



FH  
[REDACTED]

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

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In the Matter of

[REDACTED]

DECISION

CWA/144372

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**PRELIMINARY RECITALS**

Pursuant to a petition filed October 05, 2012, 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 November 05, 2012, at Wisconsin Rapids, Wisconsin.

The issue for determination is whether the IRIS Program erred in terminating petitioner from enrollment in the IRIS Program due to his no longer meeting the required level of care.

There appeared at that time and place the following persons:

**PARTIES IN INTEREST:**

Petitioner:

[REDACTED]

Respondent:

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

By: Jill Speer  
IRIS  
1 S. Pinckney St.  
Suite 320  
Madison, WI 53703-2887

**ADMINISTRATIVE LAW JUDGE:**

John P. Tedesco  
Division of Hearings and Appeals

**FINDINGS OF FACT**

1. Petitioner (CARES # [REDACTED]) is a resident of Wood County.
2. Petitioner was a member of the IRIS program.

3. Petitioner underwent an annual long-term functional screen assessment on August 30, 2012 in order to determine whether petitioner was eligible for continued eligibility.
4. The assessment determined that petitioner was largely independent but needed assistance with one ADL and two IADL's.
5. The Program determined that petitioner was no longer eligible as he no longer met the nursing home level of care.
6. Petitioner filed a timely appeal.

### DISCUSSION

The petitioner seeks to continue enrollment in the Wisconsin IRIS program, a fee-for-service alternative to the Family Care and Partnership programs for individuals requesting a long-term care support program in Family Care counties. *Medicaid Eligibility Handbook*, § 37.1.1. IRIS, which stands for "Include, Respect I Self-Direct," requires potential recipients to reside in a county with Family Care, have a nursing home level of care, and meet MA Waiver financial and non-financial criteria. *Id.*, 37.1.3. The petitioner lives in a county with Family Care and meets the program's financial criteria, but the agency contends he no longer meets the nursing home level of care.

The nursing home level of care, which is also referred to as the comprehensive level of care, is described as follows at Wis. Admin. Code § DHS 10.33(2)(c):

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.
6. The person has a complicating condition that limits the person's ability to independently meet his or her needs as evidenced by meeting both of the following conditions:
  - a. The person requires frequent medical or social intervention to safely maintain an acceptable health or developmental status; or requires frequent changes in service due to intermittent or unpredictable changes in his or her condition; or requires a range of medical or social interventions due to a multiplicity of conditions.
  - b. The person has a developmental disability that requires specialized services; or has impaired cognition exhibited by memory deficits or disorientation to person, place or time; or has impaired decision making ability exhibited by wandering, physical abuse of self or others, self neglect or resistance to needed care.

Wis. Admin. Code § DHS 10.33(2)(c).

Activities of daily living, or ADLs, refer to "bathing, dressing, eating, mobility, transferring from one surface to another such as bed to chair and using the toilet." Wis. Adm. Code, § DHS 10.13(1m). Instrumental activities of daily living, or IADLs, refer to "management of medications and treatments,

meal preparation and nutrition, money management, using the telephone, arranging and using transportation and the ability to function at a job site.” Wis. Adm in. Code § 10.13(32)

Agencies must determine eligibility using a uniform functional screening tool prescribed by the Department. Wis. Admin. Code § DHS 10.33(2)(a). The program assessed the petitioner through the use of the functional screen and determined that he does not meet the required level of care. In fact, according to the assessment, petitioner was not even a close case in that he reported a significant improvement in independence with bathing, dressing, eating, toileting and transferring. The IRIS program determined that petitioner needs assistance with one of his ADL’s and two of his IADL’s.

The real issue in this case is that, at the time of the hearing, petitioner claimed that he was not truthful with the program at the time of the assessment. He testified that he intentionally misrepresented facts because he was afraid the program might place him in a nursing home against his will if he told the truth. Therefore, he testified, he reported to the program a greater degree of independence than he actually possesses.

This may be what happened. But, petitioner did not put forth any evidence to rebut the assessment conducted by the program or demonstrate his actual capabilities. He did not provide physician testimony or supplemental occupational therapist assessments in his favor. His credibility must be questioned due to his claim that he was intentionally untruthful with the program previously. It is equally possible that petitioner wishes to continue eligibility and is being untruthful now.

I see no basis on this record to find that the program made an error. The program may have been misled by the intentional misrepresentations of petitioner. If so, that is unfortunate. It may be that he is actually eligible. If petitioner believes that is so then he should inquire about re-application to the program. But, it is clear that petitioner’s termination from the program was not due to any error by the agency.

### **CONCLUSIONS OF LAW**

The IRIS program did not err in its decision to terminate petitioner from the program due to its determination that he no longer meets the required level of care.

**THEREFORE, it is**

**ORDERED**

That this appeal is 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 served and 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 12th day of December, 2012

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\sJohn 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 December 12, 2012.

Bureau of Long-Term Support