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STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[redacted]

DECISION
Case #: FCP - 220671

PRELIMINARY RECITALS

Pursuant to a petition filed October 30, 2025, under Wis. Admin. Code, §DHS 10.55, to review a decision by Inclusa Inc. regarding the Family Care Program (FCP), a hearing was held on March 24, 2026, by telephone. Hearings set for December 16, 2025, January 20, and February 19, 2026 were rescheduled at the petitioner's request.

The issue for determination is whether petitioner meets an FCP level of care.

PARTIES IN INTEREST:

Petitioner:

[redacted]

Petitioner's Representative:

Atty. Mary Colleen Bradley
Disability Rights Wisconsin
1502 W Broadway, Suite 201
Monona, WI 53713

Respondent:

Department of Health Services
201 E. Washington Ave.
Madison, WI 53703
By: Steph Selle
Inclusa Inc.
3349 Church St., Suite 1
Stevens Point, WI 54481

ADMINISTRATIVE LAW JUDGE:
Brian C. Schneider
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner is a [redacted] resident of [redacted].

2. Petitioner has a number of diagnoses, including an [redacted]. She

resides in a home with her daughter. In October, 2024, a long-term functional screen was conducted, and petitioner was found to be eligible for the FCP at a non-nursing home level of care. Inclusa is her managed care organization (MCO).

3. On August 25, 2025, an Inclusa screener met with petitioner for an annual renewal rescreen. The result of the screen was that petitioner was found to be functionally ineligible for the FCP. The only changes between the 2024 and 2025 screens were that petitioner was found to need some help with mobility in 2024 but not in 2025, and that she needed some help with laundry/chores in 2024 but not in 2025. The 2024 screen noted that petitioner needed assistance with work, but the 2025 screens did not. The 2024 screen also noted that petitioner was at risk of failing; the 2025 screen removed the risk factor. By a notice dated September 18, 2025, the agency informed petitioner that FCP would end.

4. Petitioner filed a grievance, and on October 2, 2025, a different Inclusa screener met with her, with an ombudsman appearing on her behalf by telephone. The result of the screen was that petitioner was functionally ineligible for the FCP. The grievance committee upheld that determination of ineligible by a letter dated October 23, 2025.

5. Petitioner appealed, and benefits were ordered to be continued pending the appeal. On January 13, 2026, Leslie Eder, a screener supervisor with Inclusa, conducted a third functional screen, again with an ombudsman assisting petitioner via telephone. The result confirmed that petitioner was functionally ineligible for the FCP.

6. The 2024 screen showed a target group of physical disability. The August, 2025 screen showed that petitioner met no target group, but the October, 2025 and January, 2026 both put her in an eligible target group of Developmental Disability – State definition, apparently because a 2021 neuropsychological evaluation was considered for the first time.

7. All three screeners found that petitioner was independent in all activities of daily living (ADLs). They found that she was independent in instrumental ADLs (IADLs), noting that petitioner does not drive and does not currently work. They acknowledged that petitioner needs to take additional time to complete some tasks, but she told them she did not feel unsafe, but that she would like another person to be present if she needs help. Petitioner reported that on bad days it might take longer to complete ADLs.

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.

Wis. Admin. Code, §DHS 10.33(2) provides that an FCP applicant must have a functional capacity level of "nursing home" or "non-nursing home." If the person meets the 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 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.

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

> (c) *Nursing home level.* A person is functionally eligible at the nursing home 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.

Wis. Admin. Code, §DHS 10.33(2)(d) describes non-nursing home functional capacity:

> d) *Non-nursing home level.* A person is functionally eligible at the non-nursing home level if the person is at risk of losing his or her independence or functional capacity unless he or she receives assistance from others, as is evidenced by a finding from application of the functional screening that the person needs assistance to safely or appropriately perform either of the following:
>
> 1. One or more ADL.
> 2. One or more of the following critical IADLs:
> a. Management of medications and treatments.
> b. Meal preparation and nutrition.
> c. Money management.

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 Medicaid 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, over time it has been shown that the results of the functional screening might be different than the results determined by reviewing the code definitions.

Atty. Olson put together a strong case on petitioner's behalf. She pointed out that in the *Functional Screen Instructions*, found on-line at www.dhs.wisconsin.gov/publications/p00946.pdf, individuals who have fluctuating abilities should be judged on how they function on their "bad days." *Instructions*, page 2-4. Shortness of breath and exhaustion are significant, negative health outcomes. *Instructions*, page 5-1. Various sections of the *Instructions* suggest that a person should be scored at least a "1" if, on a bad day, she has to use improvised or homemade items to complete an ADL, and certain IADLs should also be scored at least a "1" if help is needed, suggesting that petitioner needs some help in meal preparation, laundry/chores, transportation, and employment. *Instructions*, Modules 5.6. through 6.4.

Atty. Olson then pointed out that petitioner has consistently reported shortness of breath and chronic pain in her medical assessments. Petitioner testified that she cannot stand for lengthy periods of time, that she sometimes has to improvise with fixtures and walls to bathe, toilet, or move around the home, that she does not drive because she cannot pass the written driver's test, and that she likely could not make change using cash.

As strong as Atty. Olson's presentation was, the problem is that all of these concerns were raised for the first time at the hearing. When petitioner met with the screeners, she consistently showed that she could do her ADLs and IADLs independently. Three different screeners essentially came to the same conclusions. There is nothing in the screeners' comments suggesting that petitioner could not do the activities on "bad" days, despite petitioner having an ombudsman assisting her. The screeners thus had no reason to review collateral contacts or to delve into petitioner's functioning on "bad" days.

Atty. Olson argued that petitioner meets a nursing home level of care because, based on the evidence presented at the hearing, she meets a target group, and she needs assistance with at least three ADLS and five IADLs. I cannot make that jump. Even if petitioner needs some assistance on "bad" days, I cannot make the leap to the conclusion that she cannot safely or appropriately perform the activities, as required by the Administrative Code. As noted, at best the results of the new information might lead to petitioner having the number "1" entered on various ADLs and IADLs. I have no way of knowing if those entries would make a difference in the functional screen results, and I am not convinced by the evidence that I should override any potential functional screen results by concluding that petitioner cannot safely and appropriately perform the activities.

Therefore, noting again that the functional screeners entered the information into the functional screen correctly based upon their assessments of petitioner, I will remand the matter to the agency to conduct a fourth functional screen, using the new information provided during the hearing process. Petitioner probably did not realize the need to discuss the difference in functioning on her bad days versus good days, so at the new screening she can provide more details to the screener. If petitioner disputes the findings of the re-screen, she can file a new appeal.

CONCLUSIONS OF LAW

Although the functional screens processed by Inclusa were accurate based upon the information provided, new evidence suggests that petitioner might meet an FCP-eligible functional result if she is re-screened.

THEREFORE, it is **ORDERED**

That the matter be remanded to the agency with instructions to conduct a new long-term functional screen to allow petitioner to describe her functioning as she did during the hearing. The agency shall schedule the meeting within 10 days of this decision and issue a new determination as usual following the re-screen.

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, 201 E. Washington Ave., **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 31st day of March, 2026

\s_____
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 March 31, 2026.

Inclusa Inc/Community Link
Office of Family Care Expansion
Health Care Access and Accountability
Attorney Mary Colleen Bradley