



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

---

In the Matter of



DECISION

CWA/157032

---

The attached proposed decision of the Administrative Law Judge dated August 5, 2014 is hereby adopted as the final order of the Department.

**PRELIMINARY RECITALS**

Pursuant to a petition filed April 19, 2014, under Wis. Admin. Code, §HA 3.03, to review a decision by the Include, Respect, I Self-Direct (IRIS) program to discontinue eligibility, a hearing was held on June 18, 2014, by telephone.

The issue for determination is whether petitioner meets the level of care requirement for continued IRIS eligibility.

**PARTIES IN INTEREST:**

Petitioner:



Petitioner's Representative:

Atty. April Hartman  
Legal Action of Wisconsin, Inc.  
230 W. Wells St., Rm. 800  
Milwaukee, WI 53203

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 (CARES # [REDACTED]) is a resident of Milwaukee County.
2. Petitioner has been a participant in the IRIS program. She was scheduled for an annual review in the spring, 2014. A functional screen was completed on April 17, 2014.

3. Petitioner has diagnoses of diabetes, hypertension, malaise/fatigue, sarcoidosis, urinary problems, and heart disease with a pacemaker.
4. The screener found that petitioner needs partial assistance with bathing and dressing, and that she is independent in eating, toileting, transferring, and mobility. She needs assistance with meal preparation, specifically grocery shopping, and with laundry/chores. She is independent with medication administration, money management, and communication. She is able to drive but there are safety concerns.
5. When the results of the screening were run petitioner was found to no longer meet the level of care requirement for IRIS eligibility. She was informed of the proposed discontinuance by a notice dated April 18, 2014. Benefits were continued pending this decision.

### 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.

An IRIS participant must be elderly, or an adult with physical or developmental disabilities. See IRIS General Information at [www.dhs.wisconsin.gov/bdds/IRIS/general.htm](http://www.dhs.wisconsin.gov/bdds/IRIS/general.htm). The physical disabilities must be such that the person requires a level of care equal to the level of a nursing home, "as determined by the LTC Functional Screen." DHS Medicaid Eligibility Handbook, §37.1.3; this requirement is mandated by 42 C.F.R. §440.40. To qualify for a nursing home level of care a person must have a long-term care condition expected to last at least one year. See the Overview of the Long Term Care Functional Screen, §1.2, found at [www.dhs.wisconsin.gov/lcicare/FunctionalScreen/WebCT/instructions1.htm](http://www.dhs.wisconsin.gov/lcicare/FunctionalScreen/WebCT/instructions1.htm).

IRIS plans of care are updated when a participant requests a change in the plan. See IRIS Program Policies found at [www.dhs.wisconsin.gov/bdds/IRIS/IRISPolicySummary.pdf](http://www.dhs.wisconsin.gov/bdds/IRIS/IRISPolicySummary.pdf). The plans also are updated at least on a yearly basis.

The Department has developed a computerized functional assessment screening system. The system relies upon a face-to-face interview with a quality assurance screener who has at least a bachelor of science degree in a health or human services related field, with at least one year of experience working with the target populations (or, if not, an individual otherwise specifically approved by the Department based upon like combination of education and experience). The screener asks the applicant, or a recipient at a periodic review, questions about his or her medical conditions, needs, cares, skills, activities of daily living, and utilization of professional medical providers to meet these needs. The assessor then submits the Functional Screen Report for the person to the Department's Division of Disability and Elder Services. The Department enters the Long Term Functional Screen data into a computer program to see if the person meets any of the required levels of care.

If the assessor enters information into the functional screen correctly, then it is assumed that the computer will accurately determine the level of care. In this case, I find that the screen was completed correctly.

Petitioner does not dispute that the screen was completed correctly, and that the end result of the screen would be a finding that petitioner does not meet the requisite level of care. She points to the definition of “comprehensive functional capacity level” in the Wisconsin Administrative Code, §DHS 10.33(2)(c) for the argument that petitioner meets subsection 2 of that definition. The problem is that the definition is found in the description of a separate home waiver program, the Family Care Program. Both cases cited by petitioner also involve issues with the Family Care Program.

