



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of



DECISION

CWA/158160

PRELIMINARY RECITALS

Pursuant to a petition filed June 07, 2014, under Wis. Admin. Code § HA 3.03, to review a decision by the Include, Respect, I Self-Direct (IRIS) to deny Reiki therapy, a hearing was held on September 30, 2014, via telephone.

The issue for determination is whether Petitioner has demonstrated that the Include, Respect, I Self-Direct (IRIS) program should provide funding Reiki therapy.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:



Respondent:

Department of Health Services
1 West Wilson Street, Room 651
Madison, Wisconsin 53703

By: Carrie Haugen, of IRIS on behalf of
Bureau of Long-Term Support
1 West Wilson
Madison, WI

ADMINISTRATIVE LAW JUDGE:

David D. Fleming
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # ) is a resident of Waukesha County.
2. Petitioner is a participant in the IRIS program.

3. This appeal was filed on behalf of Petitioner to contest a denial of a request for Reiki therapy. A reduction in massage therapy was appealed but the reduction was reversed.
4. Petitioner's diagnosis includes hypoxic ischemic encephalopathy [characterized by clinical and laboratory evidence of acute or subacute brain injury due to asphyxia per <http://emedicine.medscape.com/article/973501-overview>], cerebral palsy, global developmental delays secondary to brain injury and a seizure disorder. Spasticity and dystonia are chronic and severe. She requires assistance with all ADLs. She does have 2 rods her spine from a fusion in January 2005. She also has a diagnosis of anxiety disorder and history of mood disorders. She is tube fed.
5. The reason for the denial of the Reiki therapy was denied was that the IRIS program contends that it is not a customized service and is experimental in nature.

DISCUSSION

The Include, Respect, I Self-Direct (IRIS) program was developed pursuant to a Medicaid 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.

Reiki therapy, per The International Center for Reiki Training is:

Reiki is a Japanese technique for stress reduction and relaxation that also promotes healing. It is administered by "laying on hands" and is based on the idea that an unseen "life force energy" flows through us and is what causes us to be alive. If one's "life force energy" is low, then we are more likely to get sick or feel stress, and if it is high, we are more capable of being happy and healthy.

...

<http://www.reiki.org/faq/whatisreiki.html>

The agency denied the request contending that it is experimental. The Medicaid waiver itself states that following:

Service Definition (*Scope*):

Customized Goods and Services refers to a service, support or good that addresses a participant's assessed long-term support need, enhances the participant's opportunities to achieve long-term support outcomes related to living arrangement, relationship, community inclusion, work and functional or medical status with respect to a long-term support need. Each service, support or good selected must address a long-term support need and must meet all of the following four criteria and at least one of the criteria as stated in the second list of criteria:

- _ The item or service is designed to meet an assessed long-term support need related specifically to the participant's functional, vocational, medical or social needs and also advances the desired outcomes in his/her Individual Support and Service Plan;
- _ The service, support or good is documented on the Individual Support and Service Plan;
- _ The service, support or good is not prohibited by Federal and State statutes and regulations, or guidance including the State's Procurement Code;
- _ The service, support or good is not available through another source (natural, community-based, Medicaid funded)
- The service, support or good is not experimental (as defined in DHS 107.035). http://docs.legis.wisconsin.gov/code/admin_code/dhs/101/107/135

Each service, support or good selected must meet at least one of the following criteria:

- _ The service, support or good will maintain or increase the participant’s safety in the home or community environment;
- _ The service, support or good will decrease or prevent increased dependence on other Medicaid-funded services to meet a long-term support need;
- _ The service, support or good will maintain or increase the participant’s functioning related to the disability; or
- _ The service, support or good will address a long-term support need and will maintain or increase the participant’s access to or presence in the community.

...
The Medicaid waiver – found at http://www.dhs.wisconsin.gov/iris/HCBW_FE_PD.pdf at page 86.

