



**STATE OF WISCONSIN
Division of Hearings and Appeals**

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

CWA/156778

PRELIMINARY RECITALS

Pursuant to a petition filed April 11, 2014, under Wis. Admin. Code § HA 3.03, to review a decision by the Outagamie County Department of Human Services in regard to Medical Assistance, a hearing was held on June 02, 2014, at Appleton, Wisconsin.

The issue for determination is whether the Iris Program erred in its calculation of the \$22.57 in medical remedial expenses and the related cost share for Iris Program enrollment.

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, Room 651
Madison, Wisconsin 53703

By: Sue Hanks

Outagamie County Department of Human Services
401 S. Elm Street
Appleton, WI 54911-5985

ADMINISTRATIVE LAW JUDGE:

John P. Tedesco
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Outagamie County.
2. Petitioner has been an ongoing member of the Iris Program. Petitioner was responsible for a cost share which was around 29 dollars for most of 2013.

3. In January 2014, petitioner underwent a periodic review of his eligibility by the Program. The Program realized that the medical remedial expense information it had been relying upon to calculate the cost share was over two years old. This information is supposed to be updated annually.
4. The Program consultant completed a new medical remedial checklist for the Program to apply. This document indicated \$22.57 as the total monthly medical and remedial expenses. Petitioner signed this form on February 5, 2014. (See ex. #2).
5. The Iris Program then re-calculated eligibility and cost share with this new information provided by petitioner. It determined a new cost share of \$194.43. On February 10, 2014, the agency sent a notice of this new cost share amount which was to be effective as of March 1, 2014.
6. In March, the agency re-calculated the cost share and included a special housing amount of \$55.59. With the new calculation, on April 1, 2014 the agency sent a new notice to petitioner indicating that his cost share would be reduced to \$138.84 effective April 1, 2014.
7. Petitioner filed a request for hearing on April 11, 2014.

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, Appendix 37.1.3. The calculation of a cost share is described in the Handbook at Appendix 28.8.3.1. From income there are several possible deductions including the personal needs allowance that is currently set at \$878, health insurance, medical/remedial expenses, and a special housing amount equal to the amount of housing costs above \$350.

Remedial medical expenses are the issue in this case as articulated by petitioner. Such expenses are described as follows in *Medicaid Eligibility Handbook*, § 15.7.3:

Medical expenses are anticipated incurred expenses for services or goods that have been prescribed or provided by a professional medical practitioner (licensed in Wisconsin or another state). The expense is for diagnosis, cure, treatment, or prevention of disease or for treatment affecting any part of the body. These are expenses that are the responsibility of the member, and cannot be reimbursable by any other source, such as Medicaid, private insurance, or employer.

The petitioner argued at hearing that his medical expenses have not gone down in 2014 and more likely have increased from previous years. Petitioner asked why his over-the-counter expenses have been covered since 1974 but are now claimed to be ineligible by Iris. Petitioner claimed that his eligible medical expenses are more than the \$22.57 he claimed on the checklist filed in February. But, petitioner was unable at hearing to specify or document eligible expenses. He conceded that the expenses he is arguing for are over-the-counter items.

The Department's policy guidance is clear in declaring that the cost of OTC products are not allowable as IRIS medical/remedial expenses. See, DHS Division of Long Term Care *Updated Medical and Remedial Expenses Checklist* p.2 (March 2012), available at <http://www.tmg-wis.com/iris/docs/misc/mrc.pdf>, and prior DHA Decision #CWA/148880 (Wis. Div. of Hearings & Appeals July 16, 2013)(DHS), both found in Exhibit 2. The federal rules only require a state to subtract health insurance premiums, deductible and coinsurance

charges as medical/remedial expenses in this type of program; treatment of additional items as medical/remedial expenses is up to the state agency, with the directive that it may place “reasonable limits” on such expenses. *See*, 42 C.F.R. § 435.726(c)(4). Per a suggestion made at hearing, the petitioner may wish to ask the IRIS agency to add the OTC items to the list of items provided within his service plan. Petitioner, however, stated that he does not want the expenses covered because then he may lose his rent-reduction. Petitioner also argues simply that he cannot afford the cost share required by the Iris rules. But, the Iris Program is a voluntary program. He may elect to participate in another program if he is otherwise eligible.

CONCLUSIONS OF LAW

The Iris Program did not err in denying OTC items as deductions from income as medical expenses.

THEREFORE, it is

ORDERED

That this appeal is 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 23rd day of July, 2014

\sJohn P. Tedesco
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 July 23, 2014.

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