I can find nothing in IRIS rules or policy that refers to the level of care definition for Family Care. As noted, the MA Eligibility Handbook defines the level of care for IRIS to be as determined by the functional screen, and in this case the functional screen resulted in a finding of ineligibility.

I note that in the cited decision that I wrote, FCP-11/113325, dated October 26, 2010, there was reference to the Department’s position that the definitions found at §DHS 10.33 were out of alignment with federal requirements, and that the code definitions would be updated. It is now almost four years later and the code definition remains the same, and thus if this were a Family Care issue, the code definition would take precedence over the functional screen result. It is not Family Care, however, and I must conclude that the agency correctly determined that petitioner no longer meets the IRIS level of care requirement.

### **CONCLUSIONS OF LAW**

The IRIS agency correctly determined that petitioner no longer meets the level of care requirement for eligibility.

**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, WI, 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 request (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 23 day  
of December, 2014.

Kevin E. Moore  
Kevin E. Moore, Deputy Secretary  
Department of Health Services



STATE OF WISCONSIN  
Division of Hearings and Appeals

---

In the Matter of



PROPOSED REHEARING DECISION

CWA/157032

---

**PRELIMINARY RECITALS**

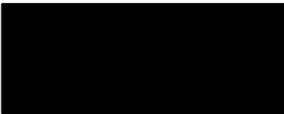
Pursuant to a petition filed April 19, 2014, under Wis. Admin. Code, §HA 3.03, to review a decision by the Include, Respect, I Self-Direct (IRIS) program to discontinue eligibility, a hearing was held on June 18, 2014, by telephone.

A decision was issued on June 25, 2014 dismissing the appeal. On July 11, 2014 petitioner requested a rehearing that was granted on July 24, 2014. Because the issue is one of law, a new hearing is not necessary as no additional facts are needed to issue the rehearing decision. I note that petitioner's position was made clear in her rehearing request; she can use the rehearing request as her objection to the decision if she chooses to do so.

The issue for determination is whether petitioner meets the level of care requirement for continued IRIS eligibility.

**PARTIES IN INTEREST:**

Petitioner:



Petitioner's Representative:

Atty. April Hartman  
Legal Action of Wisconsin, Inc.  
230 W. Wells St., Rm. 800  
Milwaukee, WI 53203

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 (CARES # [REDACTED]) is a resident of Milwaukee County.
2. Petitioner has been a participant in the IRIS program. She was scheduled for an annual review in the spring, 2014. A functional screen was completed on April 17, 2014.
3. Petitioner has diagnoses of diabetes, hypertension, malaise/fatigue, sarcoidosis, urinary problems, and heart disease with a pacemaker.
4. The screener found that petitioner needs partial assistance with bathing and dressing, and that she is independent in eating, toileting, transferring, and mobility. She needs assistance with meal preparation, specifically grocery shopping, and with laundry/chores. She is independent with medication administration, money management, and communication. She is able to drive but there are safety concerns.
5. When the results of the screening were run petitioner was found to no longer meet the level of care requirement for IRIS eligibility. She was informed of the proposed discontinuance by a notice dated April 18, 2014. Benefits were continued pending the initial fair hearing decision.

### 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.

An IRIS participant must be elderly, or an adult with physical or developmental disabilities. See IRIS General Information at [www.dhs.wisconsin.gov/bdds/IRIS/general.htm](http://www.dhs.wisconsin.gov/bdds/IRIS/general.htm). The physical disabilities must be such that the person requires a level of care equal to the level of a nursing home, "as determined by the LTC Functional Screen." DHS Medicaid Eligibility Handbook, §37.1.3; this requirement is mandated by 42 C.F.R. §440.40. To qualify for a nursing home level of care a person must have a long-term care condition expected to last at least one year. See the Overview of the Long Term Care Functional Screen, §1.2, found at [www.dhs.wisconsin.gov/lcicare/FunctionalScreen/WebCT/instructions1.htm](http://www.dhs.wisconsin.gov/lcicare/FunctionalScreen/WebCT/instructions1.htm).

