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[REDACTED]

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

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In the Matter of

[REDACTED]

DECISION

CWA/144059

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**PRELIMINARY RECITALS**

Pursuant to a petition filed September 25, 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 January 08, 2013, at Waukesha, Wisconsin.

The issue for determination is whether the IRIS program correctly denied or modified Petitioner's request for cell phone service, internet service and the cost of admission to various community events.

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: Andrea Loasby, IRIS Participant Services Specialist and  
Jill Speer, IRIS Participant Services Specialist

**ADMINISTRATIVE LAW JUDGE:**

Michael A. Greene  
Division of Hearings and Appeals

NOTE: Due to staffing issues, ALJ Greene was unable to write this decision. Consequently, this decision was written by ALJ Mayumi M. Ishii, on ALJ Greene's behalf. This decision was based upon the record created at the hearing on January 8, 2012. Petitioner's mother graciously agreed to extend the decision deadline to accommodate the staffing issue that arose.

**FINDINGS OF FACT**

1. Petitioner (CARES # [REDACTED]) is a resident of Waukesha County and a participant in the IRIS program.
2. On August 15, 2012, IRIS sent Petitioner a notice of action indicating that it denied his request for cell phone service at \$67.00 per month, modified his request for internet service from \$40.00 per month to

- \$20.00 per month and denied his request to cover the cost of recreational activities, such as movies, mini golf, admission to Noah's Ark, the zoo, water parks, museums and festivals. (DHA file)
3. Petitioner's mother filed an appeal on his behalf that was received by the Division of Hearings and Appeals on September 25, 2012. (DHA file)
  4. Petitioner suffers from autism and a seizure disorder. (Testimony of Petitioner's mother; Exhibit 2)
  5. Petitioner is cognitively delayed and needs some assistance with his activities of daily living. Petitioner is limited in his ability to communicate verbally. Petitioner uses an i-pad, sign language, and picture boards to communicate. (Testimony of Petitioner's mother; Exhibit 2 ; Exhibit 4)
  6. Petitioner's mother would like Petitioner to use an i -phone to take pictures to help him communicate about his activities and to be able to contact her if necessary, but he is not at that level of ability, yet. (Testimony of Petitioner's mother)
  7. Petitioner cannot independently use a phone and requires assistance. (Exhibit 2)
  8. Petitioner uses the internet to download software updates for his i-phone and i-pad. (Testimony of Petitioner's mother)
  9. Petitioner's mother also uses the internet to communicate with IRIS staff and to order products and services for Petitioner. (Testimony of Petitioner's mother)

### DISCUSSION

The petitioner receives medical benefits under IRIS, which stands for Include, Respect, I Self-Direct. This 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. *Medicaid Eligibility Handbook*, § 37.1.1.

It is Petitioner's desire that IRIS pay for cell phone service for his i -phone, internet service and for recreational activities such as movies, mini golf, admission to Noah's Ark, the zoo, water parks, museums and festivals .

It is a well-established principle that a moving party generally has the burden of proof, especially in administrative proceedings. State v. Hanson, 295 N.W.2d 209, 98 Wis. 2d 80 (Wis. App. 1980). In a case involving a request for services from IRIS, the applicant has the initial burden to show that the requested services meet the program's guidelines for approval.

The IRIS program, as an MA Waiver service, may include the following services:

- (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)

When determining whether a service is necessary, the Division must review, among other things, the medical necessity of the service, the appropriateness of the service, the cost of the service, the extent to which less expensive alternative services are available, and whether the service is an effective and appropriate use of available services. Wis. Admin. Code, § DHS 107.02(3)(e)1.,2.,3.,6. and 7.

"Medically necessary" means a medical assistance service under ch. DHS 107 that is:

- (a) Required to prevent, identify or treat a recipient's illness, injury or disability; and
- (b) Meets the following standards:
1. Is consistent with the recipient's symptoms or with prevention, diagnosis or treatment of the recipient's illness, injury or disability;
  2. Is provided consistent with standards of acceptable quality of care applicable to the type of service, the type of provider, and the setting in which the service is provided;
  3. Is appropriate with regard to generally accepted standards of medical practice;
  4. Is not medically contraindicated with regard to the recipient's diagnoses, the recipient's symptoms or other medically necessary services being provided to the recipient;
  5. Is of proven medical value or usefulness and, consistent with s. HFS 107.035, is not experimental in nature;
  6. Is not duplicative with respect to other services being provided to the recipient;
  7. Is not solely for the convenience of the recipient, the recipient's family, or a provider;
  8. With respect to prior authorization of a service and to other prospective coverage determinations made by the department, is cost-effective compared to an alternative medically necessary service which is reasonably accessible to the recipient; and
  9. Is the most appropriate supply or level of service that can safely and effectively be provided to the recipient.

Wis. Admin. Code, § DHS 101.03(96m)

In furtherance of implementing this law, 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 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

#### *Cellphone Service*

Petitioner asks that IRIS pay for cellphone service at \$67.00 per month, to support his use of an i-phone. Petitioner's mother expressed concern that Petitioner would not be able to update software applications on the cellphone without cellular service.

IRIS objects to the service, arguing that cell-phone service is not necessary for Petitioner to download applications or software updates on a cell-phone. Ms. Loasby also stated that there are free cellphone services available to Petitioner through Safelink and Assurance.

