



FH
[REDACTED]

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

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

AMENDED DECISION

CWA/169822

PRELIMINARY RECITALS

Pursuant to a petition filed October 28, 2015, under Wis. Admin. Code § HA 3.03, to review a decision by the Bureau of Long-Term Support in regard to Medical Assistance, a telephonic hearing was held on December 08, 2015, at Port Washington, Wisconsin.

THIS DECISION IS BEING AMENDED HEREIN to correct a merge that caused an error in Finding of Fact #4.

The issue for determination is whether the IRIS agency correctly determined that petitioner no longer meets the level of care or target group for IRIS eligibility.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]

█

Respondent:

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

By: [REDACTED], Screen Liaison Supv.
TMG - IRIS Consultant Agency
1 S. Pinckney St., Suite 320
Madison, WI 53703-2887

ADMINISTRATIVE LAW JUDGE:

Kelly Cochrane
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Ozaukee County.
2. Petitioner has been enrolled in IRIS. She is 21 and lives with her parents.
3. Petitioner has been diagnosed with a mild cognitive impairment (with a full scale IQ of 75), attention deficit disorder, and Legg-Perthes (right hip).
4. An IRIS annual reassessment was completed in October 2015. A new functional screen was prepared. The screener noted that petitioner needs no assistance with activities of daily living (ADLs). Petitioner was found to need assistance with the instrumental activities of daily living (IADLs) of laundry/chores and money management.
5. The functional screen result was that petitioner did not meet the nursing home level of care. By a notice dated October 8, 2015, the agency informed petitioner that IRIS services would end due to the negative functional screen.

DISCUSSION

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(j) of the Social Security Act. It is a self-directed personal care program.

The federal government has promulgated 42 C.F.R. §441.450 - .484 to provide general guidance for this program. Those regulations require that the Department's agent must assess the participant's needs and preferences (including health status) as a condition of IRIS participation. *Id.*, §441.466. The Department's agent must also develop a service plan based on the assessed needs. Further, "all of the State's applicable policies and procedures associated with service plan development must be carried out ..." *Id.* §441.468.

An IRIS participant must be elderly, or an adult with physical or developmental disabilities. See IRIS General Information at www.dhs.wisconsin.gov/bdds/IRIS/general.htm. The physical disabilities must be such that the person requires a level of care equal to the level of a nursing home. DHS Medicaid Eligibility Handbook, §37.1.3. To qualify for a nursing home level of care a person must have a long-term care condition expected to last at least one year. See Overview of the Long Term Care Functional Screen, §1.2, found at www.dhs.wisconsin.gov/lcicare/FunctionalScreen/WebCT/instructions1.htm.

IRIS plans of care are updated at least on a yearly basis. 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 (ADLs), and utilization of professional medical providers to meet these needs. The assessor 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 assessor enters information into the functional screen correctly, then it is assumed that the computer will accurately determine the level of care.

Wis. Admin. Code, §DHS 10.33(2)(c) defines 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 [IADLs].
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.

Comprehensive functional capacity level is equivalent to nursing home level. See Wis. Stat., §46.286. Although the above definition is found in the administrative code chapter relating to the Family Care Program, Division of Hearings and Appeals administrative law judges have applied the definition to the IRIS program as well. In August, 2014, the Deputy Secretary issued a Final Decision in case no. CWA-157032 holding that the code definition does not apply to the IRIS program, thus entailing that the results of the functional screen would be the final word in the level of care determination. However, that decision was vacated by the Department in April, 2015, as part of a settlement of a Circuit Court appeal of that case. Thus, it is evident that the definition of comprehensive, nursing home level of care for IRIS is as set out in Wis. Admin. Code, §DHS 10.33(2)(c).

It was undisputed that petitioner does not need assistance with her ADLs (bathing, dressing, eating, mobility, toileting, and transferring). With respect to her IADLs (meal preparation, medication management, money management, laundry, using the telephone, transportation, overnight care or supervision and employment. See LTCFS Instructions, Module 4, §4.1 at <http://www.dhs.wisconsin.gov/lcfs/FunctionalScreen/WebCT/instructions4.htm>), the agency found she needed some assistance with money management and laundry.

Using the code definition, petitioner comes closest to meeting §DHS 10.33(2)(c)5. However, I cannot find that the evidence supports a finding that she requires assistance with 4 IADLs. Petitioner certainly faces some challenges, but it does appear that she is functioning well being employed, recently acquiring her driver's license and having been able to stay home by herself when her parents were out of town for a couple of days. Petitioner's parents testified and clearly want what is best for their daughter, however, I cannot find that the evidence shows that petitioner cannot perform most tasks safely and appropriately. While petitioner may require assistance reordering her medications, that is captured under Chores (laundry). See <https://www.dhs.wisconsin.gov/functionalscreen/lcfs/instructions4.htm#16>.

Another reason the agency determined that it was going to terminate petitioner's IRIS coverage was because it determined that she did not meet the federal definition for Developmental Disability. To meet the IRIS level of care, a person must be in a target group of developmentally disabled, physically disabled, or frail elderly. Petitioner's full-scale IQ and mild cognitive impairment puts her into the developmentally disabled (DD) group. From there the person must have substantial limitations in at least three areas of the following: capacity for independent living, self-care, receptive and expressive communication, learning, mobility, and self-direction. See Exhibit G1. There is again no evidence to show that she has limitations in at least 3 of those categories.

For the reasons described above, I conclude that petitioner does not meet the IRIS level of care requirements. I do not mean to diminish the challenges the petitioner faces, however, under the rules she does not meet the nursing home level of care. She is not substantially, functionally limited to the extent required here. I conclude that the agency's decision was correct. As stated at hearing, the petitioner may want to consider applying for the Family Care Program. If her limitations change or worsen, she can always reapply for IRIS.

CONCLUSIONS OF LAW

Petitioner does not meet the IRIS eligibility and level of care requirements.

THEREFORE, it is

ORDERED

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

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, 5005 University Avenue, Suite 201, 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, Madison, Wisconsin 53703, **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 Milwaukee,
Wisconsin, this 13th day of January, 2016

\sKelly Cochrane
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

Brian Hayes, Administrator
Suite 201
5005 University Avenue
Madison, WI 53705-5400

Telephone: (608) 266-3096
FAX: (608) 264-9885
email: DHAmail@wisconsin.gov
Internet: <http://dha.state.wi.us>

The preceding decision was sent to the following parties on January 13, 2016.

Bureau of Long-Term Support