



STATE OF WISCONSIN  
Division of Hearings and Appeals

---

In the Matter of

[REDACTED]  
[REDACTED]  
[REDACTED]

DECISION

CWA/151509

---

**PRELIMINARY RECITALS**

Pursuant to a petition filed August 20, 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 October 25, 2013, at Eau Claire, Wisconsin. A hearing scheduled for September 17, 2013 was rescheduled at the petitioner's request.

The issue for determination is whether the Wisconsin IRIS program correctly denied the petitioner's request for a membership at a local health club.

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:**

Michael D. O'Brien  
Division of Hearings and Appeals

**FINDINGS OF FACT**

1. The petitioner (CARES # [REDACTED]) is a resident of Eau Claire County.
2. The petitioner receives medical assistance-waiver services through the Wisconsin IRIS program.

3. The petitioner is 5' 7" and weighs 345 pounds.
4. The IRIS program denied the petitioner's request for an annual membership at [REDACTED]. The health club costs \$99 to join and \$89 per month.
5. There are several other health clubs in Eau Claire, including the [REDACTED], that cost less than [REDACTED].
6. The petitioner seeks the membership so that she can lose weight.
7. There is no evidence that [REDACTED]'s programs are more successful at helping members lose weight than are the programs at other [REDACTED] clubs.

### DISCUSSION

The petitioner receives medical benefits through IRIS, which stands for Include, Respect, I Self-Direct. This 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. *Medicaid Eligibility Handbook*, § 37.1.1. IRIS, as an MA Waiver service, may include the following services:

- (1) Case management services.
- (2) Homemaker services.
- (3) Home health aide services.
- (4) Personal care services.
- (5) Adult day health services.
- (6) Habilitation services.
- (7) Respite care services.
- (8) Day treatment or other partial hospitalization services, psychosocial rehabilitation services and clinic services (whether or not furnished in a facility) for individuals with chronic mental illness, subject to the conditions specified in paragraph (d) of this section.
- (9) Other services requested by the agency and approved by CMS as cost effective and necessary to avoid institutionalization.

42 CFR § 440.180(b)

When determining whether a service is necessary, IRIS must review, among other things, the medical necessity of the service, the appropriateness of the service, the cost of the service, the extent to which less expensive alternative services are available, and whether the service is an effective and appropriate use of available services. Wis. Admin. Code, § DHS 107.02(3)(e)1.,2.,3.,6., and 7. "Medically necessary" means a medical assistance service under ch. DHS 107 that is:

- (a) Required to prevent, identify or treat a recipient's illness, injury or disability; and
- (b) Meets the following standards:
  1. Is consistent with the recipient's symptoms or with prevention, diagnosis or treatment of the recipient's illness, injury or disability;
  2. Is provided consistent with standards of acceptable quality of care applicable to the type of service, the type of provider, and the setting in which the service is provided;
  3. Is appropriate with regard to generally accepted standards of medical practice;
  4. Is not medically contraindicated with regard to the recipient's diagnoses, the recipient's symptoms or other medically necessary services being provided to the recipient;
  5. Is of proven medical value or usefulness and, consistent with s. HFS 107.035, is not experimental in nature;
  6. Is not duplicative with respect to other services being provided to the recipient;
  7. Is not solely for the convenience of the recipient, the recipient's family, or a provider;

- 8. With respect to prior authorization of a service and to other prospective coverage determinations made by the department, is cost-effective compared to an alternative medically necessary service which is reasonably accessible to the recipient; and
- 9. Is the most appropriate supply or level of service that can safely and effectively be provided to the recipient.

Wis. Admin. Code, § DHS 101.03(96m).

The petitioner seeks a health club membership at [REDACTED] [REDACTED] so that she can lose weight. She now weighs 345 pounds. The IRIS program denied her request that it pay for the service because it contends that there are other health clubs, such as the [REDACTED], that cost much less. The petitioner does not dispute that [REDACTED] [REDACTED] costs more than other clubs, but she contends that it is the only place that will actually lead to her losing weight. She testified that at [REDACTED] [REDACTED] there were people even heavier than she is. She also testified that she cannot lose weight without motivation, and [REDACTED] [REDACTED] will provide this motivation. She points out that she has tried many programs, some several times, including HMR, Weight Watchers, Adkins, and various liquid diets. None has worked. As for [REDACTED] [REDACTED], she says, "I have never been so sure of a weight-loss program."

The petitioner has the burden of proving that a service is cost-effective and medically necessary. This requires some objective evidence that [REDACTED] [REDACTED]'s program will help her lose weight more effectively than programs at less expensive clubs. The presence of other heavy people at [REDACTED] [REDACTED] does not prove anything without some evidence that the club also has formerly heavy people. Nor does the petitioner's statement that the club will provide motivation prove anything. She testified that she has bad knees and a bad back, has had a heart attack, and has no life. If this does not motivate her even to begin to exercise at a less expensive health club, it is doubtful that she will do so for any significant length of time at [REDACTED] [REDACTED]. Almost everyone goes into an exercise program with enthusiasm, but this quickly subsides. Even if [REDACTED] [REDACTED]'s trainers are master motivators, the petitioner must show up to be motivated. Given the number of unsuccessful programs she has enrolled in and the lack of self-motivation she displayed at the hearing, it likely that after a few weeks she will find reasons to miss a session or two and that within a couple months she will stop showing up entirely.

The petitioner has not proved by the preponderance of the credible evidence that the requested club membership is cost-effective and medically necessary. Therefore, the IRIS program's denial of that request is upheld.

**CONCLUSIONS OF LAW**

IRIS correctly denied the petitioner's request for a health club membership because she has not shown that it is cost-effective and medically necessary.

**THEREFORE, it is** **ORDERED**

The petitioner's appeal 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 12th day of November, 2013

---

\sMichael D. O'Brien  
Administrative Law Judge  
Division of Hearings and Appeals



**State of Wisconsin\DIVISION OF HEARINGS AND APPEALS**

Brian Hayes, Administrator  
Suite 201  
5005 University Avenue  
Madison, WI 53705-5400

Telephone: (608) 266-3096  
FAX: (608) 264-9885  
email: [DHAmail@wisconsin.gov](mailto:DHAmail@wisconsin.gov)  
Internet: <http://dha.state.wi.us>

The preceding decision was sent to the following parties on November 12, 2013.

Bureau of Long-Term Support