



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

CWA/156417

PRELIMINARY RECITALS

Pursuant to a petition filed March 26, 2014, under Wis. Admin. Code § HA 3.03, to review a decision by the Bureau of Long-Term Support in regard to IRIS program benefits, a hearing was held on May 13, 2014, by telephone.

The issue for determination is whether the IRIS program correctly denied a recipient's request for a \$22,503.12 home bathroom modification.

There appeared at that time the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]

Respondent:

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

By: Sue Hanks, Quality Services Mgr.
IRIS Consultant Agency
Madison, WI

ADMINISTRATIVE LAW JUDGE:

Nancy J. Gagnon
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner is a resident of Walworth County.
2. The petitioner, age 79, has diagnoses that include obesity (approximately 250 pounds), unspecified knee problems ("worn cartilage") and a history of bilateral hip replacements. She uses a seated walker for mobility. She requires physical assistance with showering, and other activities of daily living (ADLs) and transfers. There was no testimony that her vision, speech and

hearing are impaired, but she does have periods of confusion. The petitioner resides in the upper half of a two level residence built in 1913. Her granddaughter also lives in the residence.

3. The petitioner is enrolled in the IRIS program and has an individualized service plan (Plan). IRIS is a self-directed personal care program, created by a Medicaid waiver. Her current Plan authorizes payments totaling \$1,387 monthly for her care, and includes several hours daily of supportive home care (SHC). She also receives adult day care services for up to 10 days monthly.
4. In June 2013, the petitioner requested one-time payments, in addition to her monthly allotment, to pay for (1) a valet seat to lift her into her van, (2) a vertical platform lift to traverse the stairs in her residence, and (3) a complete, \$22,503 bathroom remodeling. An on-site assessment of the petitioner and her residence was performed in July 2013. The program approved items (1) and (2), at a total cost of \$18,654. However, on February 19, 2014, the Department denied the request for a bathroom remodeling. *See*, Exhibit 1. The petitioner then filed this appeal.
5. The Department concluded in February 2014 that the petitioner's difficulties in accessing her shower could be addressed by the purchase (by the program) and use of a Bath Buddy sliding transfer shower chair, at a cost of \$2,886.
6. The petitioner has purchased a Bath Buddy sliding transfer shower chair, and was not successful in using it.
7. The petitioner's current bathroom contains a toilet, sink, bathtub, and separate shower. The petitioner cannot safely access a bathtub. She has difficulty in the use of her current shower, because it is too small for an attendant to accompany her, and she cannot step over the threshold on the entrance to the shower floor. The bathroom is narrow, measuring 43 inches wide by approximately 152 inches (approximately 12 ½ feet).

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. This Section 1915(c) waiver document is available at <http://www.cms.gov/MedicaidStWaivProgDemoPGI/MWDL/list.asp>. IRIS is a fee-for-service, 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, and then develop a service plan based on the assessed needs. *Id.*, §441.466. The service plan may include homemaker services and "other services" allowed by the state agency. *Id.*, §440.180(b). Further, "all of the State's applicable policies and procedures associated with service plan development must be carried out ..." *Id.* §441.468.

The federal rule allows IRIS to pay for items that allow the client to reduce human assistance for program-covered human assistance expenditures:

§ 441.482 Permissible purchases.

(a) Participants, or their representatives, if applicable, may, at the State's option, use their service budgets to pay for items that increase a participant's independence or substitute (such as a microwave oven or an accessibility ramp) for human assistance, to the extent that expenditures would otherwise be made for the human assistance.

(b) The services, supports and items that are purchased with a service budget must be linked to an assessed participant need or goal established in the service plan.

42 C.F.R. §441.482. The Department's IRIS policy document, *IRIS Policy Manual*, available at <http://www.dhs.wisconsin.gov/iris/manual.htm>. (viewed in June 2014), declares that one-time expenditures may include cost-effective home modifications. *Id.*, § 5.8, and IRIS form F-01205c (2014). Given that home modification is a covered service, the next question is whether the petitioner requires a \$22,503 bathroom remodeling to meet her needs. The burden of proof for the project and its cost rests with the petitioner.

The program asserts that the petitioner's safe showering needs could be met with the use of a specific sliding shower chair. The petitioner has tried that chair, and it did not work for her. I accept that the sliding shower chair is not a solution for the petitioner.

The petitioner *has* met her burden of establishing that she needs a modification of her home shower via expansion and removal of the shower threshold. This will probably entail removal of the adjacent bathtub and demolition of the existing shower stall.

The petitioner has not proven that the tile floors (do not appear to be original to 1913 in photographs) need to be replaced, or that the sink must be replaced. She also expressed a desire to create a new, wider entrance to the bathroom by demolishing a closet and making an opening in that wall. None of these three expenditures would reduce the petitioner's need for human assistance. The petitioner opined that replacement of the sink with a wheelchair-accessible sink would be desirable in the event that the petitioner needs a wheelchair in the future. However, that is not her current situation, and there is no need for a publicly-funded program to remodel the home of a 79-year old person to anticipate every possible future need.

The quote provided for a complete bathroom remodel is \$22,503. I am not persuaded that a complete remodeling is necessary to meet the petitioner's current showering needs. I am also surprised at the \$22,503 price tag for a small bathroom. *See*, <http://www.hgtv.com/home-improvement/budgeting-your-bathroom-renovation/index.html>; <http://www.consumerreports.org/cro/2012/03/bathroom-remodeling-guide-trends-and-costs/index.htm>; <http://home.costhelper.com/bathroom-remodel.html>; or <http://www.repair-home.com/bathroom-remodeling/average-costs-of-bathroom-remodeling.html> . The national average for a mid-grade bathroom remodeling is \$16,000. Because the detailed \$22,503 bid is not in the hearing record, this Judge has no way of knowing if components of the bid are excessive.

To conclude, the petitioner has established that she has a need to have her bathroom remodeled to the extent needed to replace her existing shower with a roll-in shower. This will probably entail removal of her bathtub. The petitioner has not established that \$22,503 is a reasonable cost for this task. This Judge cannot determine specifications and take bids to arrive at a reasonable number. I can only approve or disapprove the request before me. Thus, I will uphold denial of the \$22,503 request, and dismiss this matter without prejudice. This means that the petitioner may submit another, lower cost request to the IRIS program for her partial bathroom remodeling, if she so desires. If the IRIS program denies that new remodeling request, the petitioner is free to file a new fair hearing request on that denial.

CONCLUSIONS OF LAW

1. The petitioner reasonably requires a roll-in shower to replace her existing bathroom shower.
2. The cost of the bathroom remodeling request submitted by the petitioner is excessive.
3. The IRIS program correctly denied the petitioner's request for a \$22,503 bathroom remodeling.

THEREFORE, it is **ORDERED**

That the petition is dismissed, without prejudice.

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

\sNancy J. Gagnon
Administrative Law Judge
Division of Hearings and Appeals
MedIRIShome2014



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The preceding decision was sent to the following parties on June 24, 2014.

Bureau of Long-Term Support