



FH

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

DECISION
Case #: FCP - 216638

PRELIMINARY RECITALS

Pursuant to a petition filed on January 14, 2025, under Wis. Admin. Code § DHS 10.55, to review a decision by the ADRC of Portage County regarding Medical Assistance (MA), a hearing was held on February 19, 2025, by telephone.

The issue for determination is whether the respondent correctly determined the petitioner's functional eligibility/level of care.

There appeared at that time the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

Respondent:

Department of Health Services
1 West Wilson Street, Room 651
Madison, WI 53703
By: Daryl Woods
ADRC of Portage County
1519 Water Street
Stevens Point, WI 54481

ADMINISTRATIVE LAW JUDGE:

Jason M. Grace
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES #) is a 66 year-old resident of Portage County.
2. The ADRC completed a Long Term Care Functional Screen (LTCFS) for the petitioner on or about December 27, 2024. It found that the petitioner met the target group of Frail Elder and that she had a Non-Nursing-Home level of care. She was found to need assistance with the 1 Activity of Daily Living (mobility in the home) and 5 Instrumental Activities of Daily Living (meal preparation, medication administration/management, money management, laundry/chores, and transportation).
3. The petitioner appealed the finding of a Non-Nursing Home level of care.

DISCUSSION

The Family Care program, which is supervised by the Department of Health Services, is designed to provide appropriate long-term care services for individuals who fall within the following “target groups”: 1. Frail elders; 2. individuals age 18 and older who have physical disabilities, as defined in Wis. Stats. § 15.197(4)(a)2; and 3. individuals age 18 and older who have developmental disabilities. See, Wis. Stats. §46.286. To be eligible for enrollment in Family Care, an individual must fall within one of these target groups AND need a “nursing home” (referred to as comprehensive) or “non-nursing home” (referred to as intermediate) level of care. See, Wis. Stats. §46.286(1)(a). In this case, petitioner was found to fall within the frail elder target group.

To assess an individual’s functional eligibility for Family Care and IRIS, an extensive interview regarding his 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-211106 (Wis. Div. Hearing and Appeals (Jan. 23, 2024) (DHS); 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.

Emphasis added.

Activities of daily living 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” 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 10.13(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. This is consistent with federal Medicaid regulations which indicate that IADLs include the performance of essential household chores. See 42 C.F.R. § 441.505.

In this case, it was not contested that the petitioner’s LTCFS indicates she needs assistance with 1 ADL (mobility in the home) and 5 IADLs (meal preparation, medication administration/management, money management, laundry/chores, and transportation), and belongs to the Frail Elder target group. Although the screening personnel followed their DHS instructions correctly, the conclusion relating to level of care was incorrect under the Code. Per Wis. Admin. Code § DHS 10.33(2)(c)3, petitioner requires a nursing home level of care.

CONCLUSIONS OF LAW

The petitioner requires a nursing home level of care.

THEREFORE, it is

ORDERED

That this matter is remanded to the respondent to amend the Long Term Care Functional Screen to reflect that petitioner requires a nursing home/comprehensive level of care. This shall be done within ten 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.

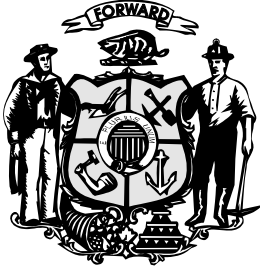
APPEAL TO COURT

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 20th day of February, 2025

\s _____
Jason M. Grace
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 February 20, 2025.

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