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

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In the Matter of

[REDACTED]  
[REDACTED]  
c/o [REDACTED]  
[REDACTED]  
[REDACTED]

DECISION

CWA/145011

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**PRELIMINARY RECITALS**

Pursuant to a petition filed November 3, 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 March 20, 2013, by telephone. Hearings set for November 29, 2012, and February 12, 2013, were rescheduled at the petitioner's request. Post-hearing, the record was held open 43 days for submissions from both parties, which were received.

The issue for determination is whether the Department's agent correctly denied a request for ongoing marketing services to expand the petitioner's business.

There appeared at that time the following persons:

**PARTIES IN INTEREST:**

Petitioner:

[REDACTED]  
By: [REDACTED], mother  
[REDACTED]  
[REDACTED]

Respondent:

Department of Health Services  
1 West Wilson Street  
Madison, Wisconsin 53703  
By: Jill Speer, participant services spec.  
IRIS consultant agency  
Madison, WI

**ADMINISTRATIVE LAW JUDGE:**

Nancy J. Gagnon  
Division of Hearings and Appeals

### FINDINGS OF FACT

1. Petitioner is a resident of Winnebago County. She is financially eligible for, and enrolled in, the IRIS program. IRIS is a self-directed personal care program, created by a Medicaid waiver.
2. The petitioner, age 35, is disabled. She is blind, has cognitive delays, and is nonverbal (she communicates with signs). The petitioner requires hands-on assistance with all activities of daily living (ADLs), such as bathing, eating, dressing, grooming, toileting, walking and transferring. She is physically unable to drive a vehicle.
3. The IRIS program paid for \$150 in monthly business marketing costs for the petitioner prior to November 2012. The program agency incorrectly coded these costs as “requested customized goods/services” on the petitioner’s service plan; such goods/services are for prevention of institutionalization. The more appropriate cost category would have been “supported employment.” In fall 2012, the petitioner requested a \$50 increase to her business expense budget from IRIS.
4. On October 23, 2012, the IRIS agency issued written notice to the petitioner advising that it would cease making the \$150 monthly payments towards the petitioner’s business costs, effective November 6, 2012.
5. The petitioner started her business several years ago, before entering the IRIS program. She was assisted by Goodwill. The business is the furnishing of “honor system” self-service snack kiosks at small business locations. She currently has eight business locations, and has a goal of 15 locations; if the goal of 15 locations is met, the enterprise could become profitable. The enterprise is not currently profitable. The petitioner shops for the products that go into the kiosks and then stocks them. Another person must do her business recordkeeping in Excel. The \$150 (\$200 requested) monthly cost is for the services of a marketer.

### 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. In addition to personal care and homemaker services, the service plan may include “habilitation 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.

The petitioner requests payment for marketing services under the allowed service category of supported employment. The federal rule regarding allowed habilitation services, of which supported employment services is a subset, is as follows:

(c) *Expanded habilitation services, effective October 1, 1997* —(1) *General rule.*  
Expanded habilitation services are those services specified in paragraph (c)(2) of this section.

(2) *Services included.* The agency may include as expanded habilitation services the following services:

(i) Prevocational services, which means services that prepare an individual for paid or unpaid employment and that are not job-task oriented but are, instead, aimed at a generalized result. ...

(ii) Educational services, which means special education and related services (as defined in sections 602(16) and (17) of the Education of the Handicapped Act) (20 U.S.C. 1401 (16 and 17)) to the extent they are not prohibited under paragraph (c)(3)(i) of this section.

(iii) **Supported employment services**, which facilitate paid employment, that **are—**

(A) Provided to persons for whom competitive employment at or above the minimum wage is unlikely and who, because of their disabilities, need intensive ongoing support to perform in a work setting;

(B) Conducted in a variety of settings, particularly worksites in which persons without disabilities are employed; and

**(C) Defined as any combination of special supervisory services, training, transportation, and adaptive equipment that the State demonstrates are essential for persons to engage in paid employment and that are not normally required for nondisabled persons engaged in competitive employment.**

(3) *Services not included.* The following services may not be included as habilitation services:

(i) Special education and related services ....

(ii) Vocational rehabilitation services that are otherwise available...

[emphasis added]

42 C.F.R. § 440.180(c).

Wisconsin’ federally-approved IRIS waiver document defines supported employment services as follows:

Supported employment services is the provision of support to participants who, because of their disabilities, need intensive on-going support to obtain and maintain competitive or customized employment in an integrated work setting. Supported employment may also include support to maintain self-employment, including home-based self-employment. Supported employment services are individualized and may include any combination of the following services: vocational/job-related discovery or assessment, person-centered employment planning, job placement, job development, negotiation with prospective employers, job analysis, training and systematic instruction, job coaching, benefits management, transportation and career advancement services. Other workplace support services including services not specifically related to job skill training may also be provided based on the needs of the specific participant served.

**...Limits. .. on this service:**

Waiver funds may not be used to defray expenses associated with starting up or operating a self-employment business. Supported employment does not include payment for

supervision, training, support and adaptations typically available to other non-disabled workers filling similar positions in the business.

...

**Provider Specifications:**

Provider Category	Provider Type Title
91411 Individual	On-the-job support person
91410 Agency	Supported Employment Agency

Wisconsin § 1915(c) waiver #...R01.00, Appendix C-1/C-3.

The Department’s IRIS website, at <http://www.dhs.wisconsin.gov/bdds/IRIS/>, states that supported employment services can be covered by IRIS. Wisconsin does not have an administrative rule that defines IRIS-covered services.

After reviewing the federal code and federally-approved waiver, I must conclude that the agency’s discontinuance of payment for a marketer’s services for this self-employment enterprise was correct. The waiver’s limits on supported employment services declares that IRIS money cannot be used for expenses associated with operating a self-employment business. The petitioner’s request is exactly for an expense associated with running such a business. Further, the waiver says that supported employment does *not* include payment for “support” typically available to other non-disabled workers in such a business. The agency correctly argued that marketing is a support that is typically used by non-disabled business operators.

Finally, I do not interpret the definitional code language at 42 C.F.R. § 440.180(c)(2)(iii)(C) as including a marketer’s services as a supported employment service.

**CONCLUSIONS OF LAW**

1. The services of a marketer are expenses associated with operating a self-employment business and are not “supported employment services.”
2. The IRIS agency correctly removed the cost for a marketer from the petitioner’s IRIS service plan.

**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 22nd day of May, 2013

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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 May 22, 2013.

Bureau of Long-Term Support