



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

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

CWA/158504

PRELIMINARY RECITALS

Pursuant to a petition filed June 20, 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 October 01, 2014, at Milwaukee, Wisconsin. During the hearing, due to some time constraints, an offer was extended to petitioner to continue proceedings to another date to make a further record or present further argument. Petitioner declined that opportunity.

The issue for determination is whether the IRIS agency has justified the reduction of SHC hours to 39.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]

Petitioner's Representative:

[REDACTED]
[REDACTED]
[REDACTED]

Respondent:

Department of Health Services
1 West Wilson Street, Room 651
Madison, Wisconsin 53703
By: Carrie Haugen
IRIS
1 S. Pinckney St., #320
Madison, WI 53703

ADMINISTRATIVE LAW JUDGE:

John P. Tedesco
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner is a resident of Milwaukee County.

2. Petitioner is a member of the IRIS Program. He has various diagnoses including COPD, allergies, and he of limited mobility/ambulation.
3. In 2013, petitioner was granted 89 hours of supportive home care hours, and 80 hours of self-directed personal care (SDPC) hours.
4. In 2014, petitioner long-term functional screen indicated that he no longer needed overnight supervision and needed less assistance bathing. As a result, his IRIS budget was reduced.
5. Petitioner filed for a reinstatement of the amount of the 2013 budget. As part of the budget reinstatement request, IRIS completed the SHC Assessment Tool which resulted in a need of 20.25 hours of SHC.
6. Petitioner completed a task list that indicated his position that approximately 86.6 hours is needed for SHC related tasks.
7. In 2014, petitioner was granted 39 hours of SHC hours and 130 hours of SDPC hours. 43.33 of the SDPC hours are budgeted to incidental tasks that include light housecleaning, laundry, changing sheets, meal preparation, cleaning dishes, and purchasing food. Thus, petitioner has a total 82.33 for SHC tasks granted by the IRIS Program.
8. Petitioner appealed the reduction of his SHC hours.

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. DHS Medicaid Eligibility Handbook, §37.1.3. IRIS plans of care are updated when a participant requests a change in the plan. See IRIS Program Policies found at www.dhs.wisconsin.gov/bdds/IRIS/IRISPolicySummary.pdf. The plans also are updated at least on a yearly basis.

Supportive home care services are a permissible cost under the IRIS Waiver. See Application for a §1915(c) Home and Community-Based Services Waiver, Waiver Number WI.0485.R01.00, Effective January 1, 2011. SHC services are permitted as follows:

Supportive Home Care (SHC) is the provision of a range of services for participants who require assistance to meet their daily living needs, ensure adequate functioning in their home and permit safe access to the community.

Supportive home care services include:

1. Personal Services

- a. Assistance with activities of daily living such as eating, bathing, grooming, personal hygiene, dressing, exercising, transferring and ambulating;
- b. Assistance in the use of adaptive equipment, mobility and communication aids;
- c. Accompaniment of a participant to community activities;
- d. Assistance with medications that are ordinarily self-administered;
- e. Attendant care;
- f. Supervision and monitoring of participants in their homes, during transportation (if not done by the transportation provider) and in community settings;
- g. Reporting of observed changes in the participant's condition and needs; and
- h. Extension of therapy services. "Extension of therapy services" means activities by the SHC worker that assist the participant with a PT/OT or other therapy/treatment plan. Examples of these activities include assistance with exercise routines, range of motion exercises, standing by during therapies for safety reasons, having the SHC worker read the therapist's directions, helping the participant remember and follow the steps of the exercise plan or hands on assistance with equipment/devices used in the therapy routine. It does not include the actual service the therapist provides.

2. Household Services

- a. Performance of household tasks and home maintenance activities, such as meal preparation, shopping, laundry, house cleaning, simple home repairs, snow shoveling, lawn mowing and running errands;
- b. Assistance with packing/unpacking and household cleaning/organizing when a participant moves.

3. Room and board costs for SHC providers who "live in" are allowable under this SPC.

Application for a §1915(c) Home and Community-Based Services Waiver, Waiver Number WI.0485.R01.00, Effective January 1, 2011 (emphasis added).

It must be noted from the outset, that petitioner already gets more than 130 hours of self-directed personal care services per month paid by the IRIS program allocation. These personal care services are not at issue in this case. This appeal involves only the SHC hours.