The referenced Wisconsin’s Administrative Code provision states in part:

DHS 107.035 Definition and identification of experimental services. (1) DEFINITION. “Experimental in nature,” as used in s. DHS 107.03 (4) and this section, means a service, procedure or treatment provided by a particular provider which the department has determined under sub. (2) not to be a proven and effective treatment for the condition for which it is intended or used.

(2) DEPARTMENTAL REVIEW. In assessing whether a service provided by a particular provider is experimental in nature, the department shall consider whether the service is a proven and effective treatment for the condition which it is intended or used, as evidenced by:

- (a) The current and historical judgment of the medical community as evidenced by medical research, studies, journals or treatises;
- (b) The extent to which medicare and private health insurers recognize and provide coverage for the service;
- (c) The current judgment of experts and specialists in the medical specialty area or areas in which the service is applicable or used; and
- (d) The judgment of the MA medical audit committee of the state medical society of Wisconsin or the judgment of any other committee which may be under contract with the department to perform health care services review within the meaning of s.146.37, Stats.

...
Wis. Admin. Code, §DHS 107.035.

The IRIS program contends that the requested Reiki therapy is experimental in nature. Though it attached 3 abstracts to its submissions (see Exhibit # 3) indicating that the therapy is experimental; that does not constitute a determination under §107.035. Nonetheless, there is nothing in *Wis. Admin. Code, §DHS 107.15, 16 or 17* [chiropractic, physical and occupational therapies] that would indicate that it is a covered service by Medicaid. I did double check that with the Department’s Division of Health Care Access and Accountability and was informed that the Department of Health Services/Medicaid would not pay for Reiki therapy at this point and, in fact, the Department has no provider for the requested therapy as the term ‘provider’ is used in the Medicaid program:

...
 (137) “Provider” means a person who has been certified by the department to provide health care services to recipients and to be reimbursed by MA for those services.
 (138) “Provider agreement” means the contract between a provider and the department which sets forth conditions of participation and reimbursement.
 ...
 §Wis. Admin. Code, §DHS 101.03(137) & (138).

Nonetheless, while the IRIS program has a *Medicaid IRIS Services Definitions and Codes Manual* that typically requires that providers be licensed it also contains the following at page 31:

If services are provided by trained technicians, therapy assistants or other specially trained persons who do not require state licensure or certification, the services need to be carefully considered in order that the treatment is not averse to the health and safety of the participant.

I am not, however, approving the request for Reiki therapy at this time. Petitioner seeks the services so has the burden of persuasion. This is rather unusual request and Petitioner has not met that burden. It is not clear why the approved massage therapy does not provide the same benefits as the Reiki therapy. The IRIS program, DHS, and DHA all have an obligation to follow the requirements of the Federal Waiver. There is no authority to make exceptions. Having said that, the denial as an experimental therapy may well be correct but the agency submission of 3 abstracts of articles on the subject does not define Reiki therapy as experimental as required by §107.035.

Petitioner's providers may again request Reiki therapy but they need to be aware of the Federal Waiver requirements and the fact that this is an unusual request means that any future request needs extra documentation to demonstrate that it meets the criteria established in that Waiver – that would include a showing that it is not experimental as defined in Wis. Admin. Code § DHS 107.035. Nonetheless, the IRIS program does not have the authority to make the experimental decision and should have involved the Department's Division of Health Care Access and Accountability in this decision and should include it in any future decision on the Reiki therapy request. I am forwarding the letter from Petitioner's physician dated August 18, 2014 (Exhibit # 5) to IRIS and expect that they will share that letter with the DHS if a new request is made on behalf of Petitioner.

CONCLUSIONS OF LAW

That the IRIS program correctly denied requested Reiki therapy at this time as there is insufficient documentation to conclude that it meets Federal Waiver requirements.

THEREFORE, it is

ORDERED

That this appeal is dismissed.

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 30th day of October, 2014

\sDavid D. Fleming
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 October 30, 2014.

Bureau of Long-Term Support