



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

In the Matter of

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

DECISION

CWA/157743

PRELIMINARY RECITALS

Pursuant to a petition filed May 14, 2014, under Wis. Admin. Code § HA 3.03, to review a decision by the Waukesha County Health and Human Services in regard to Medical Assistance, a hearing was held on July 01, 2014, at Waukesha, Wisconsin.

The issue for determination is whether the Waukesha County Aging and Disability Resource Center correctly determined the Petitioner's level of care and eligibility for the IRIS program.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

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

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Respondent:

Department of Health Services
1 West Wilson Street, Room 651
Madison, Wisconsin 53703
By: Shirley Peterson, Supervisor
Aging and Disability Resource Center
Waukesha County Health and Human Services
514 Riverview Avenue
Waukesha, WI 53188

ADMINISTRATIVE LAW JUDGE:

Mayumi M. Ishii
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Waukesha County.
2. On February 28, 2014, Waukesha County Aging and Disability Resource Center completed a Long Term Care Functional Screen. At that time the agency determined the Petitioner to needs assistance

- with only one activity of daily living (ADL), bathing and three instrumental activities of daily living (IADLs), money management, laundry and transportation. (Exhibit 3)
3. On May 2, 2014, the Waukesha county Aging and Disability Resource Center sent the Petitioner a letter indicating that her level of care had changed to non-nursing home level of care and as such, she was no longer eligible for the IRIS program. (Exhibit 1)
 4. The Petitioner filed a request for fair hearing that was received by the Division of Hearings and Appeals on May 15, 2014. (Exhibit 1)
 5. Petitioner does not have a cognitive impairment. (Testimony of Petitioner's daughter; Exhibit 3)
 6. Petitioner requires assistance with bathing. (Id.)
 7. Petitioner requires assistance getting shirts over her head because of shoulder pain, but is able to dress her upper body, if she has button up shirts. Petitioner is able to dress her lower body. (Testimony of Petitioner's daughter.)
 8. Petitioner needs assistance with toileting because she has difficulty reaching down to wipe herself. (Testimony of Petitioner's daughter)
 9. Petitioner needs assistance with medications, because she will forget to take them. Her daughter sets up a pill box and board for her to remind her when to take her medications. (Testimony of Petitioner's daughter.)
 10. Petitioner drives herself, but there are serious safety concerns about her driving. (Testimony of Petitioner's daughter, Exhibit 2 and Exhibit 3)

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. The physical disabilities must be such that the person requires a level of care equal to the level of a nursing home. Medicaid Eligibility Handbook, §37.1.3. 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 Overview of the Long Term Care Functional Screen, §1.2, found at www.dhs.wisconsin.gov/lcicare/FunctionalScreen/WebCT/instructions1.htm.

The Wisconsin Department of Health Services Medicaid Eligibility Handbook (MEH) also describes the IRIS program:

37.1.1 Introduction

The Include, Respect I Self-Direct ([IRIS](#)) program is a fee for service alternative to Family Care, PACE or Partnership for individuals requesting a long-term care support program in Family Care counties.

Under IRIS, the participant will be able to access services comparable to those provided under the Home- and Community-Based Waivers (HCBW) while managing an individual budget to meet their service needs.

...

37.1.3 IRIS Eligibility

The IRIS option is available to people living in Family Care counties when they come to the [ADRC](#) and are found in need of publicly-funded long term care services. It is also available to Family Care members (and Partnership members, if Partnership is also operated in the county) if the [member](#) requests to change to IRIS. (Such individuals would need to be disenrolled from their [managed care](#) long-term support program in order to participate in IRIS).

Individuals who wish to participate in IRIS must meet the following criteria in order to qualify:

- Reside in a county operating Family Care,
- Have a nursing home level of care as determined by the LTC Functional Screen, **and**
- All Medicaid Home- and Community-Based waiver financial and non-financial eligibility criteria

MEH, §§37.1.1 and 37.1.3.

