



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of



DECISION
Case #: CWA - 173471

PRELIMINARY RECITALS

Pursuant to a petition filed on April 6, 2016, under Wis. Admin. Code § HA 3.03, to review a decision by the Bureau of Long-Term Support regarding Medical Assistance (MA), a hearing was held on July 5, 2016, by telephone.

The issue for determination is whether the IRIS agency erred in its denial of a recumbent trike at an expense of over \$2,500.

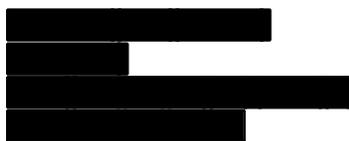
There appeared at that time the following persons:

PARTIES IN INTEREST:

Petitioner:



Petitioner's Representative:



Respondent:

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

By: [Redacted]
Bureau of Long-Term Support
PO Box 7851
Madison, WI 53707-7851

ADMINISTRATIVE LAW JUDGE:

John P. Tedesco
Division of Hearings and Appeals

FINDINGS OF FACT

- 1. Petitioner is a resident of Jefferson County.
2. Petitioner requested a recumbent trike at a cost of over \$2,500.

3. The request was denied.
4. Petitioner appealed.

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.

IRIS Program policy no. SC 16.1 provides guidance on coverage of customized goods or services under the program. Such goods or services are those that enhance the person's opportunities related to living arrangement, relationship, community inclusion, work, and functional medical status. The item must meet all four of the following criteria:

- a. It must be designed to meet the person's functional, vocational, medical, or social needs and also advance the desired outcomes in the individual service plan;
- b. It must be documented on the service plan;
- c. It cannot be prohibited by statutes or regulations;
- d. It cannot be available through another source or be experimental in nature.

In addition, the item must meet at least one of the following criteria:

- a. It will maintain or increase the person's safety in the home or community;
- b. It will decrease or prevent increased dependence on other Medicaid-funded services;
- c. It will maintain or increase the person's functioning related to his disability;
- d. It will maintain or increase the person's access to or presence in the community.

The agency must review questionable items that exceed the cost of average products necessary to meet an outcome. ***The agency must provide an item that is the most cost effective possible.*** See IRIS Program Operations Infrequent Expense Policy at www.dhs.wisconsin.gov/bdds/IRIS/BudgRevw.pdf. See also 42 C.F.R. §440.180(b)(9).

In this case, the agency denied the request for a recumbent trike stating that petitioner already has a power wheelchair, and a scooter to facilitate her access to the community. The agency also notes that petitioner is able to walk and also receives transit tickets. The agency also explained that petitioner is able to obtain a health club membership which would be more cost effective than the \$2,500 trike. The agency also notes that petitioner had a trike previously approved and that petitioner returned the item shortly after buying it because petitioner did not feel safe in the trike. The agency also suspects that petitioner may need assistance transferring on and off the trike.

Petitioner argues that there is no safety concern. Her physicians encourage its use with appropriate safety gear. She also sees that the trike is a good way for petitioner to access her community and improve her health. The petitioner sees this as a long-term cost effective option. Petitioner explained that the initial

trike she owned was purchased at Walmart and is a different model than the one presently requested. Petitioner also notes that her physician recommends the trike and her physical therapist also questions the wisdom of a gym membership given her medical conditions.

This item seems to me like a novelty and luxury; an experiment that may work to accomplish some limited goals. Petitioner's representative argues that bus tickets are not the same as a trike to accomplish community access. But, the IRIS waiver does not require that an agency provide all manner of transportation options to meet the daily whim of the member. A nearly \$3,000 expenditure for a tricycle that may or may not work for petitioner is not a cost-effective expense. There are many other possibilities for transportation and fitness than a questionable item at that cost.

CONCLUSIONS OF LAW

The agency did not err in its denial of the recumbent trike.

THEREFORE, it is ORDERED

That this appeal 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, **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 Madison,
Wisconsin, this 24th day of August, 2016

\s _____
John P. Tedesco
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 August 24, 2016.

Bureau of Long-Term Support

