FH
[redacted]

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[redacted]

DECISION

CWA/148980

PRELIMINARY RECITALS

Pursuant to a petition filed April 26, 2013, 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 in regard to IRIS benefits, a hearing was held on August 28, 2013, by telephone. Hearings set for June 12 and July 24, 2013, were rescheduled at the petitioner's request.

The issue for determination is whether the petitioner's IRIS cost share should have been reduced after accounting for the expense of her (1) Viactiv supplements and (2) mattress-related credit plan payments.

There appeared at that time the following persons:

PARTIES IN INTEREST:
Petitioner:

[redacted]

Respondent:

Department of Health Services
1 West Wilson Street
Madison, Wisconsin 53703
By: Jill Speer, Participant Serv. Spec.
Milwaukee Enrollment Services
1220 W Vliet St
Milwaukee, WI 53205

ADMINISTRATIVE LAW JUDGE:
Nancy J. Gagnon
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [redacted]) is a resident of Milwaukee County.
2. The petitioner, age 36, is disabled, and is a Medical Assistance household of one person. She has diagnoses of spinal muscular dystrophy, bilateral hip dysplasia, left-sided neuropathy and

osteoporosis. The petitioner's physician has advised the petitioner to take an over-the-counter (OTC) product, Viactiv calcium daily chews, in conjunction with her prescribed Forteo injection treatments for osteoporosis. Previously, the use of TempurPedic mattress was recommended to the petitioner by her physician for relief of chronic pain.

3. The petitioner purchased a TempurPedic mattress in *August 2011*, at a cost of $4,223. To pay for the mattress, she borrowed the entire purchase cost from Wells Fargo. As a result, she has been making monthly credit payments of $118 to Wells Fargo from the time of purchase through the present.

4. The petitioner has been purchasing the OTC Viactiv chews from at least May 2013 forward. The cost of the chews is $9.00 monthly (*e.g.*, 60-count,Walgreens website).

5. The petitioner was not a participant in the Include, Respect, I Self-Direct (IRIS) program prior to or during August 2011. Later, she joined the IRIS program as a "Group A" participant, as she was an SSI benefit recipient. Group A participants do not have a cost share liability. The petitioner's income increased when she began receiving Social Security Disability in November 2012. An annual review of the petitioner's IRIS case was performed in April 2013, at which time her income information was updated.

6. Pursuant to the April 2013 review, the petitioner was determined to be a "Group B" IRIS participant, and therefore susceptible to a cost share liability. The Department based its cost share computation on uncontested Social Security Disability income of $1,586, with consideration of the following expenses: rent of $557.50, gas of $60, telephone of $76.74. The petitioner's cost share liability was determined to be $427. Allowable costs were later corrected to be the basic needs allowance, rent of $559, gas of $110, and telephone of $76.74, resulting in a *$377.00* cost share.

7. On April 16, 2013, the Department issued written notice to the petitioner advising that the cost share was increasing to $427 effective May 1, 2013. The petitioner then filed a hearing request with this office. On May 3, 2013, a notice advising of a correction to the cost share was issued. The Department declined to treat the petitioner's monthly $118 Wells Fargo payment and Viactiv chews expense as items to be subtracted from income as medical/remedial expenses. Neither item is listed in the petitioner's current IRIS service plan.

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. 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. All Medical Assistance-based care plans for personal care services are required, by state code, to be developed by a registered nurse, and to be ordered by a physician. Wis. Admin. Code §DHS 107.112(3)(b).

The petitioner's only dispute is the refusal of the Department or its agent to give her credit in some form for the cost of her Viactiv OTC chews and the monthly payment cost of her mattress. Preliminarily, I note that it is not permissible for the IRIS program to pay for the mattress charges because the mattress was purchased before the petitioner was in the IRIS program, and therefore before she had an IRIS service plan.

The Wisconsin waiver document declares:

> ...The FSA [fiscal agent], under its provider agreement with the Department, pays the participant's service provider, based on the authorized ISP [care/service plan] budget and then bills the Department for reimbursement for the services or goods that have been paid to providers. ... The FSA, under its provider agreement with the Department, pays the participant's service provider, based on the authorized ISP budget and then bills the Department for reimbursement for the services or goods that have been paid to providers.

Section 1915(c) waiver document (waiver # WI.0484.R01.00), at Appendix I-2, available online at http://www.cms.gov/MedicaidStWaivProgDemoPGI/MWDL/list.asp. Because there was no authorized service plan in place in August 2011, the IRIS program has correctly denied payment for a service provided at that time. Also, I cannot imagine that the IRIS program would have agreed to a protracted installment payment plan for a mattress, with the resulting interest charges.

The petitioner now asks that the IRIS program effectively assume the above forbidden cost (principal and interest) by subtracting it as a medical/remedial expense. That seems illogical to me. I conclude that payment of installment debt, contracted to prior to entry into the IRIS program, is not an allowable medical/remedial expense.

The petitioner also asks that the cost of her OTC Viactiv chews be subtracted from income as a medical/remedial expense. The IRIS agency declined to treat this OTC cost as a medical/remedial expense, which means that it is not being subtracted from her income. There is no dispute that use of the OTC chews is strongly recommended for the petitioner's medical treatment. However, the Department's policy guidance is clear in declaring that the cost of OTC vitamin and mineral products are not allowable as IRIS medical/remedial expenses. *See*, DHS Division of Long Term Care *Updated Medical and Remedial Expenses Checklist* p.2 (March 2012), available at http://www.tmg-wis.com/iris/docs/misc/mrc.pdf, and prior DHA Decision #CWA/148880 (Wis. Div. of Hearings & Appeals July 16, 2013)(DHS), both found in Exhibit 2. The federal rules only require a state to subtract health insurance premiums, deductible and coinsurance charges as medical/remedial expenses in this type of program; treatment of additional items as medical/ remedial expenses is up to the state agency, with the directive that it may place "reasonable limits" on such expenses. *See*, 42 C.F.R. § 435.726(c)(4). Per a suggestion made at hearing, the petitioner may wish to ask the IRIS agency to add the Viactiv chews to the list of items provided within her service plan.

CONCLUSIONS OF LAW

1. The IRIS program correctly declined to subtract as medical/remedial expenses, credit installment payments for a mattress furnished prior to creation of an authorized IRIS service plan for the petitioner.
2. The IRIS program correctly declined to subtract the cost of OTC calcium chews as a medical/remedial expense in the computation of the petitioner's IRIS cost share.

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 17th day of September, 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 September 17, 2013.

Milwaukee Enrollment Services
Bureau of Long-Term Support