



STATE OF WISCONSIN  
Division of Hearings and Appeals

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In the Matter of

[REDACTED]  
[REDACTED]  
[REDACTED]

DECISION

CWA/149732

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**PRELIMINARY RECITALS**

Pursuant to a petition filed June 03, 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 July 09, 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 January 2013. Following the assessment the program notified Petitioner on May 28, 2013 that IRIS eligibility would end because he no longer met the level of care requirement.

3. Petitioner is 22 years of age (DOB 7/25/91). He is cognitively challenged and diagnosed with learning disabilities and ADHD. He lives in the community with his mother. There is no guardianship in place. He reads at an early grade school level. He has a high school diploma but it is an attendance diploma. He can use a cell phone but his memory is such that he lost 5 or 6 phones in the last year. He learns only via repetition but even then some things are elusive, e.g., turning on a washing machine.
4. The assessor found that Petitioner demonstrated independent functioning in activities of daily living (ADLs) and all but 2 instrumental activities of daily living (IADLs). Those findings led to the determination that Petitioner did not meet the level of care requirement.

### 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](http://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. DHS 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/lcicare/FunctionalScreen/WebCT/instructions1.htm](http://www.dhs.wisconsin.gov/lcicare/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 Depart 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](http://www.dhs.wisconsin.gov/bdds/IRIS/IRISPolicySummary.pdf).* The plans are also reviewed and updated at least on a yearly basis.

Petitioner is cognitively impaired so must be unable to safely perform: A) one or more ADL and 3 or more IADLs or B) 4 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 dress, eat, move, used the bathroom and transfer independently. Bathing is more problematic. He has to be reminded to bathe. Bathing is an ADL because hygiene is a human health issue. While he gets in and out of the shower himself someone needs to be nearby as he leaves the bathroom so wet that it is dangerously slippery. The Modules at §4.7 indicate that someone who would not bathe but for reminders is someone who needs assistance. The Wisconsin Administrative Code chapter regulating the comparable Family Care program which also utilizes the functional screening tool indicates that assistance includes cueing. *Wis. Adm. Code, § DHS 10.13(6)*. Though this is close I am concluding that Petitioner is unable to safely perform this ADL.

As for the IADLs, there is no dispute that Petitioner needs assistance with at least two - money management and laundry. He does not take any medications. This leaves meal prep, use of the telephone, transportation, overnight care or supervision and employment. Petitioner can use a phone and is not an overnight care or supervision problem. He has never worked and while being disabled or cognitively challenged does not make one incapable of work, it is apparent that he would need at least help at work every day. *See Module, § 4.20*. While he may have come very close to passing a driving test, given his other deficits it is unclear to me that he could ever drive safely. *See Module §4.18*. I am, therefore, concluding that Petitioner is unable to perform in the IADL areas of transportation and employment.

For all of the foregoing I conclude that Petitioner still meets the nursing home level of care standard.

### **CONCLUSIONS OF LAW**

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

**THEREFORE, it is**

**ORDERED**

That this matter is remanded to the agency with instructions to rescind the discontinuance of Petitioner's IRIS eligibility. This must be done within 10 days of the date of this decision.

**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 27th day of August, 2013

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\sDavid D. Fleming  
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 August 27, 2013.

Bureau of Long-Term Support