



STATE OF WISCONSIN  
Division of Hearings and Appeals

In the Matter of



DECISION

CWA/171576

**PRELIMINARY RECITALS**

Pursuant to a petition filed January 22, 2016, under Wis. Admin. Code § HA 3.03, to review a decision by the Bureau of Long-Term Support in regard to Medical Assistance, a hearing was held on March 02, 2016, at Milwaukee, Wisconsin.

The issue for determination is whether the agency correctly determined that the petitioner no longer meets the level of care requirement for the IRIS program.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:



Respondent:

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

By:   
Bureau of Long-Term Support  
1 West Wilson  
  
Madison, WI

ADMINISTRATIVE LAW JUDGE:

Corinne Balter  
Division of Hearings and Appeals

**FINDINGS OF FACT**

1. The petitioner (CARES # ) is a resident of Milwaukee County.
2. The petitioner was previously enrolled in and receiving services through the IRIS program.

3. The petitioner is 21 years old. He is diagnosed with Hypothyroidism, unilateral sensorineural hearing loss, nutritional disorder, fatigue, and constipation. Previously he had carcinoma of nasopharynx stage III. He has been cancer free for four years now. The petitioner is fed through a g-tube, however, he can manage his own g-tube feeding.
4. On December 17, 2015 IRIS completed a long-term care functional screen for the petitioner. The screener went to the petitioner's home, spoke to the petitioner and his mother, and observed the petitioner. The screener concluded that the petitioner was independent with all of his ADLs and IADLs. The screener imputed this information into the long-term care functional screen, which found that the petitioner was no longer functionally eligible for the IRIS program.
5. On December 17, 2015 IRIS sent the petitioner a notice stating that he was no longer functionally eligible for the IRIS program, and that he would be terminated from the program effective January 1, 2016. The notice went on to state that the petitioner had 45 days from the date of the notice to request a state fair hearing.
6. On January 22, 2016 the Division of Hearings and Appeals received the petitioner's Request for Fair Hearing.

### 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](http://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/lc/FUNCTIONALSCREEN/WebCT/instructions1.htm](http://www.dhs.wisconsin.gov/lc/FUNCTIONALSCREEN/WebCT/instructions1.htm).

IRIS plans of care are updated when a participant requests a change in the plan. See IRIS Program Policies found at [www.dhs.wisconsin.gov/bdds/IRIS/IRISPolicySummary.pdf](http://www.dhs.wisconsin.gov/bdds/IRIS/IRISPolicySummary.pdf). The plans also 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, 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.

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.
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] .

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. As noted in the petitioner's brief, 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).

ADLs include bathing, dressing, eating, mobility, and transferring. Wis. Adm. Code, § DHS 10.13(1m). IADLs include meal preparation, medication management, money management, laundry and chores, telephone, and transportation. Critical IADLs include management of medications and treatments, meal preparation and nutrition, and money management.

In this case IRIS correctly determined that the petitioner was no longer functionally eligible for the IRIS program. The long term care functional screen determined that the petitioner was independent with all of his ADLs and IADLs. Although the petitioner is fed with a g-tube, he is 21 years old, and able to manage his own g-tube feeding. The screener observed the petitioner manage his g-tube feeding, move about his apartment, and transfer. Although the screener did not observe the petitioner get into and out of the bath or dress himself, the petitioner indicated that he was able to complete bathing and dressing on his own.

At the hearing the petitioner argued that the screener observed him on a good day, and that he is unable to complete the all of his ADLs and IADLs on a bad day. On a bad day, which occurs 2-3 times per week, he needs assistance with everything. I do not find this testimony credible. The petitioner has been cancer free for four years. The petitioner also reported memory loss, which IRIS was unable to confirm through his medical records. The previous screen never found that the petitioner needs assistance with "everything." On one hand the petitioner is saying that nothing has changed, but going from the previous screen if I were to find the petitioner's testimony credible, his condition would have worsened. For all these reasons, I find that the long term care functional screen is correct, and that the petitioner is no longer functionally eligible for the IRIS program.

### **CONCLUSIONS OF LAW**

The agency correctly determined that the petitioner no longer meets the level of care requirement for the IRIS program.

**THEREFORE, it is**

**ORDERED**

That the petition is 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**

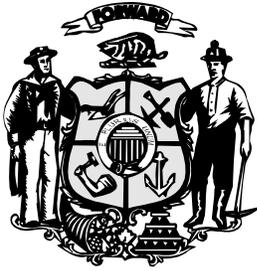
You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Health Services, 1 West Wilson Street, Room 651, Madison, Wisconsin 53703, **and** on those 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 9th day of March, 2016

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\sCorinne Balter  
Administrative Law Judge  
Division of Hearings and Appeals



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The preceding decision was sent to the following parties on April 22, 2016.

Bureau of Long-Term Support