



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

DECISION

CWA/151574

PRELIMINARY RECITALS

Pursuant to a petition filed August 23, 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 November 07, 2013, at Waukesha, Wisconsin.

This case is related to cases CWA-151569, CWA-151570, CWA-15173 and CWA-151579.

On November 7, 2013, Ms. Speer submitted an Individual Support and Service Plan dated August 10, 2012, a letter to Petitioner summarizing changes made to the plan, an Individual Support and Service Plan dated September 28, 2012, and a letter to Petitioner summarizing changes made to that plan. These documents have been marked as Exhibits 33, 34, 35 and 36, respectively.

On November 11, 2013, Petitioner's mother submitted Letters of Guardianship of the Person, an Individual Support and Service Plan – Financial and Service Summary by Goal, a receipt from Natural Health Ministry dated November 13, 2010, one page from an Individual Support and Service Plan dated May 10, 2010 and an Expense Report dated November 2010. The documents have been marked as Exhibits 37, 38, 39, 40 and 41, respectively.

The issue for determination is whether Wisconsin IRIS (the agency) correctly denied Petitioner's request for funding of a hotel stay for his care giver when he goes to see his allergist at Allergy Associates of La Crosse.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

Respondent:

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

By: Jill Speer, Participant Services Specialist
IRIS Consultant Agency
1 South Pickney Street
Suite 320
Madison, WI 53703-2887

ADMINISTRATIVE LAW JUDGE:
Mayumi M. Ishii
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner is a resident of Waukesha County.
2. Petitioner is 24 years old and is diagnosed with autism, communication disorder, neurological/cognitive deficit, seizure disorder, asthma and allergies. (Exhibit 29) In 2012, Petitioner was also diagnosed with gastrointestinal mal-absorption, abdominal pain, constipation, immune mechanism disorder, metabolic disorder, toxic encephalopathy, and sleep disturbances. (Exhibit 1)
3. Petitioner receives sublingual immunotherapy to treat allergic rhinitis, hay fever, and “asthma like episodes”. He is treated by Dr. Vijay K. Sabnis of Allergy Associates of La Crosse. (Exhibit 16) Petitioner’s condition is further monitored, by his primary care physician, Dr. Bartel. (Exhibit 17)
4. Sublingual immunotherapy involves administering antigens in drops under the tongue, in lieu of more traditional allergy shots. (Exhibit 25)
5. Petitioner’s last Individual Support and Service Plan dated September 28, 2012, indicated that allergy therapy with Allergy Associates of La Crosse was approved at a cost of \$60.00 per unit, 12 times per year. It also covered the cost of a hotel stay, in the amount of \$125.00. (Exhibit 35, pg. 9)
6. There are other allergists in Waukesha County that use sublingual immunotherapy. Petitioner has not attempted treatment with any of them. (Testimony of Petitioner’s mother)
7. In July 2013, Petitioner requested coverage of a hotel stay, in the amount of \$125.00, for another trip to Allergy Associates in La Crosse. (Testimony of Ms. Speer)
8. On July 17, 2013, Wisconsin IRIS (the agency) sent Petitioner a notice of action denying the requested service because the agency determined that there are other allergists closer to Petitioner. (Exhibit 30, pg. 5)
9. Petitioner filed a request for fair hearing that was received by the Division of Hearings and Appeals on August 23, 2013.

DISCUSSION

The petitioner receives medical benefits under 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.

The IRIS program, 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.

Emphasis added 42 CFR § 440.180(b)

When determining whether to authorize a service for Medicaid coverage, the Division 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. DHS 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).

In furtherance of implementing these laws, the IRIS program has developed various policies regarding funding of goods and services. *See Policy: SC 16.1, IRIS Funding for Goods, Supports and Services (September 1, 2010 – September 30, 2011)* and the *Medicaid Services and Summaries Definitions* manual.

BURDEN OF PROOF

It is a well-established principle that a moving party generally has the burden of proof, especially in administrative proceedings. State v. Hanson, 295 N.W.2d 209, 98 Wis. 2d 80 (Wis. App. 1980). In a case involving a request for services from IRIS, the applicant has the initial burden to show that the requested services meet the program's guidelines for approval. However, where the agency discontinues a service, the initial burden falls upon the agency to show that it acted correctly.

In the case at hand, Wisconsin IRIS paid for one hotel stay for Petitioner's caregiver, in La Crosse, as a customized good or service, because it approved Petitioner's therapy with Allergy Associates of La Crosse in 2012. It was a one-time expense. Thus, the current request is a new request for goods/services and the burden of proof falls upon Petitioner to show that the requested good/service meets approval criteria.

CAN A HOTEL STAY FOR THE PURPOSES OF RECEIVING TREATMENT AT ALLERGY ASSOCIATES BE COVERED BY IRIS FUNDS?

It is unclear why Wisconsin IRIS previously paid for a hotel stay for Petitioner's caregiver when he went to La Crosse for treatment of his allergies. However, it appears that it is now the agency's position that it previously approved the hotel stay in error. It is the agency's position that going to La Crosse for allergy treatment is not cost-effective and as such, the hotel stay may not be covered.

Petitioner's mother testified that there are, in fact, allergists in Waukesha, where Petitioner lives, that implement the sublingual immunotherapy that Petitioner desires. Petitioner's mother further testified that she has never attempted to take Petitioner to one of these physicians because she was uncertain whether they would be able to appropriately treat an autistic individual.

While Petitioner's mother has legitimate concerns, there is no basis in the record upon which to conclude the allergists in Waukesha are incapable of providing appropriate and adequate treatment to Petitioner. Thus, the agency is correct in its assertion that going to La Crosse for allergy treatment is not cost-effective. Because going to La Crosse is not cost-effective, it is not a covered service under 42 CFR §440.180(b) or Wis. Admin. Code, § DHS 107.02(3)(e).

CONCLUSIONS OF LAW

That the agency correctly denied Petitioner's request for funding of a hotel stay for his caregiver, when he goes to see his allergist at Allergy Associates of La Crosse.

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 Milwaukee,
Wisconsin, this 14th day of November, 2013.

\sMayumi M. Ishii
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 November 14, 2013.

Bureau of Long-Term Support