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

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In the Matter of



DECISION

CWA/144619

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**PRELIMINARY RECITALS**

Pursuant to a petition filed October 18, 2012, under Wis. Admin. Code § HA 3.03, to review a decision by an agent of the Wisconsin Department of Health Services' Division of Long Term Care, Bureau of Long-Term Support (BLTS or Bureau), in regard to IRIS benefits, a hearing was held on December 10, 2012, by telephone. A hearing set for November 13, 2012, was rescheduled at the petitioner's request, due to his hospitalization.

The issue for determination is whether the Department's agent correctly dis-enrolled the petitioner from the IRIS program, due to concerns that his health and safety could not be protected while participating in the program.

There appeared at that time the following persons:

**PARTIES IN INTEREST:**

Petitioner:



Respondent:

Department of Health Services  
1 West Wilson Street  
Madison, Wisconsin 53703  
By: Jill Speer  
IRIS Participant Services Spec.  
IRIS Consultant Agency

**ADMINISTRATIVE LAW JUDGE:**

Nancy J. Gagnon  
Division of Hearings and Appeals

## FINDINGS OF FACT

1. Petitioner is currently a resident of St. Croix County. He is financially eligible for the IRIS program, and has been enrolled in the program for several years. IRIS is a self-directed personal care program, created by a Medicaid waiver.
2. The petitioner, age 52, is physically disabled. He has diagnoses of multiple sclerosis, depression, recurrent UTIs, recurrent pressure sores, dysphagia, anemia, and colostomy. The petitioner requires hands-on assistance with all activities of daily living (ADLs), such as bathing, eating, dressing, grooming, toileting and transferring. He is physically unable to dial a telephone or drive a vehicle.
3. Since March 2009, the petitioner has had 28 caregiver employees either quit or get fired by him. Upon discharge from his June 2012 hospitalization, the petitioner misrepresented to the IRIS agency that he would be able to find unpaid caregivers (“natural supports”) to care for him, so that a home health agency need not be retained for him. This did not work out, and the petitioner was re-hospitalized. Finally, in August 2012, the petitioner represented the amount in his IRIS budget to a care provider, David Morbeck, thereby inducing Morbeck to provide care that exceeded the IRIS budget.
4. On October 10, 2012, the IRIS agency issued written notice to the petitioner advising that he would be involuntarily dis-enrolled from the IRIS program. Upon receiving the dis-enrollment notice, the petitioner both requested a hearing, and switched to Family Care effective October 25, 2012, in Dodge County. He then moved to St. Croix County on November 1, 2012, and was re-hospitalized for a short time in November 2012.

## DISCUSSION

The Include, Respect, I Self-Direct (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. This Section 1915(c) waiver document is available at <http://www.cms.gov/MedicaidStWaivProgDemoPGI/MWDL/list.asp>. IRIS is a fee-for-service, 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, and then develop a service plan based on the assessed needs. *Id.*, §441.466. The service plan may include personal care and homemaker services. *Id.*, §440.180(b). Further, “all of the State’s applicable policies and procedures associated with service plan development must be carried out ...” *Id.* §441.468.

Both the federal Medicaid waiver statute and the pertinent federal rule require the Department to assure a recipient’s health and welfare:

### **§ 441.302 State assurances.**

Unless the Medicaid agency provides the following satisfactory assurances to CMS, CMS will not grant a waiver under this subpart and may terminate a waiver already granted:

(a) *Health and Welfare* — Assurance that necessary safeguards have been taken to protect the health and welfare of the recipients of the services. Those safeguards must include —

- (1) Adequate standards for all types of providers that provide services under the waiver;
  - (2) Assurance that the standards of any State licensure or certification requirements are met for services or for individuals furnishing services that are provided under the waiver; and
  - (3) Assurance that all facilities covered by section 1616(e) of the Act, in which home and community-based services will be provided, are in compliance with applicable State standards that meet the requirements of 45 CFR Part 1397 for board and care facilities.
- (b) ...

42 C.F.R. § 441.302.

The Department's IRIS policy document, *IRIS Program Policies*, available at <http://www.dhs.wisconsin.gov/bdds/IRIS/IRISPolicySummary.pdf>, also echoes the federal "health and welfare" requirement, at "Involuntary Disenrollment: "

### **Involuntary Disenrollment**

It is the IRIS Program policy to make reasonable efforts to help a participant to address and resolve issues in order to prevent an involuntary disenrollment whenever possible. The Wisconsin Department of Health Services (DHS) may involuntarily disenroll a participant from IRIS when:

- One or more of the conditions listed in this policy exist.
- Efforts to resolve the issues are not successful.

If a participant is disenrolled, then the IRIS Consultant Agency works with the participant/guardian and the Aging and Disability Resource Center to transition the participant to other services as appropriate.

Participants may be involuntarily disenrolled from IRIS when one or more of these conditions exist:

- The participant's health and safety is at risk.
- Purchasing authority is mismanaged.

...

The agency's concern for the petitioner's health and safety is completely justified. He has stage 4 decubitus ulcers which, if not properly cared for, can lead to sepsis and death. The petitioner has had multiple hospitalizations in 2012, which suggests that he is too fragile to be cared for through this community-based program. Also, his inability to keep caregivers, who are needed for many hours every day, creates a serious risk to his health and safety. The petitioner did not provide a coherent explanation as to why 28 people have left his employment. Thus, I conclude that dis-enrollment from the IRIS program was necessary. This dis-enrollment does not prevent the petitioner from seeking assistance through the Family Care program.

The petitioner raised a separate issue regarding van payments, which will be addressed in a separate decision.

**CONCLUSIONS OF LAW**

1. The Department's agent correctly sought to dis-enroll the petitioner from the IRIS program.

**THEREFORE, it is**

**ORDERED**

That the petition 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 13th day of December, 2012

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\sNancy J. Gagnon  
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 13, 2012.

Bureau of Long-Term Support