



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]

DECISION

CWA/143717

PRELIMINARY RECITALS

Pursuant to a petition filed August 09, 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 December 04, 2012, at Milwaukee, Wisconsin. At the request of petitioner, hearings set for November 6, 2012 and November 20, 2012 were rescheduled. At the request of the parties, the record was held open until December 18, 2012 for the IRIS program's written closing argument, and then until January 2, 2013 for the petitioner's responsive closing argument.

In petitioner's prior appeal on a related subject in Case No. CWA/142266, ALJ Schneider concluded in his decision (issued 9-21-2012) that the county agency acted reasonably in discontinuing specialized transportation for petitioner if he chose to have a van modified for transportation purposes. Some of the relevant Findings of Fact from that decision have been incorporated into this decision from Judge Schneider's decision.

The issue for determination in the instant appeal is whether the petitioner's father was eligible for backdated IRIS supportive home care (SHC) retroactive to June 22, 2012 due to a reduction from 207 to 98.5 SHC hours per month.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]

Representative:

[REDACTED], father and guardian
[REDACTED]

Respondent:

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

By: Jill Speer, IRIS program specialist
IRIS Consultant Agency
1 South Pinckney St., Suite 320
Madison, WI 53703

ADMINISTRATIVE LAW JUDGE:
 Gary M. Wolkstein
 Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner is a 28 year old resident of Milwaukee County who has spastic cerebral palsy. He is an IRIS participant and resides with his father, [REDACTED]
2. Petitioner's IRIS allocation is \$5,190.52 per month. The allocation was spent on supportive home care, adult day care, specialized transportation, bathing, and an art class.
3. In the spring, 2012, petitioner requested that the program pay for exceptional expense funding for modifications to a new van to allow for private transport of petitioner (including carrying petitioner's wheelchair). The cost was \$20,300, of which some \$16,000 would come from available money in petitioner's IRIS funding, but the additional \$4,000 would have to come from current funding.
4. The IRIS agency sent the request to the Department's exceptional expense review committee. The committee agreed to fund the van modification but with the provision that IRIS would not pay for specialized transportation anymore.
5. By a notice dated June 26, 2012, the IRIS agency informed petitioner that specialized transportation funding would be discontinued effective July 9, 2012. By notice dated July 20, 2012, the Department's Bureau of Long Term Support informed petitioner that it would pay for the van modifications on the condition that specialized transportation no longer would be covered.
6. In petitioner's prior appeal in Case No. CWA/142266, ALJ Schneider concluded in his decision (issued 9-21-2012) that the county agency acted reasonably in discontinuing specialized transportation for petitioner if he chose to have a van modified for transportation purposes.
7. After completing an IRIS Supportive Home Care (SHC) Hours Assessment Tool on about May 19, 2012, the IRIS agency determined that petitioner's SHC hours should be reduced from 207 to 98.5 hours per month. See Exhibits A and B. Petitioner's father participated in the IRIS Plan Update to reduce the petitioner's SHC hours to 98.5. See Exhibit C.
8. The petitioner had not participated in an IRIS SHC Assessment Tool prior to 2012 when he had been granted 207 hours of SHC. There is no evidence in the hearing record that petitioner's SHC would not have reduced from 207 even without the approval of the van modification due to the requirement of the SHC functional assessment tool.
9. One of the conditions for approval for van modification funding was that Mr. [REDACTED] had agreed to lower frequency of SHC on petitioner's ISSP to 98.5 hours per month. See Exhibit D.
10. The Department approved the \$20,300 van modification with the understanding that Mr. [REDACTED] voluntarily agreed to reduce paid SHC hours from 207 to 98.5 hours per month based upon the SHC functional re-assessment tool, as stated in Finding of Fact #7 above.
11. The petitioner's Plan of Care for his Individual Support and Service Plan (ISSP) was completed on June 22, 2012 confirming the calculation of petitioner's SHC to be 98.5 hours. See Exhibits E and F3, line item 2. That approved Plan of Care was legally required per 42 CFR 441.301(b)(1)(i) in order for services to be furnished in a home and community based waiver program.
12. The petitioner filed an August 9, 2012 appeal regarding the June 22, 2012 reduction of the petitioner's SHC hours.

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 petitioner's prior decision, ALJ Schneider explained in pertinent part of his Discussion Section:

I cannot find fault with the agency's determination. The agency gave petitioner the choice of specialized transportation or van modifications. Either one would provide petitioner with access to the community. However, there is no requirement that the agency provide total, unfettered access to the community. Petitioner's father testified that with the van there is difficulty getting petitioner to his adult day care and other daily functions, and that the van modifications were intended for evening social activities. Admittedly, since petitioner does not drive that puts the onus on petitioner's father to get him to those places, and petitioner's father admits that he is unreliable as a driver. Nevertheless, the option provided by the agency was reasonable; I see no requirement that the agency should pay for the modifications to the van plus then continue to pay for service vehicles to transport petitioner.

During the hearing and in his written closing arguments, Mr. ██████ alleged unconvincingly that he was “misled,” and that it was unfair for any conditions to have been attached to the approval of the \$20,300 van modification. He also alleged that the “Department of Health Services never had the authority to tell the IRIS assessors or functional screen nurses that SHC hours had to be 98 per month.” However, petitioner was unable to provide any reliable evidence of DHS telling the screener what the SHC hours should or should not be. Instead, the hearing record indicates that many evaluations/discussions and the functional screening resulted in the reduction of SHC. See above Findings of Fact #7, 8, & 11. Furthermore, the IRIS program witnesses testified convincingly that Mr. ██████ participated in the process of re-assessing the petitioner’s SHC hourly needs based upon a new SHC Assessment Tool.

