



FH
[REDACTED]

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

In the Matter of

[REDACTED]

DECISION

CWA/143208

PRELIMINARY RECITALS

Pursuant to a petition filed August 20, 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 telephonic hearing was held on October 29, 2012, at Elkhorn, Wisconsin. At the request of petitioner, a hearing set for September 24, 2012 was rescheduled. At the request of the parties, the record was held open for the submission of documents and written arguments by the parties to the Division of Hearings and Appeals (DHA). Those documents are received into the hearing record.

The issue for determination is whether the IRIS program correctly denied the petitioner's request for a lump sum MA transportation reimbursement of \$2,274.60 for a one-time family trip/vacation to Oregon during the period of June 21, 2012 to July 7, 2012.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]

Representatives:

[REDACTED] parents
[REDACTED]

Respondent:

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

By: Andrea Loasby, IRIS specialist
Bureau of Long-Term Support
IRIS consultant agency
1 South Pinckney Street, Suite 320
Madison, WI 53703-2887

ADMINISTRATIVE LAW JUDGE:

Gary M. Wolkstein
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a 25 year old resident of Walworth County who resides with her parents and legal guardians, [REDACTED] and [REDACTED].
2. The petitioner is an IRIS Wavier program participant.
3. In petitioner's Individual Support and Service (ISSP) plan, the IRIS program approved mileage reimbursement of 500 miles per month for specialized transportation through VIP Services to meet petitioner's transportation needs.
4. The petitioner's guardians accumulated the petitioner's monthly transportation allotment over the course of much of a plan year in order to attempt to expense that account for a one-time lump sum reimbursement for a family trip/vacation to Oregon during June/July, 2012.
5. The petitioner's request for a family trip/vacation to Oregon during June/July, 2012 was not approved by the IRIS program under petitioner's Individual Support and Service Plan. See Exhibit B-1.
6. The IRIS program sent a July 13, 2012 Notice of Action to the petitioner stating that her request for mileage reimbursement for a family trip/vacation to Oregon during the period of June 21, 2012 to July 7, 2012 in the amount of \$2,274.60 was denied because under IRIS policy 16.1 IRIS funds cannot be used to pay for costs associated with vacations and trips. The denial was also based upon 42 CFR §441.302(b) and 42 CFR §440.180(b)(9). The intent of the transportation reimbursement was to meet the petitioner's specialized monthly transportation needs, not to fund a family trip/vacation. See Exhibits 1 and 2.

DISCUSSION

The Medicaid Eligibility Handbook (MEH) describes the IRIS program:

37.1.1 Introduction

The Include, Respect I Self-Direct (IRIS) program is a fee for service alternative to Family Care, PACE or Partnership for individuals requesting a long-term care support program in Family Care counties.

Under IRIS, the participant will be able to access services comparable to those provided under the Home- and Community-Based Waivers (HCBW) while managing an individual budget to meet their service needs.

The IRIS program is governed in part by the Code of Federal Regulations (CFR). Relevant here is this section of 42 CFR 440.180:

(b) Included services. Home or community-based services may include the following services, as they are defined by the agency and approved by CMS:

- (1) Case management services.
- (2) Homemaker services.
- (3) Home health aide services.
- (4) Personal care services.
- (5) Adult day health services.
- (6) Habilitation services.
- (7) Respite care services.

(8) Day treatment or other partial hospitalization services, psychosocial rehabilitation services and clinic services (whether or not furnished in a facility) for individuals with chronic mental illness, subject to the conditions specified in paragraph (d) of this section.

(9) Other services requested by the agency **and approved by CMS as cost effective and necessary to avoid institutionalization.**

42 CFR §440.180(b).

(Emphasis added).

In furtherance of implementing this law, especially subsection (9), the IRIS program has developed policies regarding funding of goods and services. *See Policy: SC 16.1, IRIS Funding for Goods, Supports and Services.* **That policy requires that a requested item be designed to meet the participant's functional, vocational or medical or social needs and advance outcomes in the individual service plan.**

In addition, the policy requires each service, support or good to meet four criteria:

- a. The item or service is designed to meet the participant's functional, vocational or medical or social needs and also advances the desired outcomes in his/her Individual Service and Support Plan;
- b. The service, support or good is documented on the Individual Service and Support Plan;
- c. **The service, support or good is not prohibited by Federal and State statutes and regulations,** including the State's Procurement Code;
- d. The service, support or good is not available through another source or is not experimental in nature.