IRIS is correct that an i-phone without phone service operates just like an i-pod or i-pad. The only thing that is required to download applications and software updates is a wireless internet connection. Thus, cell-phone service is not necessary to accomplish this task.

It should be noted that neither Petitioner nor IRIS provided a copy of Petitioner's Individual Service Plan, so it is not entirely clear how cellphone service works into Petitioner's desired outcomes. Further, the record indicates that Petitioner is largely non-verbal, having only very basic speaking ability and that he needs assistance with using a phone. As such, cell-phone service would be of very limited use to Petitioner.

If Petitioner's mother still desires Petitioner to have cell phone service, a more-cost effective alternative is available, in the form of free cell-phone service through Safelink or Assurance, if Petitioner needs and is able to speak to someone on the phone.

Petitioner's mother argues that having two different devices would be too confusing for Petitioner. However, there is insufficient evidence in the record to conclude that the free cell-phone service suggested by the agency would be incompatible with Petitioner's i-phone. Assurance is affiliated with Sprint, and Sprint provides cellphone service for i-phones. Even, if Petitioner needed two devices, it appears that Petitioner's cognitive delays make it difficult for him to use a phone independently, so he would have to have assistance from a caregiver to use a cell-phone in either case.

Based upon all of the foregoing, it is found that IRIS correctly denied Petitioner's request for cell-phone service at \$67.00 per month.

#### *Internet Service*

IRIS policy, SC 16.1 describes goods, support and services not covered by IRIS, including:

- Goods, supports and services that are not directly related to participant goals or needs, or those that primarily benefit someone else.

*Emphasis added*

IRIS concedes that Petitioner requires internet service to meet his desired outcomes and as such, a portion of the internet service meets approval criteria. However, IRIS asserts that it cannot cover the entire monthly cost because Petitioner's mother also benefits from the internet service. As such, IRIS approved funding for half of the monthly cost.

Petitioner's mother testified that she does, indeed, use the internet to communicate with IRIS staff and to order goods and services for Petitioner. It is difficult to believe Petitioner's mother does not use the internet for other personal reasons, such as paying other bills or looking up information.

Based upon the testimony of Petitioner's mother, a portion of the internet service does provide benefit primarily to Petitioner's mother and that portion of the service cannot be covered by IRIS. Thus, IRIS reasonably modified the request and approved coverage for half of the cost of the internet service.

#### *Community Recreational Activities*

42 CFR §44.482 describes permissible purchases in self-directed programs:

- (a) Participants, or their representatives, if applicable, may, at the State's option, use their service budgets to pay for items that increase a participant's independence or substitute (such as a microwave oven or an accessibility ramp) for human assistance, to the extent that expenditures would otherwise be made for the human assistance.
- (b) The services, supports and items that are purchased with a service budget must be linked to an assessed participant need or goal established in the service plan.

IRIS denied Petitioner's request for coverage of admission to various recreational activities such as movies, waterparks, festivals and museums, because the activities are purely recreational and do not necessarily support community inclusion and socialization. Further, Petitioner has been approved to participate in day programming.

Petitioner's mother argues that Petitioner needs to go to the recreational activities to increase his socialization and that he needs to do so outside a group setting because he needs to be watched closely due to his extreme intolerances to dairy and gluten and due to his very low functioning and inability to report problems that might arise.

First, because no one provided a copy of Petitioner's service plan, there is no evidence that admission to various festivals, movies, mini-golf, waterparks or museums is linked to an assessed need or goal in the service plan. Second, going to various recreational activities with the same caregivers he sees every day is not going to increase Petitioner's ability to socialize independently or with new people, assuming that is a goal for Petitioner. Third, it is also unclear how these various activities, in and of themselves, will increase Petitioner's independence or otherwise serve as a less expensive substitute for human assistance. Fourth, it is understandable that Petitioner's mother has anxiety about letting her 23 year-old, autistic son go to a day program or on group outings outside her presence or the presence of his normal caregivers, but her concerns could be addressed with effective communication with the day programs. Indeed, food allergies and intolerances are not uncommon among autistic individuals and are so prevalent among the general population these days, it is difficult to imagine that a day program would not have specific policies and contingencies in place to address such issues. Finally, if Petitioner does need additional assistance of a caregiver while participating in the day program or group outings that IRIS has already approved, he can ask IRIS to cover the cost of that caregiver. (See Exhibit 4)

Based upon the foregoing, it is found that IRIS correctly denied Petitioner's request to cover the cost of admission to various recreational activities, such as movies, museums, waterparks and festivals.

### **CONCLUSIONS OF LAW**

1. IRIS correctly denied Petitioner's request for cell-phone service at \$67.00 per month.
2. IRIS correctly modified Petitioner's request for internet service, agreeing to pay for half of the monthly cost.
3. IRIS correctly denied Petitioner's request to cover the cost of admission to various recreational activities such as movies, museums, waterparks and festivals.

**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 Milwaukee,  
Wisconsin, this 4th day of March, 2013.

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\sMichael A. Greene  
Administrative Law Judge  
Division of Hearings and Appeals

By: \_\_\_\_\_  
Mayumi M. Ishii  
Administrative Law Judge  
Division of Hearings and Appeals



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The preceding decision was sent to the following parties on March 4, 2013.

Bureau of Long-Term Support