As of January 1, 2008 the levels of care for waiver programs are:

1. Nursing Home (formerly Comprehensive NH)
2. Non-Nursing Home (formerly Intermediate and Comprehensive non-NH)

See the MEH, §29.4.

The standard for assessing the level of care for IRIS is taken from the regulation of the Family Care Program. *Wis. Admin. Code, §DHS 10.33(2)* provides that an FCP applicant must have a functional capacity level of comprehensive or intermediate; I note here, however, that Wis. Stat., §46.286, uses the terms “nursing home” and “non-nursing home” levels just as the agency in this case.

If the person meets the comprehensive (nursing home) level, s/he is eligible for full services through a care management organization (CMO), including Medical Assistance (MA). *Wis. Admin. Code, §DHS 10.36(1)(a)*. If the person meets the intermediate (non-nursing home) level, s/he is eligible for full services only if s/he is in need of adult protective services, s/he is financially eligible for MA, or she is grandfathered as described in §DHS 10.33(3). *Wis. Admin. Code, §DHS 10.36(1)(b)*.

Comprehensive functional capacity is defined at *Wis. Admin. Code, §DHS 10.33(2)(c)*:

- (c) Comprehensive functional capacity level. 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.

Intermediate functional capacity is defined at *Wis. Admin. Code, §DHS 10.33(2)(d)*:

- d) Intermediate functional capacity level. A person is functionally eligible at the intermediate level if the person is at risk of losing his or her independence or functional capacity unless he or she receives assistance from others, as is evidenced by a finding from application of the functional screening that the person needs assistance to safely or appropriately perform either of the following:
 1. One or more ADL.
 2. One or more of the following critical IADLs:
 - a. Management of medications and treatments.
 - b. Meal preparation and nutrition.
 - c. Money management.

A person's long term care needs and the level of care are determined by use of the Long Term Care Functional Screen. The instructions for completing the LCTFS can be found on-line at:

<http://www.dhs.wisconsin.gov/LTCare/FunctionalScreen/LTCFSinstrux-clean.pdf>

The Long Term Care Functional Screen (LTCFS) is a functional needs assessment describing assistance needed with:

- **Activities of Daily Living** (ADL's-bathing, dressing, mobility, transfers, eating, toileting)
- **Instrumental Activities of Daily Living** (IADL's-meal preparation, medication management, money management, laundry, telephone, transportation, and employment)
- **Health Related Tasks** (including skilled nursing)
- **Diagnoses**
- **Behavioral Symptoms and Cognition**

The LTCFS also includes information on risk factors, mental health and substance abuse, and where the person would like to live.

The ADLs are bathing, dressing, eating, mobility in the home, toileting and transferring. The IADLs are meal preparation, medication administration and management, money management, laundry and/or chores, use of the telephone, transportation, overnight care or supervision and employment. (See LTCFS Instructions, section 4)

Petitioner is not cognitively impaired so must be unable to safely perform 3 or more activities of daily living; 2 or more ADLs and 1 or more IADLs; or 5 or more IADLs to meet the nursing home level of care to be found functionally eligible at the nursing home/comprehensive level of care.

It is undisputed that the Petitioner is in need of assistance with the ADL of bathing. However, the parties disagree about whether the Petitioner should be marked as needing assistance with ADLs of dressing and bathing.

With regard to dressing, section 4.8 of the LTCFS instructions defines dressing as, “the ability to dress and undress as necessary, with or without the aid of adaptive devices.” The activity of dressing includes dressing the top half of the body, including putting on undergarments.

Relying on button up shirts to dress the upper body is, in effect, utilizing an adaptation because the Petitioner is not able to don pull over type shirts and undergarments. As such, it is found that the LTCFS should have marked the Petitioner as needing some assistance with dressing.