In addition to meeting each of those four criteria, each service, support or good must meet at least one of the following:

- a. The service, support or good will maintain or increase the participant's safety in the home or community environment;
- b. The service, support or good will decrease or prevent increased dependence on other Medicaid-funded services;
- c. The service, support or good will maintain or increase the participant's functioning related to the disability;
- d. The service, support or good will maintain or increase the participant's access to or presence in the community.

IRIS policy, SC 16.1

In addition to customized goods, supports and services, the policy outlines other goods, supports and services that may be in the IRIS service categories including pre-vocational services and transportation.

The policy further describes goods, support and services not covered by IRIS, including:

- Good, supports or services that are the responsibility of another agency (such as educational services for persons up to 21 years, and vocational services provided by the Wisconsin Dept. of Vocational Rehabilitation)
- Room and board, including rent, mortgage payment, food or utilities
- Goods, supports and services that are not directly related to participant goals or needs, **or those that primarily benefit someone else.**

(Emphasis added).

In the instant case, the IRIS program sent a July 13, 2012 Notice of Action to the petitioner stating that her request for mileage reimbursement for a family trip/vacation to Oregon during the period of June 21, 2012 to July 7, 2012 in the amount of \$2,274.60 was denied with the following explanation:

The mileage reimbursement for a trip to Oregon was previously approved on your Individual Support and Service Plan (ISSP) **in error**. Based on Appendix C of the approved 1915(c) Home and Community Based Waiver: IRIS funding for specialized transportation ensures that the IRIS Participant has a means of transport on an ongoing monthly basis to aid in prevention of institutionalization. Based upon the information supplied to IRIS, the request for mileage reimbursement is for a family trip/vacation which is beyond the scope of the specialized transportation service provision. The participant currently receives specialized transportation through VIP Services related to her transportation needs. Transportation provided for trip/vacations can be provided as a natural support but not with Medicaid waiver funding. Additionally, mileage was approved at \$500/month on the participant's ISSP. This is the manner in which mileage reimbursement should be expensed. Mileage should not be accumulated over the course of a plan year and expensed as a one-time lump sum.

(Emphasis added).

During the hearing and in their November 7, 2012 letter, the petitioner's parents argued that the lump sum reimbursement should be granted because: 1) the petitioner's parents thought that the petitioner's IRIS transportation funding was "flexible"; 2) petitioner's parents believed that the Oregon transportation reimbursement had been "preapproved" because IRIS worker, Stacey Fenner, in error, incorrectly indicated that the request could be approved; and 3) there were some social aspects for the petitioner on this family vacation/trip. The IRIS representative responded that the request for the family trip/vacation to Oregon was never actually approved for transportation reimbursement by IRIS funding under petitioner's Individual Support and Service Plan (ISSP). Even if there was some misunderstanding, Ms. Loasby correctly indicated that Waiver funds can not be used for customized goods, supports or services unless those services are **cost effective** and especially that those purchases **are made to prevent institutionalization of the participant** per 42 CFR §441.302(B and 42 CFR §440.180(b)(9). Ms. Loasby argued in her November 16, 2012 written closing argument that while the family trip may have provided the petitioner with a sense of socialization and community, there is no evidence that the trip prevented the petitioner from being institutionalized or was determined cost effective by the IRIS program. In addition, there is no evidence in the hearing record that the family trip **primarily benefitted** the petitioner rather than other family members, and thus was not covered by IRIS policy 16.1. See Document B-2. Accordingly, based upon the above, I conclude that the IRIS program correctly denied the petitioner's request for a lump sum MA transportation reimbursement of \$2,274.60 for a one-time family trip to Oregon during the period of June 21, 2012 to July 7, 2012.

CONCLUSIONS OF LAW

The IRIS program correctly denied the petitioner's request for a lump sum MA transportation reimbursement of \$2,274.60 for a one-time family trip to Oregon during the period of June 21, 2012 to July 7, 2012 because the trip was not to prevent petitioner's institutionalization, and was not primarily for the petitioner and determined cost effective.

THEREFORE, it is

ORDERED

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 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 11th day of January, 2013

\sGary M. Wolkstein
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 January 11, 2013.

Bureau of Long-Term Support