



FH
[REDACTED]

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

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

CWA/160717

PRELIMINARY RECITALS

Pursuant to a petition filed September 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 October 28, 2014, at Waukesha, Wisconsin.

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

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: 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 # [REDACTED]) 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 family and individual therapy to be provided by [REDACTED]. The IRIS program denied the request as contending that the services can be provided by fee for service Medicaid and that there has been no denial of those services by Medicaid.
4. Initially 10 individual counseling sessions were requested at a cost of \$90.35 per session and 5 family counseling sessions at a cost of \$110.35 per session. By the time of the hearing the request had been reduced to 1 family counselling session per week.
5. Petitioner is 20 years of age ([REDACTED]). Her diagnosis includes autism/Asperger's, oppositional defiant disorder and mood disorder. She currently resides in her family home but has been institutionalized in the past. She needs some assistance with most of her ADLs and IADLs. She will steal food and hoard it and will become quite upset if she does not get the food she wants.
6. ODTc is not a certified Medicaid provider though it holds any relevant professional licenses. ODTc has provided services to Petitioner for several years.

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. 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.

The *Medicaid Waivers Manual* outlines general limitations on the program in *Section 4.06*:

...

C. For services or items covered by the Medicaid state plan, a Medicaid denial is required before waiver funds may be used. Acceptable documentation of a Medicaid denial may include:

- A copy of the denial letter or a case note indicating the CM/SSC had reviewed a copy of the Medicaid denial; or
- A case note indicating the CM/SSC had reviewed the Medicaid durable medical equipment, medical supply or other Medicaid covered service listing and found the item or service listed as "not covered."

Note: A vendor refusal to bill Medicaid or a refusal to accept Medicaid reimbursement is not a Medicaid denial.

There is no issue as to whether the requested therapy is needed; rather, the agency points to this provision in the Waivers Manual as the basis for its denial. Nonetheless, ODTc staff testified that ODTc provides similar services to other IRIS participants. Further, Petitioner's family has been unable to find any other provider to provide the counseling needed here in the home.

While the Medicaid program cannot not pay a non-Medicaid certified provider (see Wis. Admin. Code, §DHS 107.02(1) and (2)(c)), I do not have any legal basis for finding that the Waiver Manual provision is

not applicable here. As for ODTG receiving IRIS payments for other IRIS participants, the details of those situations is not part of this record.

There is, however, another avenue for Petitioner’s representatives to explore. Even though the provider is not Medicaid certified, Petitioner can ask for a waiver/variance, if no other provider will do in-home family counseling, and it is medically necessary:

DHS 106.13 Discretionary waivers and variances.

A provider or recipient may apply for and the department shall consider applications for a discretionary waiver or variance of any rule in chs. DHS 102 to 105, 107 and 108, excluding ss. DHS 107.02 (1) (b), (2) (e) to (j) and (3) (a) and (b) and (d) to (h), 107.03 (1) to (8) and (10) to (18), and 107.035. Waivers and variances shall not be available to permit coverage of services that are either expressly identified as non-covered in ch. DHS 107 or are not expressly mentioned in ch. DHS 107. The following requirements and procedures apply to applications under this section:

...

Found at: https://docs.legis.wisconsin.gov/code/admin_code/dhs/101/106.pdf

Though this decision cannot go this far at this point, one would think that a denial of a waiver or variance would arguably constitute a Medicaid denial.

CONCLUSIONS OF LAW

That the IRIS program correctly denied requested counseling as there no Medicaid denial as that term is used in the Waiver Manual.

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 8th day of December, 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 December 8, 2014.

Bureau of Long-Term Support