The crux of the issue in this case is whether the program is correct that petitioner needs only 39 hours per month of SHC rather than the 89 hours petitioner claims he needs and was previously getting. Petitioner complicates the matter by asserting that an issue I must determine is whether the IRIS program erred in its denial of the request for budget reinstatement by not sending out a formal notice on the budget reinstatement request. But the IRIS Program's determination that 39 hours were all that was needed, communicated in a formal Notice of Action was effective as a denial of the request. Furthermore, it is not logical to argue that the budget reinstatement was not properly denied if petitioner, in actual fact, only needs 39 hours of SHC. At hearing, petitioner's representative repeated called this argument "nuanced." She did not adequately explain the practicality of such argument and it remains one that is without practical value if the petitioner actually only needs 39 hours of SHC based on the record.

Similarly, petitioner argued that the IRIS consultant failed to advocate for him in the budget reinstatement process. The representative suggests that if the IC had done so, and if petitioner had had a fair opportunity to present his evidence to IRIS, then petitioner would have prevailed in his request and would

not have had his hours cut. Petitioner has now presented his evidence and argument and upon careful consideration I disagree. As set forth below, petitioner's arguments are not persuasive.

Petitioner also argues that he should have the freedom to spend his allocation as he sees fit. Petitioner cites various lines of policy which assert that the allocation and IRIS in general, is to be self-directed to further health and safety. Petitioner seems to argue that this freedom to spend dollars in this publicly funded medical assistance program should be without consideration of the appropriateness or objective need for the expense. Somehow, petitioner seems to believe that even if the actual need for SHC only falls at the 39 hour per month level, petitioner should still be permitted to spend more because he wants to. This argument is meritless as the spending of the additional funds on unneeded services do not in any way further the member's health and safety or achieve goals of the service plan. Thus, again, the issue for determination is the correct number of SHC hours needed under current circumstances.

Petitioner argues that he needs 89 hours per month of SHC. This is in addition to the 130 hours of SDPC he already receives, including the 43.3 hours for incidental tasks such as laundry and housecleaning. Despite this ALJ's continual efforts to focus petitioner on this issue, petitioner was far more interested at hearing in arguing with the program witnesses and pointing to process flaws by the program. Petitioner's representative spent nearly no time at hearing addressing this critical question or attempting to persuade this ALJ that more than 39 hours of SHC is needed. In fact, the representative voiced her offense at this ALJ's efforts to focus her and elicit evidence or persuasive argument on the critical issue. Petitioner did not present any testimony from a medical professional, a caregiver or a home health agency representative. Petitioner submitted some documentation, however, including a letter from a physician.

Petitioner makes somewhat more cogent and substantive arguments relating to the determination of hours by IRIS. First, petitioner argues that IRIS erred in using the SHC Assessment tool as a "sole determining factor in in how many hours he needs." The representative repeatedly misstates the facts in arguing that the IRIS Program relied solely on the Tool's determination. Her statement's at hearing make clear that she did not realize that the Tool called for 20.25 hours and not the 39 hours granted by IRIS. The program granted 39 hours and indicated they added hours above and beyond the tool's number because of special needs of this petitioner. Had the instrument been seen by the program as rigid and the "sole determining factor," then petitioner would have been granted 20.25 hours. The argument fails.

Petitioner also points to The LTCFS's from April 2013 and March 2014 to illustrate that petitioner's needs have remained the same from 2013 to 2014. Petitioner points only to the IADL portion of the screens. He claims that with his condition remaining the same it does not follow that his hours should be cut by 50 hours. But, the screens were not the same with regard to SHC tasks as overnight supervision was called for by the 2013 screen and not the 2014 screen. Also, petitioner avoided the program's argument that the SDPC hours were increased by 50 hours around the time the SHC hours were reduced by 50 hours. It is notable that 43.3 of these SDPC hours are now budgeted for incidental tasks such as laundry and housecleaning and meal preparation. Thus, petitioner's needs may not have changed dramatically, but the net number of hours has also stayed the same. To keep the SHC hours at 89 hours, contrary to petitioner's assertion, would actually result in a net gain of 50 hours which has clearly not been shown as necessary or appropriate on this record. Petitioner's representative did not dispute this shift in hours, but finally argued that that having these tasks paid by SDPC funds rather than SHC funds is not how she would do it. Ultimately, however, if 39 hours is the appropriate amount for petitioner based on his present circumstances it does not matter what he received last year.