With regard to toileting, section 4.11 of the LTCFS instructions defines toileting, in part, as the ability to use the toilet and lists as a component of toileting, cleansing. The Petitioner’s daughter testified credibly that the Petitioner is not able to wipe herself adequately after toileting. Based upon the information in section 4.11, it is found that the LTCFS should have marked the Petitioner as needing assistance with toileting.

It is undisputed that the Petitioner needs assistance with money management and with laundry and chores. However the parties disagree about whether the Petitioner needs assistance with medications and driving.

With regard to medication assistance, section 4.14 of the LTCFS instructions indicate that assistance with the task should be marked when, among other situations, a person needs to arrange the medications to help them remember to take them at the proper times.

Petitioner was previously determined in January 2013 to need assistance with medications because she occasionally forgets to take them. As such, her daughter set up a pill box and board with reminders of what to take when. During the February 2014 LTCFS evaluation, the Petitioner took out a pill box and reported that she can manage her own medications. However, at the hearing, her daughter reiterated what was reported in 2013 and testified that her mother does not set up her own medications. Section 1.11 of the LTCFS instructions indicates that people often underrate their need for assistance from others and tend to overrate their abilities. It appears that this may be happening here, especially since, as will be discussed later, the Petitioner still drives despite safety concerns. Based upon the foregoing, it is found that the LTCFS should have marked the Petitioner as needing assistance with medications.

With regard to driving the LTCFS indicates that the Petitioner needs assistance with driving (at level 1) because there are serious safety concerns, based upon a letter submitted by Dr. Englund. However, despite the safety concerns, the Petitioner still insists upon driving. (See Exhibits 2 and 3)

Given that the Petitioner needs assistance with at least 2 ADLs and one or more IADLs, it is found that the Petitioner is still at the comprehensive / nursing home level of care per Wis. Admin. Code § DHS 10.33(2)(c), and therefore, is eligible for the IRIS program.

This decision is consistent prior decisions from the Division of Hearings and Appeals:

...

As evidenced by the March 2012 screen, the petitioner falls within the comprehensive functional capacity definition – she cannot safely/appropriately perform two ADLs and one IADL (item 2 above). Thus, per code, she meets the comprehensive/nursing home level of care. The code has the force of law, and must be followed. Therefore, although the screening personnel followed their DHS instructions correctly, the discontinuance of the petitioner’s IRIS eligibility due to failure to meet the level of care requirement was incorrect. This decision is in accord with prior decisions FCP-11/113325 (Wis. Div. of Hearings & Appeals October 26, 2010, ALJ Schneider)(DHS), FCP-44/115906 (Wis. Div. of Hearings & Appeals April 5, 2011, ALJ Schneider)(DHS), and Rehearing FCP/130316 (Wis. Div. of Hearings & Appeals September 29, 2011, ALJ O’Brien)(DHS).

...
DHA Case # CWA-139759 at page 3, issued July 9, 2012.

CONCLUSIONS OF LAW

The Waukesha County Aging and Disability Resource Center did not correctly determine the Petitioner's level of care and eligibility for the IRIS program.

Petitioner is at the comprehensive/nursing home level of care and therefore, eligible for the IRIS program.

THEREFORE, it is

ORDERED

That the petition is remanded to the Waukesha County Aging and Disability Resource Center with instructions to reverse the discontinuance of Petitioner's IRIS benefits. This action shall be taken within 10 days of the date of this Decision.

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

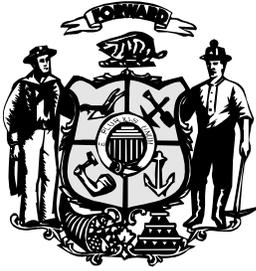
You may also appeal this decision to Circuit Court in the county where you live. Appeals must be served and filed with the appropriate court no more than 30 days after the date of this hearing decision (or 30 days after a denial of rehearing, if you ask for one).

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 25th day of July, 2014

\sMayumi M. Ishii
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 25, 2014.

Waukesha County Health and Human Services
Bureau of Long-Term Support