



STATE OF WISCONSIN  
Division of Hearings and Appeals

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In the Matter of

[REDACTED]  
[REDACTED]  
[REDACTED]

DECISION

CWA/146530

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**PRELIMINARY RECITALS**

Pursuant to a petition filed January 15, 2013, 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 April 30, 2013, at Milwaukee, Wisconsin.

The record was held open to allow the parties to supplement the record. IRIS submitted a packet containing a memo dated November 20, 2012, listing missed appointments with his nurse/personal care worker and billing documents from January 2012. This packet has been marked as Exhibit 5. Petitioner submitted a written "testimonial". This has been marked as Exhibit 6. IRIS submitted a response to Petitioner's "testimonial". This has been marked as Exhibit 7.

The issue for determination is whether Petitioner was correctly terminated from the IRIS program.

There appeared at that time and place the following persons:

**PARTIES IN INTEREST:**

Petitioner:

[REDACTED]  
[REDACTED]  
[REDACTED]

Respondent:

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

By: Jill Spear, IRIS Participant Services; Andrea Loasby, IRIS Participant Services; Sue Hanks, Supervisor IRIS Participant Services

**ADMINISTRATIVE LAW JUDGE:**

Mayumi M. Ishii  
Division of Hearings and Appeals

**FINDINGS OF FACT**

1. Petitioner is a resident of Milwaukee County.

2. Petitioner is diagnosed with cerebral palsy and mild mental retardation. He is wheelchair dependent. Petitioner is able to express wants and needs, although his speech is very slow and slurred. (Exhibit 3, pgs. 5-15)
3. Petitioner is completely dependent upon others for his activities of daily living (ADLs) and his instrumental activities of daily living (IADLs). (Exhibit 3, pgs. 5-15)
4. Petitioner is prone to urinary tract infections and needs to have his catheter replaced once every two weeks. (Testimony of Petitioner's visiting nurse case manager, Heather Haryczki; Exhibit 3, pgs. 64-71; Exhibit 6)
5. On January 4, 2012, Petitioner was admitted to the hospital with severe constipation and obstipation and a urinary tract infection. Because enemas and manual disimpaction were not successful, Petitioner required an ileostomy to be placed. Petitioner remained in the hospital until January 25, 2012. (Exhibit 3, pgs. 64-71)
6. During the aforementioned hospital stay, Petitioner's friend and caregiver, [REDACTED], incorrectly identified himself as Petitioner's brother. (Exhibit 3, pgs. 41-71)
7. On January 20, 2012, hospital staff referred Petitioner to Milwaukee County Disability Services Division-Adult Protective Services who substantiated allegations that [REDACTED] neglected Petitioner by providing insufficient/inadequate care. (Exhibit 3, pgs. 33-36)
8. Petitioner authorized payments to [REDACTED] for mileage and supportive home care services that allegedly occurred while Petitioner was in the hospital in January 2012. (Exhibit 5, pgs. 8-9)
9. On March 21, 2012, a meeting took place with Petitioner and IRIS staff during which it was agreed that [REDACTED] would no longer provide personal care services. (Exhibit 3, pg. 21)
10. By May 9, 2012, Petitioner arranged for three hours of personal care services per week, even though he was eligible for 40 hours per week. (Exhibit 3, pg. 22)
11. In October 2012, Petitioner's personal care service provider, ANS, contacted IRIS with concerns about Petitioner's missed appointments. (Exhibit 3, pg. 23; Exhibit 5, pg. 5) Prior to January 2013, Petitioner was missing more than half of his appointments for personal care services, including appointments with the nurse to change his catheter. (Testimony of Ms. Haryczki)
12. On January 2, 2013, IRIS sent Petitioner a letter indicating that it did not feel [REDACTED] was capable of providing supportive home care for Petitioner and that to continue his IRIS participation, Petitioner would have to use all the personal care hours available to him; secure supportive home care through an agency, clearly document what transportation services he is using, obtain a primary care physician and only approve services in accordance with his IRIS plan and budget. (Exhibit 3, pgs. 36-38)
13. On January 10, 2013, Wisconsin-IRIS sent Petitioner a notice indicating that effective January 25, 2013, it was terminating his IRIS enrollment. (Exhibit 1)
14. Petitioner filed a request for fair hearing that was received by the Division of Hearings and Appeal on January 15, 2013. (Exhibit 1)
15. [REDACTED] is also a participant in the IRIS program, is wheelchair bound due to MS, and according to his Long Term Care Functional Screen, needs assistance with all the ADLs and IADLs that he allegedly provides to Petitioner. (Testimony of [REDACTED]; Exhibit 3, pg. 39)
16. [REDACTED] maintains a separate address, but he sleeps at Petitioner's residence and spends all day, every day with Petitioner. (Testimony of [REDACTED])

