's Division of Disability and Elder Services. The Department enters the Long-Term Functional Screen data into a computer program to see if the person meets any of the required levels of care.

If the screener enters information into the functional screen correctly, then it is assumed that the computer will accurately determine the level of care. However, although functional screeners are trained to score an ADL as "independent" if the person is able to complete it independently with the use of adaptive equipment or durable medical equipment (DME), the Department has consistently upheld the policy that the need for adaptive equipment is the equivalent of requiring assistance. See, most recently, Final Decision no. FCP-191012, dated 2/15/19. The policy is based on a Department Functional Screen Information Access version 2019.1 (usually called the "Logic"), which states "An ADL is counted if some degree of help is needed (1 or greater), of if adaptive equipment is required."

Based on that logic, and coupled with the code definition of comprehensive functional capacity, I can conclude that petitioner cannot safely perform four ADLs (bathing, toileting, mobility, and transfers). She thus meets the subdivision 1 of the definition even without reviewing the need for IADL assistance. The matter will be remanded to the ADRC to change petitioner's functioning to nursing home level, and to continue processing her community waivers application based on that functional level.

### CONCLUSIONS OF LAW

Petitioner meets the nursing home level of care because she required adaptive equipment and DME to complete four ADLs.

**THEREFORE, it is**

**ORDERED**

That the matter be remanded to the agency with instructions to change petitioner's level of care to nursing home, and to continue processing her community waivers application based upon that level of care. The agency shall take the action within 10 days 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, 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.

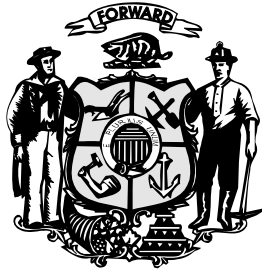
## APPEAL TO COURT

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 13th day of December, 2024

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Brian C. Schneider  
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 December 13, 2024.

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