IRIS plans of care are updated when a participant requests a change in the plan. See IRIS Program Policies found at [www.dhs.wisconsin.gov/bdds/IRIS/IRISPolicySummary.pdf](http://www.dhs.wisconsin.gov/bdds/IRIS/IRISPolicySummary.pdf). The plans also are updated at least on a yearly basis.

The Department has developed a computerized functional assessment screening system. The system relies upon a face-to-face interview with a quality assurance screener who has at least a bachelor of science degree in a health or human services related field, with at least one year of experience working with the target populations (or, if not, an individual otherwise specifically approved by the Department based upon like combination of education and experience). The screener asks the applicant, or a recipient at a periodic review, questions about his or her medical conditions, needs, cares, skills, activities of daily living, and utilization of professional medical providers to meet these needs. The assessor then submits the Functional Screen Report for the person to the Department's Division of Disability and Elder Services. The

Department enters the Long Term Functional Screen data into a computer program to see if the person meets any of the required levels of care.

If the assessor enters information into the functional screen correctly, then it is assumed that the computer will accurately determine the level of care. In this case, I find that the screen was completed correctly.

Petitioner does not dispute that the screen was completed correctly, and that the end result of the screen would be a finding that petitioner does not meet the requisite level of care. She points to the definition of "comprehensive functional capacity level" in the Wisconsin Administrative Code, §DHS 10.33(2)(c) for the argument that petitioner meets subsection 2 of that definition. The problem is that the definition is found in the description of a separate home waiver program, the Family Care Program. Both cases cited by petitioner also involve issues with the Family Care Program.

I can find nothing in IRIS rules or policy that refers to the level of care definition for Family Care. As noted, the MA Eligibility Handbook defines the level of care for IRIS to be as determined by the functional screen, and in this case the functional screen resulted in a finding of ineligibility.

I note that in the cited decision that I wrote, FCP-11/113325, dated October 26, 2010, there was reference to the Department's position that the definitions found at §DHS 10.33 were out of alignment with federal requirements, and that the code definitions would be updated. It is now almost four years later and the code definition remains the same, and thus if this were a Family Care issue, the code definition would take precedence over the functional screen result. It is not Family Care, however, and I must conclude that the agency correctly determined that petitioner no longer meets the IRIS level of care requirement.

I am sending this decision proposed because petitioner alleges that the Family Care level of care should be used for IRIS. Although there is nothing in Wis. Admin. Code, Chapter DHS 10 referring to the IRIS program, and there is nothing in the IRIS policy referring to Chapter DHS 10, it is evident that other administrative law judges have used the Chapter DHS 10 level of care definition to rule on IRIS cases. In addition petitioner has provided background material that suggests equivalence between Family Care and IRIS. Thus guidance is needed from the Secretary on how to handle these determinations.

### CONCLUSIONS OF LAW

The IRIS agency correctly determined that petitioner no longer meets the level of care requirement for eligibility.

**THEREFORE, it is**

**ORDERED**

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

### NOTICE TO RECIPIENTS OF THIS DECISION:

This is a Proposed Decision of the Division of Hearings and Appeals. IT IS NOT A FINAL DECISION AND SHOULD NOT BE IMPLEMENTED AS SUCH.

If you wish to comment or object to this Proposed Decision, you may do so in writing. It is requested that you briefly state the reasons and authorities for each objection together with any argument you would like to make. Send your comments and objections to the Division of Hearings and Appeals, P.O. Box 7875, Madison, WI 53707-7875. Send a copy to the other parties named in the original decision as "PARTIES IN INTEREST."

All comments and objections must be received no later than 15 days after the date of this decision. Following completion of the 15-day comment period, the entire hearing record together with the Proposed Decision and the parties' objections and argument will be referred to the Secretary of the Department of Health and Family Services for final decision-making.

The process relating to Proposed Decision is described in Wis. Stat. § 227.46(2).

Given under my hand at the City of Madison,  
Wisconsin, this 5<sup>th</sup> day of August, 2014



---

Brian C. Schneider  
Administrative Law Judge  
Division of Hearings and Appeals