



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

In the Matter of

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

DECISION

CWA/157211

PRELIMINARY RECITALS

Pursuant to a petition filed April 28, 2014, under Wis. Admin. Code § HA 3.03, to review a decision by the Milwaukee Enrollment Services in regard to Medical Assistance (MA), specifically the IRIS program, a telephonic hearing was held on June 26, 2014.

The issue for determination is whether the agency met its burden of proof to establish that it correctly and accurately calculated the petitioner’s IRIS cost share effective May 1, 2014.

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, Room 651
Madison, Wisconsin 53703

By: Jennifer Van Airsdale, IRIS Financial Eligibility Specialist
Milwaukee Enrollment Services
1220 W Vliet St, Room 106
Milwaukee, WI 53205

ADMINISTRATIVE LAW JUDGE:

Kelly Cochrane
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Milwaukee County and is enrolled in the IRIS program.

2. On April 11, 2014 the county agency issued a notice of decision stating that effective May 1, 2014 petitioner's cost share would increase because "the amount you need to pay each month for your in-home health care has gone up because your income has gone up." Exhibit 5.

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. 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. All Medical Assistance-based care plans for personal care services are required, by state code, to be developed by a registered nurse, and to be ordered by a physician. Wis. Admin. Code §DHS 107.112(3)(b).

IRS financial eligibility is the same as all home and community-based waiver programs. MA Handbook, §37.1.3, available online at <http://www.emhandbooks.wisconsin.gov/meh-ebd/meh.htm>. The calculation of a cost share is described in the Handbook at §28.8.3.1. From income there are several possible deductions including the personal needs allowance, health insurance, medical/remedial expenses, and a special housing amount. At issue here are the medical/remedial expenses (MREs) deductions.

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 following are examples of medical expenses:

1. Deductibles and co-payments for Medicaid, Medicare, and private health insurances.
2. Health insurance premiums.
3. Bills for medical services which are not covered by the Wisconsin Medicaid program.
4. For purposes of meeting a Medicaid deductible, medical services received before the person became eligible for Medicaid. (Past medical bills cannot be used for MAPP premium calculations.)

Remedial expenses are costs incurred for services or goods that are provided for the purpose of relieving, remedying, or reducing a medical or health condition. 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.

Some examples of remedial expenses are:

1. Case management.
2. Day care.
3. Housing modifications for accessibility.

4. Respite care.
5. Supportive home care.
6. Transportation.
7. Services recognized under s.46.27, Wis. Stats.
8. Community Options Program, that are included in the person's service plan.

Remedial expenses do not include housing or room and board services.

See MA Handbook, §15.7.3.

The IRIS case manager explained at hearing that two previously allowed MREs were no longer being allowed because they were items provided in her service plan effective December 2013. These two items were for incontinence supplies and Personal Emergency Response System (PERS). Accordingly, they were correctly omitted from the MREs per the policy cited above as they are reimbursable under MA. See also Exhibit C1 vs. G2. I remind the petitioner that IRIS agreed at hearing to get her reimbursed for any months those items were “paid out of pocket” but should have been covered by her service plan.

However, the IRIS agency could not explain a remainder of the MREs - a \$10 entry for payments made on allowable outstanding medical services not covered by IRIS. Petitioner was hospitalized during the time of the hearing and was represented by her daughter and POA and therefore the petitioner could not shed any light either. However, 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). The court in *Hanson* stated that the policy behind this principle is to assign the burden to the party seeking to change a present state of affairs. In this case, the burden falls on the agency to show that it correctly sought to increase her cost share. It could not explain what the \$10 represented and it could not respond to the POA’s questions about how that related to co-pays she had submitted for consideration as MRE. Finally, I add that the notice refers to a MRE total of \$78.72 (see Exhibit 5), whereas the MRE Checklist totaled the amount as \$76.72 (Exhibit G-2).

Based on the foregoing, I find that the IRIS agency has not met its burden to support the increased cost share. I therefore am remanding this matter to the agency with instructions to redetermine her cost share effective May 1, 2014. If it has not occurred already, petitioner may wish to authorize her daughter as her authorized representative so that the MREs submitted can be submitted by her, discussed with her and signed off by her, as petitioner did on Exhibit G-2.

CONCLUSIONS OF LAW

The agency has not met its burden to show that it correctly determined petitioner’s cost share by correctly accounting for petitioner’s MRE deduction.

THEREFORE, it is

ORDERED

That this matter is remanded to the agency with instructions that within 10 days of the date of this decision it redetermine petitioner’s cost share by correctly accounting for petitioner’s MRE deduction, effective May 1, 2014. In the event that verification of information is necessary to complete the redetermination, I am adding 20 days to the time to comply with this Order so that verification can be properly accomplished. The agency shall also issue a notice of decision to petitioner regarding her cost share effective May 1, 2014.

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, Room 651, 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 1st day of July, 2014

\sKelly Cochrane
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 1, 2014.

Milwaukee Enrollment Services
Bureau of Long-Term Support