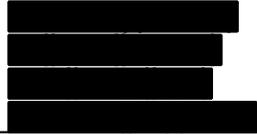




STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of



DECISION

CWA/161090

PRELIMINARY RECITALS

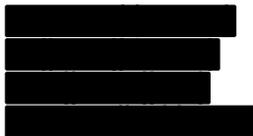
Pursuant to a petition filed October 04, 2014, under Wis. Admin. Code § HA 3.03, to review a decision by the Bureau of Long-Term Support in regard to Medical Assistance, a hearing was held on October 30, 2014, at Neenah, Wisconsin.

The issue for determination is whether the evidence is sufficient to demonstrate that the agency correctly denied a request for funding to install a barrier free shower in a spare bedroom of Petitioner's residence.

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 # [redacted]) is a resident of Winnebago County.
2. Petitioner asked that the Include, Respect, I Self-Direct (IRIS) program provide funding to add a platform to a side entrance to her residence, move a laundry room from the basement to a spare

first floor bedroom and to add a barrier free shower to that bedroom. The platform was approved as was the move of the laundry but the barrier free shower was denied.

3. The cost estimate of the barrier free shower is \$10,118.70.
4. Petitioner is 86 years of age (DOB 3/19/28). She is diagnosed with dementia, asthma, hypertension, hyperlipidemia, anxiety, and osteoporosis. She does received daily assistance with various ADLs and IADLs – bathing, dressing, meal preparation, medication administration and management, money management, laundry chores and transportation. She does not drive and has never had a driver’s license. She is ambulatory but has difficulty moving her legs over the tub edge to get in and out and cannot use her right arm for weight bearing. She uses the tub 1-2 times per week.
5. The reason for the denial was that there are more cost effective ways to assure Petitioner’s safety; specifically, grab bars.

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 CFR §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 homemaker services and “other services” allowed by the state agency. *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.

The federal rule allows IRIS to pay for items that allow the client to reduce human assistance for program-covered human assistance expenditures. 42 CFR § 441.482.

As with most public assistance benefits the initial burden of demonstrating eligibility for any particular benefit or program at the operational stage falls on the applicant, *Gonwa v. Department of Health and Family Services, 2003 WI App 152, 265 Wis.2d 913, 668 N.W.2d 122 (Ct.App.2003)*. In other words, it is a petitioner’s burden to demonstrate that s/he qualified for the requested service by a preponderance of the evidence. It is not the Department’s burden to prove that s/he is not eligible. Further, I note that all Medicaid is meant to provide the most basic and necessary health care services at a reasonable cost to a large number of persons and must authorize services according to the Wisconsin Administrative Code definition of medical necessity. *Wis. Admin. Code, § DHS 101.03(96m)*.

The Department’s IRIS policy document, *IRIS Policy Manual*, available at <https://www.dhs.wisconsin.gov/publications/p0/p00708a.pdf> states that one-time expenditures may include cost-effective home modifications. *Id.*, § 5.8, and IRIS form F-01205c (2014). Given that home modification is a covered service, the next question is whether Petitioner here requires a \$10,118.70 bathroom remodeling to meet her needs. Again, the burden of proof for the project and its cost rests with Petitioner.

Petitioner contends that the no barrier shower is the most cost effective solution to keeping Petitioner safe when bathing. She estimates the cost of a personal care worker and finds the proposed shower to be

cheaper. Further, if Petitioner should become wheelchair bound in the future the shower would be in place.

The IRIS program and the Department maintain that the proposed \$10,118.70 shower is not a cost effective use of IRIS resources and that properly installed grab bars should meet Petitioner's needs for the 1-2 time per week use of her bath tub.

I am not persuaded that either side is completely correct here. From the description of Petitioner's difficulty with the ingress and egress of the shower I am not certain that grab bars alone will provide the assistance Petitioner needs. From experience with other hearings on the issue of safety in bathing I do wonder whether the IRIS program considered other durable medical equipment, e.g., a sliding shower chair and a grab bar that fastens to the side of the tub. Though not related to ingress/egress issues a shower chair and hand held shower sprayer can also make bathing easier. While Petitioner notes that a linen cabinet overhangs the tub making it difficult for Petitioner to navigate getting in and out of the shower, a photo of the bathroom does not make apparent that the linen storage above the tub should be so much of an issue for bathtub ingress/egress. As another example, one wonders if a shower over tub could be installed with removal of the linen cabinet and use of a sliding shower chair making that possible and ingress/egress safer.

To conclude, Petitioner has established that she has a need to have modifications to make bathing safer but has not established that the barrier free shower in the spare bedroom is the most cost effective solution to the problem. The Division of Hearings and Appeals cannot determine specifications and take bids but can only approve or disapprove the request at issue in any particular appeal. Thus I will uphold denial of this request but note that Petitioner may submit another, lower cost request to the IRIS program for her bathtub issue if she so desires. If the IRIS program denies that new request, Petitioner is free to file a new fair hearing request on that denial.

Finally, I note that personal care worker services might also be explored and would expect that the IRIS program provide Petitioner with information as to how to access information about eligibility for that service.

CONCLUSIONS OF LAW

That the IRIS program correctly denied Petitioner's request to build a barrier free shower in a spare bedroom of Petitioner's home.

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 Milwaukee,
Wisconsin, this 19th 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 19, 2014.

Bureau of Long-Term Support