



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

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In the Matter of

[REDACTED]  
[REDACTED]  
[REDACTED]

DECISION

CWA/172701

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**PRELIMINARY RECITALS**

Pursuant to a petition filed March 10, 2016, under Wis. Admin. Code § HA 3.03, to review a decision by the Bureau of Long-Term Support in regard to Medical Assistance (MA), a hearing was held on April 13, 2016, at Racine, Wisconsin.

The issue for determination is whether IRIS may limit each of the petitioner’s Personal Home Workers to a maximum of 40 hours per week.

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]  
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 # [REDACTED]) is a resident of Racine County.
2. The petitioner receives Personal Home Worker (PHW) services through the IRIS (Include, Respect, I Self-Direct) program. He receives a total of 270 hours per month.

3. Previously, the petitioner's sister provided the entire 270 hours of care each month.
4. On February 14, 2016 IRIS informed the petitioner and his sister of their new policy. The new policy "prevents a single participant-hired workers (PHWs) from working more than 40 hours per week." In rare situations the Department of Health Services may approve an exception for up to 50 hours per week. Exceptions are determined on a case by case basis.
5. On March 14, 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. IRIS policies are found online at <http://www.dhs.wisconsin.gov/publications/P0/P00708.pdf>.

IRIS created a new policy for participant-hired workers (PHWs). The new policy states:

IRIS participants may elect to exercise employer authority over their caregivers. Under employer authority, the participant hires, schedules, and manages his or her own caregivers who are known as participant-hired workers (PHWs). DHS policy prevents a single PHW from working more than 40 hours per week. These hours may be any combination of Supportive Home Care, IRIS Self-Directed Personal Care (SDPC), Respite, Daily Living Skills Training, or other services paid at an hourly rate. The goal of this policy is to mitigate safety risks to both the participant and the participant-hired worker. This policy does not limit the total number of hours in a participant's care plan; it merely limits the number of hours that a single PHC can provide. Exhibit R-B1

The policy goes on to allow DHS to approve an exception of up to 50 hours per week in rare situations. *Id.* These exceptions are determined on a case by case basis. *Id.* The policy also allows for a transition period. Exhibit R-C1.

The petitioner sister vehemently opposes this new policy. The petitioner is eligible to receive up to 270 hours per month of PHW time. This amounts to approximately 62 hours of PHW time each week. The petitioner's sister was providing all of his care, and was getting paid for the entire 62 hours per week. The petitioner and his sister argue that nobody else can provide the petitioner care at the same level as her.

It is up to IRIS to create and implement their policies. The petitioner and his sister provide no legal basis for me to rule in their favor. I have no authority to re-create, modify, or invalidate an agency's policy, if the policy is consistent with state and federal statutes. There is no federal law or state law that this policy violates, and thus there is nothing that prevents IRIS from creating and implementing this policy.

### **CONCLUSIONS OF LAW**

IRIS may limit each of the petitioner's Personal Home Workers to a maximum of 40 hours per week.

**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

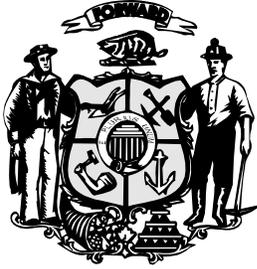
You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Health Services, 1 West Wilson Street, Room 651, Madison, Wisconsin 53703, **and** on those 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 19th day of May, 2016

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\sCorinne Balter  
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 May 19, 2016.

Bureau of Long-Term Support