FH
Redact

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

Redact

DECISION

CWA/161089

PRELIMINARY RECITALS

Pursuant to a petition filed October 03, 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 November 17, 2014, at Jefferson, Wisconsin.

The issue for determination is

There appeared at that time and place the following persons:

PARTIES IN INTEREST:
Petitioner:

Redact

Respondent:

Department of Health Services
1 West Wilson Street, Room 651
Madison, Wisconsin 53703
By: Carrie Haugen
Bureau of Long-Term Support
1 West Wilson

Madison, WI

ADMINISTRATIVE LAW JUDGE:
John P. Tedesco
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # Redact) is a resident of Jefferson County.
2. Petitioner has been a member of the Iris Program.
3. Petitioner attends Redact College. She lives in a college dormitory on campus.

4. The Department terminated petitioner's IRIS eligibility effective 9/24/14.

5. Petitioner appealed.

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.

The petitioner attends college at Redact which is a Redact college serving individuals with intellectual disabilities. Petitioner lives in an on-campus dormitory. The Department argues that this living arrangement is in violation of the IRIS rules because it is non-integrated, meaning that it is not shared by both persons with disabilities and without. I note that in support of the Department's position, the admissions criteria set forth on the college's website includes the criterion that must "have a diagnosed intellectual/developmental disability, or significant learning challenges." (See ex. 2). The Department submitted a letter after hearing (ex. #3) which clarified its argument as being based only on this integrated/non-integrated distinction.

Petitioner argues otherwise, referring to an e-mail he received from the admissions office suggesting that the language "significant learning challenges" means that the college may admit those without specific diagnoses. I have no credible evidence in this record to conclude that this is a materially integrated setting. The evidence in the form of the college's own documentation and marketing seems to indicate that the vast majority, if not all, of the students in the dormitories possess an intellectual disability or developmental disability. I find on this minimal record that this is not an integrated living arrangement.

The Department is correct that federal law governing the waiver calls for an integrated living setting:

> the setting in which the individual resides is chosen by the individual. The State must ensure that the setting chosen by the individual is integrated in, and supports full access of individuals receiving Medicaid HCBS to the greater community, including opportunities to seek employment and work in competitive integrated settings, engage in community life, control personal resources, and receive services in the community to the same degree of access as individuals not receiving Medicaid HCBS.

42 CFR § 441.301(c)(2)(i).

According to the IRIS policy manual, a person must reside in an eligible living arrangement in order to maintain enrollment in IRIS (see § 2.3C). The manual is a bit ambiguous regarding the college setting, implying that the permanent residence dictates the living arrangements at issue and not the college arrangements. But, such an approach makes little to no sense. The federal rule does not have this awkward approach and the federal rule is controlling. The policy manual is not.

CONCLUSIONS OF LAW

The Department did not err in determining that the chosen living arrangements were not consistent with IRIS rules necessitating integrated living arrangements.

THEREFORE, it is **ORDERED**

That this appeal 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 16th day of December, 2014

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\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 December 16, 2014.

Bureau of Long-Term Support