

3. The petitioner is 68 years old. She is diagnosed with memory loss, Lumbago pain, retinopathy, and CHF. Previously when the petitioner was enrolled in the IRIS program, she had recently broken her arm, and needed additional assistance with tasks that she can now complete independently.
4. On December 28, 2015 IRIS completed a long-term care functional screen for the petitioner. The screener went to the petitioner's home, spoke to her, and observed her. The screener concluded that the petitioner needed assistance with dressing, meal preparation, laundry, and chores. 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 29, 2015 IRIS sent the petitioner a notice stating that she was no longer functionally eligible for the IRIS program, and that she would be terminated from the program. The County Income Maintenance department would determine the effective date for the petitioner's termination from the IRIS program.
6. On January 18, 2016 the County agency sent the petitioner a notice stating that she would be terminated from the IRIS program effective February 1, 2016.
7. On January 25, 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. 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 when a participant requests a change in the plan. See IRIS Program Policies found at 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 because she was not at the nursing home level of care. Previously she met this level of care requirement when she had broken her arm, and was unable to complete several ADLs. With respect to ADLs the petitioner now only needs assistance with dressing. The petitioner is otherwise able to complete all other ADLs independently. The screener noted that the petitioner needs assistance on some days with bathing, but this is 50% of the time or less, and the petitioner is able to not bath on those bad days when she has pain. With respect to critical IADLs the screener notes that the petitioner needs assistance with meal preparation. The petitioner also needs assistance with laundry and chores. She is otherwise independent with all other IADLs.

The petitioner's testimony supports IRIS' position. The petitioner testified that she needed someone to help her one day a week with cleaning her house, grocery shopping, and opening jars for her. This supports that the petitioner is independent in all ADLs with the exception of dressing, and therefore, not eligible for IRIS because she is not at the nursing home level of care.

I note that the petitioner appears to be functionally eligible at the non-nursing home level or intermediate level of care. Wis. Adm. Code, §DHS 10.33(2)(d) describes intermediate functional capacity:

d) *Intermediate functional capacity level.* A person is functionally eligible at the intermediate 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.

IRIS only provides services for people at the nursing home level of care. The family care program provides services at the non-nursing home level of care. There are many family care providers to choose from. There is an additional financial component to this lower level of care. I encourage the petitioner to follow up with the Aging and Disability Resource Center (ADRC) to determine what services if any she would eligible for at the non-nursing home level of care.

CONCLUSIONS OF LAW

The agency correctly determined that the petitioner no longer met 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 8th day of March, 2016

\sCorinne Balter
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 March 8, 2016.

Bureau of Long-Term Support