



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

(petitioner)

DECISION

FCP-20/61810

PRELIMINARY RECITALS

Pursuant to a petition filed January 17, 2004, under Wis. Stat. §49.45(5) and Wis. Adm. Code §HA 3.03(1), to review a decision by the Office of Strategic Finance (OSF) in regard to Family Care Program, a hearing was held on February 27, 2004, at Fond Du Lac, Wisconsin.

The issue for determination is whether the petitioner's level of care was correctly determined.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

(petitioner)

Department of Health and Family Services
Office of Strategic Finance
1 West Wilson Street, Room 631
Madison, WI 53701

Kay Krause Creative Care Options
Creative Care Options
50 North Portland Ave
Fond Du Lac, WI 54935

ADMINISTRATIVE LAW JUDGE:

Joseph A. Nowick
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (SSN xxx-xx-xxxx, CARES #xxxxxxxxxx) is a resident of Fond du Lac County.
2. Petitioner formerly was a nursing home resident certified for MA. She moved back into the community and applied for MA coverage under the FCP.
3. Petitioner's FCP determination was referred to the Creative Care Options (CMO) for a level of care determination. At first, it was determined that petitioner met the intermediate level of care. On December 11, 2003, that was changed to a comprehensive level of care.
4. Petitioner's income is over the MA limit. Because of her level of care determination, she was found to be eligible for FCP services, but not for MA.

5. By a notice dated December 9, 2003, the county agency informed petitioner that her MA would end effective January 1, 2004.

DISCUSSION

The Family Care Program provides financial assistance for long-term care and support. Wis. Stat. § 46.2805(4) (1999-00); Wis. Admin. Code § HFS 10.13(21) (October 2000). The Family Care Benefit is available to eligible persons only through enrollment in a CMO. See Wis. Admin. Code § HFS 10.41(1) (October 2000). Application for the Family Care Benefit must be made to the agency serving the county, tribe or family care district in which the person resides. Wis. Stat. § 46.287(2)(a)1. (1999-00); Wis. Admin. Code § HFS 10.55(3) (October 2000).

Wis. Adm. Code, §HFS 10.33(2) provides that an FCP applicant must have a functional capacity level of comprehensive-needs nursing home care, comprehensive or intermediate. If the person meets the comprehensive-needs nursing home care level, she is eligible for full services through a care management organization (CMO), including MA. See Wis. Adm. Code, §HFS 10.36(1)(a). If the person meets the other levels, she is eligible for full services only if she is financially eligible for MA. See Wis. Adm. Code, §HFS 10.36(1)(b). In addition, if the person was receiving services under COP-W or another community-based service program before those programs ended with the onset of FCP, she can be grandfathered for services even if she does not meet the intermediate level. Wis. Adm. Code, §HFS 10.36(1)(c), referencing §HFS 10.33(3). Although the code is not clear on the issue, the person is treated like a comprehensive (without a need for nursing home care) or an intermediate care level recipient; she also must be financially eligible for MA to receive MA. If not immediately eligible for MA, a comprehensive or intermediate level or grandfathered person is eligible for home-based FCP services, but not for MA unless she meets an MA deductible calculated under that program's rules.

The person may or may not have to pay a cost share amount for FCP eligibility. If she does, the cost share can be used to meet the deductible. Once the deductible is met, the person becomes eligible for MA, and she no longer has to pay the cost share, for the remainder of the 6-month deductible period.

At the hearing, the ALJ went through the assessment tool with the petitioner to determine if there were any errors. The petitioner admitted that there were none. She again stated that her real concern is getting help with her significant medical expenses. While that is certainly understandable, that help is not available though the MA program unless she meets the specified deductible. If petitioner's condition should worsen, she can submit the case back to the CMO to have her functional capacity reviewed again.

CONCLUSIONS OF LAW

The agency correctly determined petitioner's FCP eligibility based upon her functional capacity level.

NOW, THEREFORE, it is ORDERED

That the petition for review be and the same is hereby dismissed.

REQUEST FOR A NEW HEARING

This is a final fair hearing decision. If you think this decision is based on a serious mistake in the facts or the law, you may request a new hearing. You may also ask for a new hearing if you have found new evidence that would change the decision. To ask for a new hearing, send a written request to the Division of Hearings and Appeals, P.O. Box 7875, Madison, WI 53707-7875.

Send a copy of your request to the other people named in this decision as "PARTIES IN INTEREST."

Your request must explain what mistake the examiner made and why it is important or you must describe your new evidence and tell why you did not have it at your first hearing. If you do not explain these things, your request will have to be denied.

Your request for a new hearing must be received no later than twenty (20) days after the date of this decision. Late requests cannot be granted. The process for asking for a new hearing is in sec. 227.49 of the state statutes. A copy of the statutes can found 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 no more than thirty (30) days after the date of this hearing decision (or 30 days after a denial of rehearing, if you ask for one).

Appeals for benefits concerning Family Care Program must be served on Department of Health and Family Services, P.O. Box 7850, Madison, WI, 53707-7850, as respondent.

The appeal must also be served on the other "PARTIES IN INTEREST" named in this decision. The process for Court appeals is in sec. 227.53 of the statutes.

Given under my hand at the City of
Madison, Wisconsin, this 3rd day of
March, 2004

/s/ Joseph A. Nowick
Administrative Law Judge
Division of Hearings and Appeals
428/JAN

cc: Jenifer Harrison-Metastar - e-mail
April HAYS-DHFS/METASTAR - e-mail
Charles Jones, OSF/CDS - e-mail
Anne Luby - Fond Du Lac Co. - e-mail
Cheryl McIlquham - BHCE
Ann Marie Ott - DHFS - e-mail
Kay Krause Creative Care Options - e-mail
Sandy Tryon - e-mail
Larry Debbert, Creative Care Options