## DISCUSSION

The Petitioner has been 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.

Federal regulations require states to assure the Centers for Medicare and Medicaid Services (CMS) that, “necessary safeguards have been taken to protect the health and welfare of individuals furnished services under the program and to assure the financial accountability for funds expended for self-directed services.” 42 CFR §441.464(a)

States may involuntarily disenroll participants, but they must, “specify the conditions under which a participant may be involuntarily disenrolled from the self-directed PAS option” and the CMS must, “approve the State’s conditions under which a participant may be involuntarily disenrolled.” 42 CFR §441.458(a) and (b).

In accordance with the aforementioned Federal Regulations, the Department of Health Services, created IRIS policy 3.03.1, which states among other things, that Participants may be involuntarily disenrolled from IRIS when the participant’s health and safety is at risk or purchasing authority is mismanaged for reasons including, but not limited to possible fraud, misrepresentation or willful inaccurate reporting of services.

It is the contention of the IRIS program that Petitioner needed to be terminated from the program for two reasons: 1) because his health and safety is at risk, due to his continued desire to receive personal care and supportive home services from [REDACTED] and 2) his purchasing authority was mismanaged.

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 termination of services, Wisconsin IRIS has the initial burden to show that Petitioner is no longer eligible for IRIS services.

### *Petitioner’s Health and Safety*

Milwaukee County Adult Protective Services substantiated allegations of neglect by [REDACTED] in his care of Petitioner. The report from Adult Protective Services states that Petitioner suffered a urinary tract infection and a fecal impaction as a result of [REDACTED]’s medical neglect, but the report did not make clear what, exactly, [REDACTED] failed to do in his care of the Petitioner. (See Exhibit 3, pg. 33-35) Further, the substantiation of neglect occurred over one year ago in January 2012 and there is no physical evidence of abuse or neglect that has occurred since that time.

While Petitioner has missed numerous appointments with his nurse and personal care worker between May 2012 and January 2013, there is no indication in the record that Petitioner suffered any harm as a result of those missed appointments. Further, Petitioner has kept his appointments with his nurse and personal care worker since January 2013.

Petitioner’s RN Case Manager, Ms. Haryczki, testified that Petitioner has had a foul odor when she visited, but that she visited on his bath days. Ms. Haryczki testified that during her bi-weekly visits she has not observed any signs of abuse or neglect, and that [REDACTED] is actually doing a good job caring for Petitioner’s stoma, noting that the skin integrity in that area is good. As such, there is insufficient evidence in the record to support a finding that [REDACTED] has abused or neglected Petitioner since January 2012.

The agency is reasonable in its concern regarding whether [REDACTED] is physically able to care for Petitioner, given what [REDACTED] reported his needs to be, in his Long Term Functional Screen Report, but that goes more to the question of whether [REDACTED] is defrauding IRIS/Medicaid. [REDACTED] claims that he is able to perform supportive home care like cooking, laundry and cleaning for Petitioner, because Petitioner's apartment is more wheelchair accessible than his own and that he would be independent in his ADLs and IADLs if his apartment were as wheelchair accessible as Petitioner's apartment. Given that [REDACTED]'s testimony that he is a college student, given that he was able to create and submit documentation for this hearing and given that he was able to subpoena witnesses for this hearing, it is more likely that [REDACTED] is more capable than he has lead IRIS to believe and if that is the case, then IRIS needs to re-evaluate [REDACTED]'s case and the services being provided to him.

