



FH

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

In the Matter of

██████████ ██████████
████████████████████
████████████████████

DECISION

CWA/148663

PRELIMINARY RECITALS

Pursuant to a petition filed April 8, 2013, under Wis. Admin. Code, §HA 3.03, to review a decision by the Include, Respect, I Self-Direct program (IRIS) to deny a requested service, a hearing was held on May 21, 2013, by telephone.

The issue for determination is whether the IRIS program can pay for petitioner's monthly telephone service.

PARTIES IN INTEREST:

Petitioner:

██████████ ██████████
████████████████████
████████████████████

Respondent:

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

By: Andrea Loasby
IRIS Consultant Agency
1 S. Pinckney St., Suite 320
Madison, WI 53703-2887

ADMINISTRATIVE LAW JUDGE:

Brian C. Schneider
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner is a resident of Clark County.
2. Petitioner receives services under the IRIS program. He is hearing impaired, and the IRIS program agreed to pay for a TTY phone device.
3. Petitioner then requested that the program pay his monthly phone services charge of \$29.69 so that he can utilize the TTY.

4. The agency denied the request by a letter date April 3, 2013 because the monthly phone service is considered a room and board expense.

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 policy specifically prohibits IRIS payment of room and board including rent, mortgage payment, food, or utilities. The policy is based on 42 C.F.R. §441.310(a)(2), the federal regulation covering Medicaid home-based waiver programs.

Because basic telephone service is considered to be a utility, it cannot be covered by the IRIS program, and the agency had no choice but to deny petitioner's request. I note that agency representatives believe that the out-of-pocket expense can be made up with other IRIS coverage that petitioner does not yet have, so petitioner should speak with his IRIS representative about alternative coverage.

CONCLUSIONS OF LAW

The IRIS program cannot pay for basic room and board expenses including telephone service.

THEREFORE, it is **ORDERED**

That 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 23rd day of May, 2013

\sBrian C. Schneider
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin \DIVISION OF HEARINGS AND APPEALS

■ H. Schwarz
Suite 201
5005 University Avenue
Madison, WI 53705-5400

Telephone: (608) 266-3096
FAX: (608) 264-9885
email: DHAmail@wisconsin.gov
Internet: <http://dha.state.wi.us>

The preceding decision was sent to the following parties on May 23, 2013.

Bureau of Long-Term Support