



FH

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION
Case #: FCP - 216785

PRELIMINARY RECITALS

Pursuant to a petition filed on January 27, 2025, 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 March 12, 2025, by telephone.

The issue for determination is whether Petitioner is functionally eligible for home and community based long term care waiver services at the nursing home level of care.

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:
Teresa A. Perez
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner is a resident of Milwaukee County who has resided in a skilled nursing unit since June 2024.
2. Petitioner contacted the Aging and Disability Resource Center (“ADRC”) on September 11, 2024 to apply for Medical Assistance long term care waiver services through the PACE program.
3. On December 17, 2024, a long term care functional screen (“LTCFS”) specialist from the ADRC met with Petitioner and gathered information to be entered into the LTCFS.
4. On January 17, 2025, the ADRC determined, using the Department of Health Services’ LTCFS, that Petitioner met only a non-nursing home level of care and that she was therefore not functionally eligible for home and community based waiver services through the PACE program.
5. On January 27, 2025, Petitioner filed an appeal.
6. Petitioner has medical diagnoses including but not limited to: Raynaud’s Syndrome, multilevel degenerative disc disease, polymyalgia rheumatica, scoliosis, osteoporosis, valvular heart disease, aortic valve stenosis, and large hiatal hernia. Petitioner suffers from trace edema in both legs, chronic pain, and has a decreased range of motion in both of shoulders.
7. Due to her various and combined diagnoses and symptoms, Petitioner requires someone to supervise her while she bathes and someone to provide daily assistance to dress her upper body. In addition, Petitioner requires assistance with meal preparation, laundry and household tasks, and transportation.
8. Petitioner requires grab bars and a shower bench while bathing, requires a wheeled walker to ambulate in her home, and requires a raised toilet seat to transfer on and off the toilet.

DISCUSSION

To be functionally eligible for home and community based long term care services through the PACE program, an individual must require a “nursing home” level of care. In this case, the agency contended that Petitioner does not require a nursing home level of care and is therefore not functionally eligible for PACE.

Wis. Admin. Code §DHS 10.33(2)(c), set forth below, describes the nursing home level of care that is used in the Wisconsin Family Care Program.

A person is functionally eligible [at the nursing home level of care] 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... [No. 6 omitted as irrelevant to this case].

The same standard for determining nursing home level of care has been adopted in the other Wisconsin home and community based long term care programs. The long term care functional screen is the tool used to make that determination.

In this case, it is undisputed that Petitioner requires the assistance of another with one ADL (i.e., bathing) and with three IADLs (e.g., meal preparation, laundry/chores, and transportation) and that she also relies on adaptive aids to bathe, toilet, and ambulate in her home.

During the hearing, Petitioner and one [REDACTED], the Director of Nursing where Petitioner resides and one of her caregivers, credibly testified that Petitioner is unable to dress her upper body due to pain and restricted range of motion in her shoulders. The medical records provided by Petitioner corroborated their credible testimony. The agency representative contended that the agency could not find that Petitioner requires assistance with dressing because that assistance was not supported by a specific diagnosis. The agency provided no legal authority for that proposition. Moreover, Petitioner's diagnoses of osteoarthritis, scoliosis, and polymyalgia rheumatica are all diagnoses that could reasonably contribute to pain and limited range of motion. I thus find that Petitioner requires assistance with dressing and that the agency must indicate that need in the LTCFS.

[REDACTED] also credibly testified that staff at the facility where Petitioner resides observed Petitioner make medication errors and that Petitioner therefore now receives medication administration as a service. I thus find that Petitioner requires assistance with medication administration and that the agency must indicate that need in the LTCFS.

I also note that dozens of [DHA hearing] decisions have found that when an individual requires an adaptive aid to complete an ADL, it is the equivalent to the need for human assistance and must therefore be counted for purposes of determining level of care. DHA's position conforms with a line of circuit court decisions as well as final decisions issued by the Department of Health Services. See, e.g., *Deborah Boehm vs. Wisconsin Department of Health Services*, No. 14-CV-10612 (Wis. Cir. Ct. Milwaukee County, Sept. 17, 2015); *Joyce Jones vs. Wisconsin Department of Health Services*, No. 14-CV-10707 (Wis. Cir. Ct. Milwaukee County, September 25, 2015); Final Decision FCP-169534 (September 7, 2016); Final Decision FCP-191012 Secretary DHS Andrea Palm February 15, 2019. I therefore find that Petitioner requires assistance with the ADLs of mobility and toileting and that the agency must indicate those needs in the LTCFS.

In light of the above, I find that Petitioner requires a nursing home level of care and is functionally eligible for Wisconsin home and community based long term care programs including the PACE program.

CONCLUSIONS OF LAW

Petitioner requires a nursing home level of care and is thus functionally eligible for PACE.

THEREFORE, it is

ORDERED

That the matter is remanded to the agency to take all administrative steps necessary to reflect that Petitioner is functionally eligible for PACE at the nursing home level of care, to enroll Petitioner in PACE, if she is otherwise eligible, and to send appropriate notice to Petitioner. The agency shall comply with this order 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.

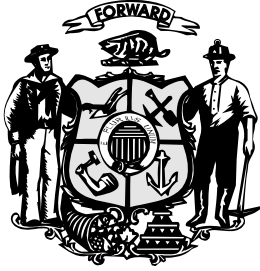
APPEAL TO COURT

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 14th day of April, 2025

\s _____
Teresa A. Perez
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 April 14, 2025.

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