



FH  
[REDACTED]

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

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In the Matter of

[REDACTED]  
[REDACTED]  
[REDACTED]

DECISION

CWA/157742

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**PRELIMINARY RECITALS**

Pursuant to a petition filed May 19, 2014, under Wis. Admin. Code § HA 3.03, to review a decision by the Bureau of Long-Term Support in regard to Medical Assistance, a hearing was held on June 10, 2014, at Eau Claire, Wisconsin.

The issue for determination is whether the petitioner remains functionally eligible for the IRIS program.

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: Sharon Stedman  
Bureau of Long-Term Support  
1 West Wilson  
Madison, WI

**ADMINISTRATIVE LAW JUDGE:**

Michael D. O'Brien  
Division of Hearings and Appeals

**FINDINGS OF FACT**

1. The petitioner (CARES # [REDACTED]) is a resident of Eau Claire County.
2. The petitioner receives medical assistance waiver benefits through the Wisconsin IRIS program.

3. The IRIS program notified the petitioner on April 14, 2014, that it would end his enrollment because a Long-Term Care Functional Screen completed on April 11, 2014, indicated that he no longer met the nursing home level of care.
4. The petitioner is 23 years old.
5. The petitioner lives alone.
6. The petitioner has no significant physical problems.
7. The petitioner is diagnosed with Asperger's and ADHD.
8. The petitioner's IQ is 113. He was in the 95<sup>th</sup> percentile when tested for visual perceptual reasoning and for nonverbal fluid intelligence and reasoning.
9. The petitioner can use a telephone and drive a car.
10. The petitioner requires help budgeting money.
11. The petitioner does not do his own laundry. He has difficulty sorting his clothes. He can clean his living space but becomes overwhelmed by the task.
12. The petitioner takes no medication.
13. The petitioner requires no assistance with bathing, dressing, eating, moving about his home, transferring himself and using the toilet. He showers without being told to but forgets to brush his teeth and hair.

### **DISCUSSION**

The Bureau of Long-Term Support seeks end the petitioner's enrollment in the Wisconsin IRIS program, a fee-for-service alternative to the Family Care and Partnership programs for individuals requesting a long-term care support program in Family Care counties. It allows persons to direct their own care. *Medicaid Eligibility Handbook*, § 37.1.1. IRIS, which stands for "Include, Respect I Self-Direct," requires potential recipients to reside in a county with Family Care, have a nursing home level of care, and meet the MA Waiver financial and non-financial criteria. *Id.*, 37.1.3. The petitioner lives in a county with Family Care and meets the program's financial criteria, but the agency contends he no longer the nursing home level of care.

The nursing home level of care, which is also referred to as the comprehensive level of care, is described as follows at Wis. Admin. Code, § DHS 10.33(2)(c):

A person is functionally eligible at the comprehensive level if the person requires ongoing care, assistance or supervision from another person, as is evidenced by any of the following findings from application of the functional screening:

1. The person cannot safely or appropriately perform 3 or more activities of daily living.
2. The person cannot safely or appropriately perform 2 or more ADLs and one or more instrumental activities of daily living.
3. The person cannot safely or appropriately perform 5 or more IADLs.
4. The person cannot safely or appropriately perform one or more ADL and 3 or more IADLs and has cognitive impairment.
5. The person cannot safely or appropriately perform 4 or more IADLs and has cognitive impairment.
6. The person has a complicating condition that limits the person's ability to independently meet his or her needs as evidenced by meeting both of the following conditions:

- a. The person requires frequent medical or social intervention to safely maintain an acceptable health or developmental status; or requires frequent changes in service due to intermittent or unpredictable changes in his or her condition; or requires a range of medical or social interventions due to a multiplicity of conditions.
- b. The person has a developmental disability that requires specialized services; or has impaired cognition exhibited by memory deficits or disorientation to person, place or time; or has impaired decision making ability exhibited by wandering, physical abuse of self or others, self neglect or resistance to needed care.

Wis. Admin. Code, § DHS 10.33(2)(c).

Activities of daily living, or ADLs, refer to “bathing, dressing, eating, mobility, transferring from one surface to another such as bed to chair and using the toilet.” Wis. Admin. Code, § DHS 10.13(1m). Instrumental activities of daily living, or IADLs, refer to “management of medications and treatments, meal preparation and nutrition, money management, using the telephone, arranging and using transportation and the ability to function at a job site.” Wis. Admin. Code, § 10.13(32)

Agencies must determine eligibility using a uniform functional screening tool prescribed by the Department. Wis. Admin. Code, § DHS 10.33(2)(a). The problem with this requirement is that the Department has changed the screening tool to better comply with the federal government’s long-term waiver provisions, but it has not changed the administrative code to reflect these changes. *See DHA Decision No. FCP-44/115906*. Because the administrative code has the force of law, I must follow it rather than the screening tool.

The petitioner has ADHD and Asperger’s, a high-functioning form of autism. He has no physical limitations and is intelligent: His IQ is 113, and his scores on tests of his visual perceptual reasoning and for nonverbal fluid intelligence and reasoning were both in the 95<sup>th</sup> percentile. He lives alone and can perform all of his activities of daily living without assistance, although he often forgets to brush his teeth or hair. He drives a car and can use a telephone without assistance. Where he requires help is in areas that involve organization. He understands money but cannot keep track of it very well. He is physically able to do his laundry but cannot sort it properly. His inability to organize carries affects all areas of his life.

The petitioner receives through the IRIS program improve his life by teaching him skills that help him organize his life. But his eligibility does not depend upon whether the services help him but rather on whether he meets the nursing home level of care. He does not require any assistance with his activities of daily living. The only instrumental activities of daily living that he requires assistance with are laundry and managing his money. He does not require assistance with medication because he does not take any. He has no developmental disability, he does not require frequent medical or social intervention or frequent changes in her services, and he does not require requires a range of medical or social interventions due to a multiplicity of conditions. Although he has significant problems, he simply does not meet any of the criteria required to qualify for the nursing home level of care. This finding is consistent with the fact that no one suggests that he would be institutionalized if he did not receive the services provided by the IRIS program. Based upon this, I find that he no longer qualifies for that program.

### **CONCLUSIONS OF LAW**

1. The petitioner does not meet the nursing home level of care.
2. The petitioner is no longer eligible for IRIS because he does not meet the nursing home level of care.

**THEREFORE, it is**

**ORDERED**

The petitioner's 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 28th day of July, 2014

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\sMichael D. O'Brien  
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 28, 2014.

Bureau of Long-Term Support