



FH

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

In the Matter of:

[REDACTED]

DECISION

CWA/143854

PRELIMINARY RECITALS

Pursuant to a petition filed September 13, 2012, under 42 C.F.R. § 441.470(f) (2011), to review a decision by the Wisconsin Department of Health Services ["DHS"] concerning the IRIS ("Include, Respect, I Self-Direct") program, a Hearing was held via telephone on October 25, 2012.

The issue for determination is whether it was correct for IRIS to deny petitioner's request for a ticket for petitioner to the Performing Arts Center (\$120.00 one-time), motel room (\$120.00/day for 2 days), and meals for petitioner's caregivers (\$12.50/event per caregiver, 2 events) .

There appeared at that time via telephone the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]

Represented by:

[REDACTED] petitioner's mother &
Legal Guardian

[REDACTED]

Wisconsin Department of Health Services
Room 650
1 West Wilson Street
P.O. Box 7850
Madison, Wisconsin 53707-7850

BY: Andrea Loasby, Participant Services Specialist
Jill Speer, Participant Services Specialist
IRIS Consultant Agency
Suite 320
1 South Pinckney Street
Madison, Wisconsin 53703-2887

ADMINISTRATIVE LAW JUDGE:
 Sean P. Maloney
 Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner is a resident of Wisconsin.
2. Petitioner requested that IRIS fund a ticket for her to the Performing Arts Center (\$120.00 one-time) in ██████████ Wisconsin, motel room (\$120.00/day for 2 days), and meals for petitioner's caregivers (\$12.50/event per caregiver, 2 events).
3. By a written *Notice of Action* dated August 3, 2012 IRIS denied petitioner's request for a ticket for her to the Performing Arts Center (\$120.00 one-time) in ██████████ Wisconsin, motel room (\$120.00/day for 2 days), and meals for petitioner's caregivers (\$12.50/event per caregiver, 2 events); the Performing Arts Center (\$120.00 one-time) in ██████████ Wisconsin is about 10 miles from petitioner's home.

DISCUSSION

Petitioner requests IRIS funding for a ticket to the Performing Arts Center (\$120.00 one-time), motel room (\$120.00/day for 2 days), and meals for petitioner's caregivers (\$12.50/event per caregiver, 2 events). Petitioner maintains that a trip to the Performing Arts Center in ██████████ Wisconsin (along with a second trip to a *Timber Rattlers* baseball game also in ██████████ Wisconsin) will advance the desired outcome of community membership. Although the events in ██████████ are only 10 miles from her home she claims a motel room is necessary because she "needs two people to assist her with toileting and they must have a bed to do it."

IRIS program written regulations state that "customized goods and services" can be approved only if, among other requirements, the item or service is not prohibited by federal and state statutes and regulations. *Appendix C: Waiver WI.0484.R01.00*; page 28 (January 1, 2011). Policy: SC 16.1 *IRIS Funding for Goods, Supports and Services*; Effective date September 1, 2010; 1.d. (p. 1) Federal regulations state that services must be cost effective to be approved. 42 C.F.R. § 441.180(b)(9) (2011).

This is a denial of eligibility for services; it is not discontinuation of services. As with any eligibility denial, the burden is on petitioner to show that she is eligible for the requested services. *Lavine v. Milne*, 424 U.S. 577, 583-584 (1976). Petitioner has failed to do so.

First, there is no documentation in the record of this matter to support petitioner's claim that a motel room is necessary because she "needs two people to assist her with toileting and they must have a bed to do it." In the absence of such documentation it cannot be concluded that payment for a motel room is a cost effective use of IRIS funds.

Second, even if a motel room is necessary, there has been no showing that other activities closer to petitioner's home in ██████████ would not meet the desired outcome of community membership. Activities closer to petitioner's home would avoid the need for a motel room because petitioner could use her own home for toileting.

CONCLUSIONS OF LAW

For the reasons discussed above, it was correct for IRIS to deny petitioner's request for a ticket for petitioner to the Performing Arts Center (\$120.00 one-time), motel room (\$120.00/day for 2 days), and meals for petitioner's caregivers (\$12.50/event per caregiver, 2 events).

NOW, THEREFORE, it is

ORDERED

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

REQUEST FOR A REHEARING

This is a final administrative decision. If you think this decision is based on a serious mistake in the facts or the law, you may request a rehearing. You may also ask for a rehearing if you have found new evidence which would change the decision. Your request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and tell why you did not have it at your first hearing. If you do not explain these things, your request will have to be denied.

To ask for a rehearing, send a written request to the Division of Hearings and Appeals, P.O. Box 7875, Madison, WI 53707-7875. Send a copy of your request to the other people named in this decision as "PARTIES IN INTEREST." Your request for a rehearing must be received no later than 20 days after the date of the decision. Late requests cannot be granted.

The process for asking for a rehearing is in Wis. Stat. § 227.49. A copy of the statutes can be found 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 appropriate court no more than 30 days after the date of this hearing decision (or 30 days after a denial of rehearing, if you ask for one).

For purposes of appeal to circuit court, the Respondent in this matter is the Department of Health Services. After filing the appeal with the appropriate court, it must be served on the Secretary of that Department, either personally or by certified mail. The address of the Department is: 1 West Wilson Street, Madison, Wisconsin 53703. A copy should also be sent to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400.

The appeal must also be served on the other "PARTIES IN INTEREST" named in this decision. The process for appeals to the Circuit Court is in Wis. Stat. §§ 227.52 and 227.53.

Given under my hand at the City of Madison,
Wisconsin, this 29th day of October, 2012

Sean P. Maloney
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 October 29, 2012.

Bureau of Long-Term Support