



FH
[REDACTED]

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

CWA/151051

PRELIMINARY RECITALS

Pursuant to a petition filed July 30, 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. With the petitioner's consent, the hearing record was held open for 7 days for the petitioner to submit documentation related to her IRIS start date, and for the IRIS agency to submit the July service plan; that documentation was timely received.

The issues for determination are (1) whether the petitioner's enrollment date in IRIS has been correctly established, (2) whether her current IRIS budget amount is appropriate, and (3) whether her IRIS budget contained the correct amount of supportive home care hours for the July 5 – July 31, 2013, period.

There appeared at that time 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, Participant Services Spec.
IRIS Consultant Agency
Madison, WI

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 51, has diagnoses that include fibromyalgia, anemia, hypertension, arthritis, kyphosis, pica and a history of gastric bypass surgery (2006) and ablation surgery (June 2012).
3. The petitioner's on-and-off participation in IRIS and Family Care prior to February 22, 2013, was chronicled in a prior fair hearing decision by Administrative Law Judge Bursinger, DHA Decision # FCP/147955 (Wis. Div. of Hearings and Appeals June 6, 2013)(DHS). The petitioner requested IRIS re-enrollment on February 14, 2013. The agency completed a required Long Term Care Functional (LTCF) Screen of the petitioner on February 22, 2013. At that time, the agency determined that the petitioner needs minimal assistance with bathing, dressing, toileting, transferring, two meals daily, medication administration, pica intervention daily, and laundry.
4. On March 4, 2013, the Department advised the petitioner that she was eligible for IRIS with a budget of \$840.01. Later that day, the Department advised that her IRIS budget would be \$174.24. On March 7, the Department determined that the petitioner's IRIS budget was zero. On March 11, the Department notified that petitioner that was not functionally eligible for IRIS. The petitioner appealed, which resulted in Decision #147955.
5. The Administrative Law Judge's decision concluded that the petitioner was functionally eligible for IRIS/Family Care, and her order read as follows:

[the Department was to explain IRIS and Family Care] The petitioner must decide in which program she wishes to be enrolled. The agency must then take the administrative steps necessary to continue processing the petitioner's application based on the LTCFS dated February 22, 2013, including development of a plan of care consistent with the petitioner's needs as documented in the February 22, 2013 LTCFS and all other necessary administrative steps. These actions shall be accomplished as soon as possible but no later than 10 days following the date of this decision.
6. The agency performed a new LTCF Screen of the petitioner (to get updated information on her care needs) on June 10, 2013. On July 3, 2013, the IRIS agency notified the petitioner that her IRIS start date was July 5, 2013. Her IRIS budget is \$874.73. The petitioner appealed.
7. On June 24, 2013, the IRIS Financial Services Agency issued letter to the petitioner stating that worker Sylvia Morgan had passed her background check and was eligible to be employed by the petitioner for furnishing supportive home care. The letter also states:

This applicant can begin working as of Monday, June 24, 2013, *as long as it is after your IRIS start date.* [emphasis added]
8. The IRIS budget in place for July 5 through July 31, 2013, allowed for 54 hours per month of SHC. The budget that is in place for August 1, 2013 forward, contains 72 hours monthly of SHC.

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). In this instance, that did not occur until at least June 6, 2013 (date of the Administrative Law Judge's order).

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, at Appendix I-2, available online at <http://www.cms.gov/MedicaidStWaivProgDemoPGI/MWDL/list.asp>. Because there was no authorized service plan in place until July 5, 2013, the IRIS program has correctly denied payment for services provided before that date.

The petitioner expressed her belief that her new service plan was in place by the date of the FSA letter, which was June 24, 2013. However, I must follow the regulations above. The best evidence of the date of the completed service plan is the service plan document, found at Exhibit 1C, p.1. It declares a service plan start date of July 5, 2013. I therefore conclude that the petitioner's IRIS service plan began on July 5, 2013, and that payment under that plan could not start before July 5, 2013.

The petitioner also argued that the program's service plan budget for her case of \$874.73 monthly (beginning July 5, 2013), is inadequate because the IRIS program was required to give the petitioner a \$918.38 budget. She argues that the \$918.38 figure was mandated by Judge Bursinger's decision. *That decision's Order does not direct the IRIS program to put any specific dollar amount into the petitioner's service budget.* In reviewing the prior Judge's decision, she found that February 22 LTCF Screen declared that the petitioner needed minimal assistance with bathing, dressing, toileting, transfers, laundry/chores, meals (2-7 times weekly), medication administration (3-7 times weekly), and pica remediation (6 times weekly). *See*, Decision #151051, Finding #7. The IRIS budget based on that screening was \$918.38 monthly. At Finding #9, the Judge notes that a re-screening was done on March 4, which led to a budget of \$840.01 monthly. The difference between the March 4 and February 22 screenings was that toileting assistance was omitted. Toileting assistance is erratically needed for when the petitioner is having a "bad day" using her hands. The IRIS agency then inexplicably cut out much of the assistance that was identified as necessary on the March 4 re-screening, and changed the budget to \$174.24. The Judge correctly complained in her decision that the agency did not justify the radical change in its determination that the petitioner needed the assistance identified in both the February 22 and March 4 screenings, and then suddenly barely needed any assistance at all, as reflected in the \$174.24 budget.

Thus, the credible screening of February 22 resulted in a \$918.38 budget, and the credible screening of March 4 resulted in a credible \$840.01 budget. The current budget of \$874.73 seems to split the difference. There is insufficient evidence in this hearing record for me to conclude that the \$874.73 budget amount is incorrect. It is possible that the petitioner's care needs may

have lessened slightly since February. Further, the petitioner has not credibly identified any care needs of hers that are unmet in the \$874.73 budget.

Finally, the petitioner argues that her IRIS budget did not contain the correct amount of supportive home care (SHC) hours for the July 5 – July 31, 2013, period. She believes that money that she would have preferred to have spent on SHC was diverted to Meals on Wheels and SafeLink, which she states she does not want. The budget in place for July 5 through July 31, 2013, allowed for 54 hours per month of SHC. It does not display any payment for Meals on Wheels or SafeLink services, and it was signed by the petitioner on July 16, 2013. *See*, Exhibit 2, service plan. The budget that is in place for August 1, 2013 forward, contains 72 hours monthly of SHC and a modest health club membership, but no Meals on Wheels or SafeLink services. *See*, Exhibit 1C. The petitioner signed off on her July budget, so she has no basis for complaint here. She is satisfied with her current level of 72 SHC hours monthly.

CONCLUSIONS OF LAW

1. The petitioner's IRIS service plan began on July 5, 2013, and that payment under that plan could not start before July 5, 2013.
2. The petitioner has not established that her current IRIS budget amount is incorrect or inadequate.
3. The petitioner has not established that the distribution of funds within her IRIS budget for the July 5-31, 2013 period was incorrect.

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 15th day of October, 2013

\sNancy J. Gagnon
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 October 15, 2013.

Bureau of Long-Term Support