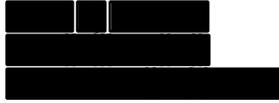




STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of



DECISION

CWA/158422

PRELIMINARY RECITALS

Pursuant to a petition filed June 16, 2014, under Wis. Admin. Code § HA 3.03, to review a decision by an agent of the Wisconsin Department of Health Services' Division of Long Term Care, Bureau of Long-Term Support (BLTS or Bureau), in regard to IRIS benefits, a hearing was held on August 6, 2014, by telephone.

The issue for determination is whether the Department's agent correctly dis-enrolled the petitioner from the IRIS program, due to concerns about her financial mismanagement while participating in the program.

There appeared at that time the following persons:

PARTIES IN INTEREST:

Petitioner:



Respondent:

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

By: Sue Hanks, Quality Services Mgr.
IRIS Consultant Agency
Madison, WI

ADMINISTRATIVE LAW JUDGE:

Nancy J. Gagnon
Division of Hearings and Appeals

FINDINGS OF FACT

- 1. Petitioner (CARES # [redacted]) is a resident of Milwaukee County.
2. The petitioner is financially eligible for the IRIS program, and has been enrolled in the program for some time. IRIS is a self-directed personal care program, created by a Medicaid waiver.

3. The petitioner, age 51, is physically disabled. She has diagnoses of arthritis, chronic pain, hypertension, anxiety and depression. The petitioner requires hands-on assistance with most activities of daily living (ADLs), such as bathing, lower body dressing, toileting and transferring. She is independent in eating, communication, money management, and use of the telephone.
4. The petitioner used non-relative [REDACTED] [REDACTED] as an IRIS-paid caregiver until the cessation of his employment on February 28, 2014. [REDACTED] reported to the IRIS agency on March 6, 2014, that he believed the petitioner was engaging in forgery and fraudulent behavior in connection with the program. Exhibit C1. The petitioner signed a false timesheet for [REDACTED] and deposited the payment into her personal account. The timesheet and a mileage log were submitted for a time period (March 1 – March 15, 2014) after [REDACTED]'s termination date, and bearing a forged signature purporting to be [REDACTED].
5. On June 13, 2014, the IRIS agency issued written notice to the petitioner advising that she would be involuntarily dis-enrolled from the IRIS program, effective June 28, 2014. The notice advised the petitioner that she was being dis-enrolled because she mismanaged her IRIS funds. Specifically, she submitted a timesheet and mileage log for an employee after his employment with her was terminated. *See*, Exhibit B.

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. This Section 1915(c) waiver document is available at <http://www.cms.gov/MedicaidStWaivProgDemoPGI/MWDL/list.asp>. IRIS is a fee-for-service, 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, and then develop a service plan based on the assessed needs. *Id.*, §441.466. The service plan may include personal care and homemaker services. *Id.*, §440.180(b). Further, "all of the State's applicable policies and procedures associated with service plan development must be carried out ..." *Id.* §441.468.

Both the federal Medicaid waiver statute and the pertinent federal rule require the Department to assure that correct records are kept to assure that these public funds can be accounted for:

§ 441.302 State assurances.

Unless the Medicaid agency provides the following satisfactory assurances to CMS, CMS will not grant a waiver under this subpart and may terminate a waiver already granted:

(a) *Health and Welfare* — Assurance that necessary safeguards have been taken to protect the health and welfare of the recipients of the services. ...

(b) *Financial accountability*— The agency will assure financial accountability for funds expended for home and community-based services, provide for an independent audit of its waiver program (except as CMS may otherwise specify for particular waivers), and it will maintain and make available to HHS, the Comptroller General, or other designees, appropriate financial records documenting the cost of services provided under the waiver, including reports of any independent audits conducted.

42 C.F.R. § 441.302.

The Department's IRIS policy document, *IRIS Policy Manual (Manual)* available at <http://www.dhs.wisconsin.gov/publications/P0/P00708.pdf> (viewed in August 2014), does not provide further elaboration.

A pertinent record for this type of case is the *Employee Time Report*, which the IRIS recipient, in her capacity as employer of a care worker, must sign to confirm the hours worked. The *Report* submitted by the petitioner for the March 1 – 15, 2014 period, declares that ██████ worked every day in the period. The signatures of both the petitioner and ██████ were requested. The petitioner's signature appears authentic. ██████ signature does not appear authentic. In particular, the "V" is shaped differently from ██████ actual signatures, and the "I"s are not dotted, unlike his actual signatures. See Exhibit F1, timesheet. A mileage log dated March 15, 2014, and submitted by the petitioner to the IRIS program appears to be similarly fraudulent. See, Exhibit G1, to be compared to ██████ actual signatures on Exhibits H1, H2, H3 and H5. Further indication of mischief is the *Direct Deposit Form* submitted to the IRIS program on January 3, 2014. It asks that ██████ IRIS payments be directly deposited to a different account at MetaBank, and bears a forged ██████ signature. Exhibit E2. The forgery matches the other forgeries. ██████ complained to the IRIS agency that he did not receive payment for his services, and declared his belief that the petitioner was having his payments deposited into her own account. The petitioner denied forging anything and claimed that ██████ did work until mid-March. Her assertions were not credible.

The agency's concern that the petitioner was mismanaging IRIS funds is justified. Thus, I conclude that dis-enrollment from the IRIS program was necessary. This dis-enrollment does not prevent the petitioner from seeking assistance through the Family Care program, which has more financial oversight.

CONCLUSIONS OF LAW

1. The Department's agent correctly sought to dis-enroll the petitioner from the IRIS program.

THEREFORE, it is

ORDERED

That the petition 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 19th day of August, 2014

\sNancy J. Gagnon
Administrative Law Judge
Division of Hearings and Appeals
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State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

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The preceding decision was sent to the following parties on August 19, 2014.

Bureau of Long-Term Support