



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of



DECISION

CWA/150560

PRELIMINARY RECITALS

Pursuant to a petition filed July 10, 2013, under Wis. Admin. Code §HA 3.03, to review a decision by the Bureau of Long-Term Support in regard to Medical Assistance (MA), a hearing was held on September 13, 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:



Petitioner's Representative:



Respondent:

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

By: Jill Speer, Participant Services Specialist
The Management Group, Inc. - IRIS
U.S. Bank Plaza, Suite 320
One South Pinckney Street
Madison, WI 53703

ADMINISTRATIVE LAW JUDGE:

Kelly Cochrane
Division of Hearings and Appeals

FINDINGS OF FACT

- 1. Petitioner (CARES # [redacted]) is a resident of Washington County. At the time of the instant hearing, he was 21 years old and diagnosed with Stargardt's Disease (legally blind) and large vestibular aqueduct syndrome (profoundly deaf). He has no cognitive impairment.

2. Petitioner received services within the Include, Respect, I Self-Direct (IRIS) program. The program did a reassessment in June 2013 using a Long Term Care Functional Screen (LTCFS). Following the assessment the program notified Petitioner on July 8, 2013 that IRIS eligibility would end because he no longer met the level of care requirement. He was rescreened in September 2013 due to a change in condition. That September LTCFS again found that he no longer met the level of care requirement.
3. The September 2013 LTCFS found that petitioner required assistance with meal preparation, medication administration and management, money management, using the telephone, and transportation.
4. The assessor found that Petitioner demonstrated a certain level of independent functioning in activities of daily living (ADLs) and 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. 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.

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

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 *MEH*, §29.4.

Nursing home level of care or 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.

Non-nursing home or 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.

The Department has developed a computerized functional assessment screening system called the Long Term Care Functional Screen (LTCFS). The system relies upon a face-to-face interview with a quality assurance screener who has at least a bachelor of science degree in a health or human services related field, with at least one year of experience working with the target populations (or, if not, an individual otherwise specifically approved by the Department based upon like combination of education and experience). The screener asks the applicant, or a recipient at a periodic review, questions about his or her medical conditions, needs, cares, skills, activities of daily living, and utilization of professional medical providers to meet these needs. The assessor then submits the Functional Screen Report for the person to the Department's Division of Disability and Elder Services. The Department enters the LTCFS data into a computer program to see if the person meets any of the required levels of care. If the assessor enters information into the functional screen correctly, then it is assumed that the computer will accurately determine the level of care.

The ADLs considered under the LTCFS 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. See LTCFS Instructions, Module 4, §4.1 at <http://www.dhs.wisconsin.gov/lcicare/FunctionalScreen/WebCT/instructions4.htm>.

As evidenced by the LTCFS, petitioner falls squarely into number 3 of the Comprehensive Functional Capacity definition. He requires assistance and cannot safely or appropriately perform 5 or more IADLs. See Finding of Fact #3. Thus under the code definition he meets the Comprehensive, or Nursing Home, level of care. Based upon the clear definition of the functional levels as defined in the administrative code as it reads now, I find that petitioner remains at the Nursing Home level of care.

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 22nd day of October, 2013

\sKelly Cochrane
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 October 22, 2013.

Bureau of Long-Term Support
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