



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

CWA/151137

PRELIMINARY RECITALS

Pursuant to a petition filed August 05, 2013, under Wis. Admin. Code § HA 3.03, to review a decision by the Portage County Department of Human Services in regard to Medical Assistance, a telephone hearing was held on October 09, 2013.

The issue for determination is whether the respondent correctly dis-enrolled the petitioner from the IRIS program based upon his failure to pay monthly cost share amounts in 2011 and 2012.

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: Jennifer Vanairsdale

Portage County Department of Human Services
817 Whiting Avenue
Stevens Point, WI 54481-5292

ADMINISTRATIVE LAW JUDGE:

Peter McCombs
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]), a C4/C5 quadriplegic, is a resident of Portage County.
2. Petitioner has received IRIS services since at least 2011. His present cost share amount is \$22.19.
3. On July 2, 2013, the IRIS Financial Service Agency notified petitioner that some of his cost share checks were returned from the bank due to non-sufficient funds. He was informed that he needed

to pay \$1062.00 by money order or cashier's check within 10 days. Exhibit 1. The copies of checks enclosed with the notice indicated that the checks were written in 2011 and 2012.

4. The July 2, 2013, notice indicated that petitioner's failure to pay the arrearage would result in termination from the IRIS program, but did not list any appeal rights. Exhibit 1.
5. On August 2, 2013, the respondent notified petitioner in writing that his enrollment in IRIS would terminate as of September 1, 2013, as he had not paid the monthly cost share. The notice included appeal rights, and petitioner timely appealed the IRIS disenrollment on August 5, 2013.

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.

IRS financial eligibility is the same as for all home and community-based waiver programs. MA Handbook, § 37.1.3. Cost sharing is the monthly amount a waivers participant may have to contribute toward the cost of his/her waiver services. Payment of the cost share is a condition of eligibility. MA Handbook § 28.5.1.

The respondent has determined to dis-enroll the petitioner based upon checks returned for non-sufficient funds in 2011 and 2012. Petitioner was notified of the returned checks in July, 2013. At that time he was further informed that he needed to pay the outstanding cost share amount of \$1,083.94 within 10 days of the date of the July, 2013, notice. The respondent was aware that petitioner is on a fixed income consisting of a monthly SSDI payment of \$1,013.00, and that he possesses no countable assets.

Petitioner testified that he had a representative payee in 2011 and 2012, and that she wrote all of the checks that bounced, save one. Respondent submitted copies of the bounced checks, which confirm the petitioner's contention. See, Exhibit 1. The petitioner asserts that he was unaware of the bounced checks, and questions why checks that bounced in 2011 and 2012 were not brought to his attention until 2013. At hearing, the respondent's representatives were unable to explain the delay.

The respondent argued that disenrollment from the IRIS program was appropriate here since the petitioner was a participant in a prior repayment agreement when the 2011 and 2012 checks bounced. The respondent's argument may be summed up as: Payment of cost share is a condition of IRIS eligibility; the petitioner failed to pay the arrearage; and therefore petitioner has lost his IRIS eligibility.

However, I am struck by the unreasonable nature of the request that petitioner bring his account current within 10 days of notice of the arrearage, coupled with the refusal to consider a repayment agreement. This is especially concerning where, (1) the arrearage occurred up to two full years ago;¹ (2) respondent is aware of petitioner's limited fixed income and lack of assets (Exhibit 2); (3) petitioner has testified that he was unaware of the arrearage, and this testimony was not contradicted by the respondent; and (4) petitioner has requested a repayment plan, but respondent's representative has testified that while the

¹ NSF checks were dated 9/26/11, 1/3/2012, 2/6/2012, 4/3/2012, and 11/1/2012. Exhibit 1.

local agency was willing to consider a repayment plan, the Department instructed the agency to dis-enroll the petitioner.

At hearing, petitioner proposed to pay \$170.00 monthly, which would allow for payment of his \$22.19 cost share amount plus a payment of \$147.81 toward the current cost share arrearage. He added that he can pay by money order, in order to assure respondent that payment will be made. The respondent's representative testified that the respondent has the discretion to deny a request for a repayment plan. No authority was cited for this proposition; in any event I do not find that the respondent has demonstrated any basis for the denial of the repayment agreement proposed by petitioner.

As such, based on the totality of the record before me, this matter shall be remanded to the respondent to rescind the IRIS disenrollment of petitioner, and to enter into a repayment agreement with petitioner in order that petitioner may pay in full his outstanding cost share obligation.

CONCLUSIONS OF LAW

Respondent has not established that it has properly exercised its discretion to dis-enroll petitioner from participation in IRIS based upon non-payment of petitioner's cost share. Petitioner has established that he was unaware of returned checks resulting in non-payment of certain cost share obligations in 2011 and 2012, and has offered a repayment plan to respondent.

THEREFORE, it is

ORDERED

That this matter shall be remanded to the respondent to rescind the IRIS disenrollment of petitioner and to enter into a repayment agreement with petitioner in order that petitioner may pay in full the outstanding cost share amounts. All actions required under this Order shall be completed within 10 days following issuance 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 Madison,
Wisconsin, this 16th day of October, 2013.

\sPeter McCombs
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 16, 2013.

Portage County Department of Human Services
Bureau of Long-Term Support