



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

CWA/149376

PRELIMINARY RECITALS

Pursuant to a petition filed May 14, 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 August 14, 2013, at Milwaukee, Wisconsin.

The issue for determination is whether Petitioner's IRIS eligibility was correctly discontinued because Petitioner no longer meets the nursing home functional screen eligibility requirement.

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 Speer

Bureau of Long-Term Support
1 West Wilson
Madison, WI

ADMINISTRATIVE LAW JUDGE:

David D. Fleming
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner is a resident of Milwaukee County.
2. Petitioner received services within the Include, Respect, I Self-Direct (IRIS) program. The program did a reassessment in May 2013. Following the assessment the program notified

Petitioner on May 7, 2013 that IRIS eligibility would end because she no longer met the level of care requirement.

3. Petitioner is 45 years of age (DOB 4/5/68). Her diagnosis includes depression, anxiety and asthma. She lives alone in the community. Her son visits her every other day.
4. The IRIS assessor found that Petitioner demonstrated independent functioning in activities of daily living (ADLs) and all but 2 instrumental activities of daily living (IADLs); specifically she does not drive and needs assistance with medications 1 or 2 days per week.

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.

An IRIS participant must be elderly, or an adult with physical or developmental disabilities. See IRIS General Information at www.dhs.wisconsin.gov/bdds/IRIS/general.htm. The physical disabilities must be such that the person requires a level of care equal to the level of a nursing home. Medicaid Eligibility Handbook, §37.1.3. To qualify for a nursing home level of care a person must have a long-term care condition expected to last at least one year. See Overview of the Long Term Care Functional Screen, §1.2, found at www.dhs.wisconsin.gov/lc/FUNCTIONALSCREEN/WebCT/instructions1.htm.

The Wisconsin Department of Health Services Medicaid Eligibility Handbook (MEH) also describes the IRIS program:

37.1.1 Introduction

The Include, Respect I Self-Direct (*IRIS*) 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.

Under IRIS, the participant will be able to access services comparable to those provided under the Home- and Community-Based Waivers (HCBW) while managing an individual budget to meet their service needs.

...

37.1.3 IRIS Eligibility

The IRIS option is available to people living in Family Care counties when they come to the ADRC and are found in need of publicly-funded long term care services. It is also available to Family Care members (and Partnership members, if Partnership is also operated in the county) if the member requests to change to IRIS. (Such individuals would need to be disenrolled from their managed care long-term support program in order to participate in IRIS).

Individuals who wish to participate in IRIS must meet the following criteria in order to qualify:

- Reside in a county operating Family Care,
- Have a nursing home level of care as determined by the LTC Functional Screen, **and**

- All Medicaid Home- and Community-Based waiver financial and non-financial eligibility criteria
MEH, §§37.1.1 and 37.1.3.

As of January 1, 2008 the levels of care for waiver programs are:

1. Nursing Home (formerly Comprehensive NH)
2. Non-Nursing Home (formerly Intermediate and Comprehensive non-NH)
See the MEH, §29.4.

I note here that the waiver programs use the terms “nursing home” and “non-nursing home” levels of care as well as ‘comprehensive’ and ‘intermediate’ levels of care. Nonetheless, the terms mean the same thing; ‘comprehensive’ is nursing home level of care and ‘intermediate’ is non-nursing home.

Comprehensive functional capacity is defined at *Wis. Admin. Code, §DHS 10.33(2)(c)*:

(c) Comprehensive functional capacity level. A person is functionally eligible at the comprehensive level if the person requires ongoing care, assistance or supervision from another person, as is evidenced by any of the following findings from application of the functional screening:

1. The person cannot safely or appropriately perform 3 or more activities of daily living.
2. The person cannot safely or appropriately perform 2 or more ADLs and one or more instrumental activities of daily living.
3. The person cannot safely or appropriately perform 5 or more IADLs.
4. The person cannot safely or appropriately perform one or more ADL and 3 or more IADLs and has cognitive impairment.
5. The person cannot safely or appropriately perform 4 or more IADLs and has cognitive impairment.
6. The person has a complicating condition that limits the person's ability to independently meet his or her needs as evidenced by meeting both of the following conditions:
 - a. The person requires frequent medical or social intervention to safely maintain an acceptable health or developmental status; or requires frequent changes in service due to intermittent or unpredictable changes in his or her condition; or requires a range of medical or social interventions due to a multiplicity of conditions.
 - b. The person has a developmental disability that requires specialized services; or has impaired cognition exhibited by memory deficits or disorientation to person, place or time; or has impaired decision making ability exhibited by wandering, physical abuse of self or others, self neglect or resistance to needed care.

