



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

CWA/155356

PRELIMINARY RECITALS

Pursuant to a petition filed February 10, 2014, under Wis. Admin. Code, §HA 3.03, to review a decision by the Include, Respect, I Self-Direct (IRIS) program to deny a request for a service, a hearing was held on June 18, 2014, by telephone. Hearings set for March 25, April 15, and May 14, 2014 were rescheduled at the petitioner's request.

The issue for determination is whether the agency correctly denied a request for a second driver evaluation for petitioner.

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]

Respondent:

Department of Health Services
1 West Wilson Street, Room 651
Madison, Wisconsin 53703

By: Sue Hanks
IRIS Consultant Agency
1 S. Pinckney St., Suite 320
Madison, WI 53703-2887

ADMINISTRATIVE LAW JUDGE:

Brian C. Schneider
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner is a 45-year-old resident of Milwaukee County who receives assistance under the IRIS program.
2. Petitioner has Spastic Quadriplegia Cerebral Palsy. In 2013 he expressed to his IRIS case manager a desire to drive an automobile. The case manager agreed to have the program pay for a

driver assessment to determine what petitioner would need to potentially drive a vehicle, at a cost of \$1.356.

3. The assessment was done by [REDACTED], LLC in November, 2013. A report was issued by [REDACTED] stating a number of recommendations, including that petitioner must be more secure in his wheelchair, his spasticity must be under better control, and his vision needed to be addressed.
4. Soon after the report was issued petitioner demanded a second driving evaluation because he was unsatisfied with the conclusions of the first report. On January 7, 2014, the IRIS agency denied the request for a second evaluation, and petitioner filed this appeal.

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.

IRIS Program policy no. SC 16.1 provides guidance on coverage of customized goods or services under the program. Such goods or services are those that enhance the person's opportunities related to living arrangement, relationship, community inclusion, work, and functional medical status. The item must meet all four of the following criteria:

- a. It must be designed to meet the person's functional, vocational, medical, or social needs and also advance the desired outcomes in the individual service plan;
- b. It must be documented on the service plan;
- c. It cannot be prohibited by statutes or regulations;
- d. It cannot be available through another source or be experimental in nature.

In addition, the item must meet at least one of the following criteria:

- a. It will maintain or increase the person's safety in the home or community;
- b. It will decrease or prevent increased dependence on other Medicaid-funded services;
- c. It will maintain or increase the person's functioning related to his disability;
- d. It will maintain or increase the person's access to or presence in the community.

The agency must review questionable items that exceed the cost of average products necessary to meet an outcome. The agency must provide an item that is the most cost effective possible. See IRIS Program Operations Infrequent Expense Policy at www.dhs.wisconsin.gov/bdds/IRIS/BudgRevw.pdf. See also 42 C.F.R. §440.180(b)(9).

The agency denied petitioner's request for a second evaluation because it found the requested service to be cost ineffective, given that an evaluation already had been completed. Primarily petitioner complained that the evaluator did not assess him appropriately and made recommendations with which that he did not

agree. He believes he is capable of driving and that the recommendations are more onerous than necessary.

Petitioner forwarded to me links to several You Tube videos. This office cannot download for copying such videos, so I watched them and made notes of them for the record. Two things stood out. One video showed how a van could be equipped with a joystick for a disabled person to drive. It was noted during the video that a system such as that one would cost over \$100,000. Even if petitioner could use such a system, I question whether it could be purchased using IRIS or other public funds. Second, the individual in that video and the woman in a second video titled "Wonder Woman Drives Herself" were both substantially less spastic than petitioner, who I was able to view in a video in which he visited a Monster truck dealer. I have to agree with the assessor that petitioner would have to become less spastic to drive a vehicle with a joystick. In addition, both of the individuals in the demonstration videos were seated with straight-backed posture in their wheelchairs, much more so than petitioner in his wheelchair. Thus I agree with the assessor that petitioner would at least need better posture in his wheelchair.

That said, the main issue is not whether the assessment was good or bad. The issue is whether the IRIS program must pay for a second assessment because petitioner demands one. The answer is no. Paying for one assessment was generous; a second one would not be cost effective. This is particularly true given that the assessment that was done does not seem to be substantially incorrect, if at all.

CONCLUSIONS OF LAW

The agency correctly denied petitioner's request for a second driver evaluation.

THEREFORE, it is **ORDERED**

That the petition for review herein be and the same is hereby dismissed.

REQUEST FOR A REHEARING

You may request a rehearing if you think this decision is based on a serious mistake in the facts or the law or if you have found new evidence that would change the decision. Your request must be **received within 20 days after the date of this decision**. Late requests cannot be granted.

Send your request for rehearing in writing to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400 **and** to those identified in this decision as "PARTIES IN INTEREST." Your rehearing request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and explain why you did not have it at your first hearing. If your request does not explain these things, it will be denied.

The process for requesting a rehearing may be found at Wis. Stat. § 227.49. A copy of the statutes may be found online or 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 filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Health Services, 1 West Wilson Street, Room 651, Madison, Wisconsin 53703, **and** on those identified in this decision as "PARTIES IN INTEREST" **no more than 30 days after the date of this decision** or 30 days after a denial of a timely rehearing (if you request one).

The process for Circuit Court Appeals may be found at Wis. Stat. §§ 227.52 and 227.53. A copy of the statutes may be found online or at your local library or courthouse.

Given under my hand at the City of Madison,
Wisconsin, this 24th day of June, 2014

\sBrian C. Schneider
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 June 24, 2014.

Bureau of Long-Term Support