Mr. ██████ was an active participant in the process of determining and calculating the functional screen to calculate petitioner’s SHC hours to be 98.5 hours as of June 22, 2012. In her December 17, 2012 closing argument, IRIS specialist Jill Spear convincingly explained in detail that the functional screen tool determined that petitioner only needed 98 hours of SHC:

Mr. ██████ is not eligible for backdated SHC payment. ██████ ██████ ██████ had an approved, ISSP processed on 6/22/2012 reflecting 98 hours/month of SHC (see page F3, line item 2). Federal protocol 42 CFR 441.301(B)(1)(i) indicates that there must be an approved written plan of care in order for services to be furnished in a home and community based waiver program, such as IRIS. If SHC above the frequency approved on ██████ ██████ ██████’s ISSP was furnished, **it is not eligible for payment because there was never an approved plan reflecting the level of service requested.**

The 6/22/2012 ISSP was approved and processed based on several documents ██████’s IRIS Consultant submitted in conjunction with ██████’s guardian, Mr. ██████. Document A is the IRIS Plan Update form. This update was developed for processing on 5/19/2012 (plan development date is noted on page A2). Page A1, line item 1 outlines the requested SHC hours at the reduced level. Mr. ██████ discussed and developed this plan update with ██████ ██████ ██████’s IRIS Consultant. The plan update form specifies, “The check below signifies that the participant had a free choice of providers and the Plan Update meets their needs and are related to their disability and desired outcomes.” The box is checked and the update was submitted for processing.

Besides the update form indicating a voluntarily reduced frequency of SHC, the Exceptional Expense (request for additional funding beyond ██████’s base allocation) for van modifications which was done concurrently with the plan update form also suggest the lowered frequency of SHC was voluntary. Point 14 on C2 of EE request states: “[██████’s] father ██████ has agreed to reduce paid SHC hours from 207 hours a month to the amount of caregiving hours the tool states are reasonable . . .” The DHS Iris AA/EE Request Decision Tracking Form follows this logic and states that the first condition for approval for van modification funding was that ██████’s father, Mr. ██████, agree to lower frequency of SHC on ██████’s ISSP **to the level suggested appropriate by the SHC Hours Tool (see D1, item 1).** **Document B is the completed SHC Hours Tool which outlines specific tasks and times allocated to complete SHC tasks. The completed tool advises 98.5 hours/month is the appropriate level of SHC to support ██████ with these tasks.** The IRIS SHC Hours Tool was developed in November 2011 and was not completed for ██████ when his previous ISSPs were processed.

Finally, during the hearing held on 12/4/2012, Mr. █████ broached the subject of funding for professional drivers and transportation funding for █████ █████ █████. This subject was already contested in a hearing held in September 2012 (CWA/14266). Administrative Law Judge Brian Schneider ruled, “The [IRIS Program] acted reasonably in discontinuing specialized transportation for petitioner if he chose to have van modified for transportation purposes.” Mr. █████ chose to have a van modified and expensed the van modifications in July 2012.

(Emphasis added).

The CMO must develop an Individual Service Plan (ISP) in partnership with the client. Wis. Admin. Code, §DHS 10.44(2)(f). The ISP must reasonably and effectively address all of the client’s long -term needs and outcomes to assist the client to be as self-reliant and autonomous as possible, but nevertheless must be cost effective. While the client has input, the CMO does not have to provide all services the client desires if there are less expensive alternatives to achieve the same results. Wis. Admin. Code, §DHS 10.44(1)(f); DHS booklet, Being a Full Partner in Family Care, page 9. ISPs must be reviewed periodically. Admin. Code, §DHS 10.44(j)(5).

The issue in this case is the amount of supportive home care hours for petitioner. The Department has developed a personal care screening tool to allow case managers to consistently determine the number of hours required by each recipient. The screening tool allots a specific amount of time in each area the recipient requires help, which the reviewer can then adjust to account for variables missing from the screening tool’s calculations.

In the instant case, during the hearing and in his closing argument, Mr. █████ was unable to present any convincing, specific evidence that petitioner’s SHC had been incorrectly or inaccurately reduced to 98.5 hours as of June 22, 2012. Mr. █████ was unable to establish any “coercion” by the Department, but only that in June, 2012 IRIS (for the first time with petitioner) the Department used the new process of a functional screen tool assessment to calculate the hours of SHC needed by petitioner. While IRIS took into consideration the van modification expense, such consideration appears properly to have been only how the modified van changed some of petitioner’s needs for specialized transportation and less SHC hours (because his father could drive the petitioner in that modified van). The petitioner’s approved Plan of Care during June, 2012 established the amount of SHC determined medically necessary for the petitioner.

If petitioner believes he can establish with evidence the need for more SHC hours, petitioner’s father may wish to submit a new request to the IRIS program for a new SHC assessment to determine the appropriate amount of his current SHC based upon completing a new functional screen assessment tool.

CONCLUSIONS OF LAW

1. In Case No. CWA/142266, ALJ Schneider concluded in his decision (issued 9-21-2012) that the county agency acted reasonably in discontinuing specialized transportation for petitioner if he chose to have a van modified for transportation purposes, and thus issue preclusion applies.
2. The IRIS program correctly determined that petitioner’s representative failed to establish with any reliable evidence that petitioner was eligible for backdated IRIS supportive home care (SHC) retroactive to June 22, 2012 due to a reduction from 207 to 98.5 SHC hours per month

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 15th day of February, 2013

\sGary M. Wolkstein
Administrative Law Judge
Division of Hearings and Appeals



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The preceding decision was sent to the following parties on February 15, 2013.

Bureau of Long-Term Support