Intermediate functional capacity is defined at *Wis. Admin. Code, §DHS 10.33(2)(d)*:

d) Intermediate functional capacity level. A person is functionally eligible at the intermediate level if the person is at risk of losing his or her independence or functional capacity unless he or she receives assistance from others, as is evidenced by a finding from application of the functional screening that the person needs assistance to safely or appropriately perform either of the following:

1. One or more ADL.
2. One or more of the following critical IADLs:
 - a. Management of medications and treatments.
 - b. Meal preparation and nutrition.
 - c. Money management.

A person's long term care needs and the level of care are determined by use of the Long Term Care Functional Screen. The Long Term Care Functional Screen (LTC FS) is a functional needs assessment describing assistance needed with:

- **Activities of Daily Living**
- **Instrumental Activities of Daily Living**
- **Health Related Tasks**
- **Diagnoses**
- **Behavioral Symptoms and Cognition**

Source: Wisconsin Department of Health Services, online, Adult Long-Term Care Functional Screen, Module #1: Overview of the Long Term Care Functional Screen (LTC FS), §1.1 History. (<http://dhs.wisconsin.gov/lcicare/FunctionalScreen/instructions.htm>).--

The ADLs are bathing, dressing, eating, mobility in the home, toileting and transferring. The IADLs are meal preparation, medication administration and management, money management, laundry and/or chores, use of the telephone, transportation, overnight care or supervision and employment. *Id.*, Module #4.

IRIS plans of care are updated when a participant requests a change in the plan. See *IRIS Program Policies found at www.dhs.wisconsin.gov/bdds/IRIS/IRISPolicySummary.pdf*. The plans are also reviewed and updated at least on a yearly basis.

Petitioner is not cognitively impaired so must be unable to safely perform 3 or more activities of daily living; 2 or more ADLs and one or more instrumental activities of daily living or 5 or more IADLs to meet the nursing home level of care to be found functionally eligible at the nursing home/comprehensive level of care. The ADLs are, again: bathing, dressing, mobility, transfers, eating, and toileting; the IADLs are meal preparation, medication management, money management, telephone, laundry and household chores, transportation, and employment.

The evidence indicates that Petitioner is able to bath, dress, eat, move, used the bathroom and transfer independently. Though she contends that she is incontinent with coughing spells the evidence is not sufficient to demonstrate that this means she need help toileting.

As for the IADLs, the evidence is that Petitioner needs assistance with one – she requires help with medications management, she needs some monitoring to be sure that she takes her medications. Her son visits every other day to assure that she does so. She does not drive but is able to use public transportation. She contends that she has a hard time doing laundry due to her asthma but the laundry room in her apartment building is on her floor and she was not noted to have breathing difficulties during the assessment visit. This leaves meal prep, use of the telephone, overnight care or supervision and employment. Petitioner can use a phone. Thus the evidence does not show that Petitioner cannot safely perform 5 IADLS. Though Petitioner needs some assistance because of her medical issues the evidence does not show that she is at the nursing home level of care as defined in the criteria above. Petitioner may, however, qualify for the Family Care program at the non-nursing home level of care and should contact her county's Aging and Disability Resource Center to apply.

CONCLUSIONS OF LAW

That the agency correctly discontinued Petitioner's IRIS eligibility as the available evidence does demonstrate that she continues to meet nursing level of care functional eligibility standards.

THEREFORE, it is

ORDERED

That this matter 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 18th day of September, 2013

\sDavid D. Fleming
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

Wayne J. Wiedenhoef, Acting Administrator
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 September 18, 2013.

Bureau of Long-Term Support