Based upon the foregoing, there is insufficient evidence that Petitioner's health and safety are currently at risk, such that he needs to be terminated from the IRIS program at this time.

*Mismanagement of Purchasing Authority*

IRIS stated concerns that it does not want Petitioner to pay for any services rendered by [REDACTED]. Petitioner has expressed that he wants to keep [REDACTED] as a paid supportive home care worker. IRIS's concerns are based upon questionable mileage and supportive homecare billing from January 2012.

Petitioner authorized payment to [REDACTED] for supportive home care allegedly provided by [REDACTED] while Petitioner was in the hospital in January 2012. [REDACTED] asserts that he did laundry for Petitioner, paid his bills and that he cleaned Petitioner's apartment daily. It is difficult to believe that it took [REDACTED] the 50 hours that he billed Petitioner for his services between January 16<sup>th</sup> and January 25<sup>th</sup> to accomplish these tasks. (See Exhibit 5, pg. 8)

While there is a reasonable basis to conclude that there was some fraudulent billing going on in January 2012, that was over a year ago and IRIS has presented no evidence of such questionable billing since that time. Moreover, per 42 CFR §441.464(a)(3) states must assure fiscal responsibility by creating safeguards that are designed, "so that budget problems are identified on a timely basis so that corrective action may be taken, if necessary." There is no indication in the record, that such safeguards were in place and utilized; as indicated above, the questionable billing took place a year before IRIS sought to terminate Petitioner from the program. Consequently, there is insufficient evidence in the record that Petitioner is currently at risk of mismanaging his funds at this time

I note that [REDACTED]'s credibility is called into question by a number of things. First, there is the fact that he claims that Petitioner's apartment needs to be cleaned daily to keep bugs from entering the building. However, there is no billing for services between January 1, 2012 and January 15, 2012. (See Exhibit 5, pg. 8) Second, it is unrefuted and documented in Petitioner's hospital records, that [REDACTED] misidentified himself to hospital staff as Petitioner's brother, in January 2012. Third, [REDACTED] was reluctant to say that he lives with Petitioner, when in fact, they are basically living together. According to [REDACTED], he sleeps at Petitioner's residence and spends all day, every day with Petitioner. Fourth, [REDACTED] either lied to the tribunal about his abilities or he was not completely honest with IRIS when completing his Functional Screen, because he testified to being able to cook, clean, do laundry, pay bills for Petitioner and transfer Petitioner, but reported to IRIS that he needs assistance with all the ADLs, in addition to needing assistance with feeding himself, with toileting himself and with larger financial transactions. Fifth, [REDACTED] testified that he attends classes at the University of Wisconsin Whitewater, which makes one question the veracity of his report to IRIS that he can only complete small financial transactions. However, all this goes to whether [REDACTED] should be sanctioned as a provider and/or recipient, not whether Petitioner should be terminated from the IRIS program.

If IRIS wishes to deny coverage for services rendered by [REDACTED], it needs to issue a new notice of action to Petitioner stating that fact. If Petitioner disagrees with IRIS's decision to deny such coverage, he will need to file a NEW request for fair hearing.

### **CONCLUSIONS OF LAW**

IRIS incorrectly terminated Petitioner from the IRIS program.

**THEREFORE, it is ORDERED**

That IRIS reinstate Petitioner to the IRIS program effective January 25, 2013. IRIS shall take all administrative steps necessary to do this within ten days.

### **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 6th day of May, 2013.

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\\s\\sMayumi M. Ishii  
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 6, 2013.

Bureau of Long-Term Support



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