Petitioner's representative then points to petitioner's own calculations of time that is needed in the Caregiver Task Schedule that he filled out and is included as part of exhibit #4. This schedule appears to have inflated estimates which undercut its credibility as a whole. The schedule includes 45 minutes per week to clean out petitioner's refrigerator and his freezer. The need for this task at all, let alone with this frequency, is not supported by this record. The weekly oven cleanings also strike me as unusual.

Similarly, two and a half hours per week for sweeping and mopping floors in a one bedroom apartment, which is in addition to more than two hours per week of vacuuming the carpets seems excessive unless this is a very, very large one bedroom apartment. I also question the need for 30 minutes to clean a bathtub. I am sure some amount of time is needed for these and other tasks, but this document strikes me as inflated and causes me to believe that petitioner simply trying to get as many hours as he can, not what is actually needed. But, I must again note that the IRIS Program has granted petitioner 82.33 hours which is just a bit less than what is outlined in this document.

Petitioner also filed a SHC table (see ex. #4) which was prepared apparently prepared by petitioner's representative DRW, though this was unclear at hearing. It is not apparent why this differs so much from the table completed by petitioner. For example, the table calls for 7 hours and 40 minutes per week for meal preparation. Petitioner only indicated that a bit over 4 hours was needed. Ultimately, this document is offered to explain the specific and unique needs of petitioner. It states that petitioner needs help organizing his house twice a week, vacuuming for 40 minutes per day, and wiping down of his stove, counters and sink twice per day. Meal preparation is claimed to need two to three times the amount of time provided by the guidance of the Assessment Tool. All these needs are well outside the norm set forth in the programs SHC Assessment Tool. Such extraordinary requirements should be supported by some evidence. But, at hearing, petitioner's representative's primary concern appeared to be faulting the program representatives rather than presenting any evidence supporting that such needs actually exist or are objectively related to petitioner's health and safety. No health professional or caregiver testified regarding the amount of time any of these tasks actually take or supporting the claimed need for them. The table explains that a low-salt diet is indicated and that fresh foods are often used. But, there was no testimony or other evidence explaining why these needs require such a great increase in time.

There was a letter from a physician in the record (see ex. #4). But, this letter did not address any specific needs of petitioner. It merely supports that he has COPD and other diagnoses, but not that such extreme measures are necessary. Petitioner argued that this letter suggests that petitioner's needs will not decrease with time and thus the reduction does not make sense. Two problems exist with this argument. First, it gets us not closer to a conclusion that four times the SHC Tool number is more appropriate than two times the SHC Tool number of 20.25 hours. Second, it ignores the increase to SDPC that essentially keeps the net hours available to petitioner the same.

The program's argument is that it took into account the 43.33 hours for tasks at issue already granted in the SDPC program. It then tried to determine what additional hours were needed. It began with the SHC Assessment Tool which identifies the median number of minutes required for particular SHC tasks. Those identified needs were then modified in the form of increasing by nearly double due to the individual member's particular circumstances. Based in this record, there is no reason to conclude that the time sought by petitioner is justified. The programs approved 39 hours appears more than reasonable given the minimal facts presented at hearing. Furthermore, the program notes that during the process of reviewing petitioner's needs, the program increased the petitioner's SDPC by 50 hours to the level of 130 hours per month. SDPC can include tasks incidental to personal cares as well such as laundry and light housecleaning. It seems that petitioner would like the increase in the SDPC hours and also have the SHC remain the same. This would result in 132 hours of time for the tasks that even petitioner says requires 86.6 hours (see caregiver task list). The IRIS program's position is reasonable in that at least some of the tasks that petitioner is so concerned about can be absorbed by the new increase in SDPC time.

CONCLUSIONS OF LAW

The IRIS Program's reduction of SHC hours to 39 hours has been proven justified and appropriate.

THEREFORE, it is

ORDERED

That this matter 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 27th day of October, 2014

\sJohn P. Tedesco
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 27, 2014.

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