



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[Redacted]
[Redacted]
c/o [Redacted]
[Redacted]
[Redacted]

DECISION

CWA/156150

PRELIMINARY RECITALS

Pursuant to a petition filed March 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 telephone hearing was held on July 22, 2014.

The issue for determination is whether the respondent correctly reduced petitioner’s allotted respite hours due to double staffing.

There appeared at that time the following persons:

PARTIES IN INTEREST:

Petitioner:

[Redacted]
[Redacted]
c/o [Redacted]
[Redacted]
[Redacted]

Respondent:

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

By: Sue Hanks
Bureau of Long-Term Support
1 West Wilson
Madison, WI

ADMINISTRATIVE LAW JUDGE:

Peter McCombs
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner is a resident of Milwaukee County.
2. Petitioner is enrolled in the IRIS program, and received Respite Care hours through that program.

3. Petitioner receives Private Duty Nursing (PDN) services.
4. On March 10, 2014, the IRIS agency issued a notice of action to petitioner stating that it was reducing his Respite Care allotment. Petitioner appealed therefrom.

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 of Health Services' (DHS) agent must assess the participant's needs and preferences (including health status) as a condition of IRIS participation. *Id.*, §441.466. The DHS'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.

In this case we are dealing with a reduction of Respite Care hours based upon a determination that the petitioner is required to first maximize his Medicaid card services before availing himself of IRIS benefits. In testimony at hearing, the respondent contended that (1) the petitioner had previously been receiving an allotment of service hours that exceeded 24 hours per day, and (2) IRIS does not pay for double staffing, which results when more than 24 hours of service hours are allotted. The respondent argued that petitioner must maximize his Medical Assistance Card Services before IRIS coverage of services will commence.

The petitioner testified that additional coverage was necessary, since all of the services required by the petitioner cannot be managed under the proposed regimen. The petitioner questions why there can't be a provision for double staffing, i.e., both SHC time and PDN time.

The respondent argues that the IRIS policy §6.4C and §6.4D, effectively bars double staffing, i.e., duplication of services provided to petitioner. This policy relates the possibility of double staffing when it relates to PDN services. See *State ex rel. Kalal v. Circuit Court for Dane County*, 271 Wis.2d 633, ¶46, 681 N.W.2d 110, 2004 WI 58 (Wis. May 25, 2004). As that policy describes, the double staffing would only occur, if medically necessary, between PDN services and MAPC services. IRIS policy states:

If a person's condition requires double staffing, and this double assistance is medically necessary, the double staffing can be covered by Medical Assistance Card Services when obtained through prior authorization. An MAPC agency would supplement the private duty nursing case and do a "case share" between the two entities. ... This is a billable card service if approved, so it should not be billed to the recipient or other provider (i.e., IRIS). IRIS waiver funds would not cover double staffing if medically necessary as it is a service covered by the Medical Assistance Card.

IRIS Policy Manual §6.4C. Thus, this policy describes how double staffing with PDN is "allowable" within IRIS, even though IRIS does not pay for it.

The Wisconsin Administrative Code states that MA recipients are not to seek duplication of services; an MA recipient may not seek the same or similar services from more than one provider, except for a second medical opinion for selected elective surgical procedures. See Wis. Adm. Code §DHS 104.02(1). This notion that MA recipients cannot receive duplication of services is not limited to the IRIS program.

Chapters DHS 101 to 108 were promulgated for the purpose of administering the MA program in Wisconsin and apply to all recipients of MA, all providers of MA and all persons engaged in the administration of MA. See Wis. Adm. Code §DHS 101.01-.02. Included in those chapters is the requirement that MA provide services which are medically necessary. See Wis. Adm. Code §DHS 107.01(1). "Medically necessary" means a MA service that is:

- (a) Required to prevent, identify or treat a recipient's illness, injury or disability; and
- (b) Meets the following standards:
 1. Is consistent with the recipient's symptoms or with prevention, diagnosis or treatment of the recipient's illness, injury or disability;
 2. Is provided consistent with standards of acceptable quality of care applicable to the type of service, the type of provider and the setting in which the service is provided;
 3. Is appropriate with regard to generally accepted standards of medical practice;
 4. Is not medically contraindicated with regard to the recipient's diagnoses, the recipient's symptoms or other medically necessary services being provided to the recipient;
 5. Is of proven medical value or usefulness and, consistent with s. DHS 107.035, is not experimental in nature;
 6. **Is not duplicative with respect to other services being provided to the recipient;**
 7. Is not solely for the convenience of the recipient, the recipient's family or a provider;
 8. With respect to prior authorization of a service and to other prospective coverage determinations made by the department, is cost-effective compared to an alternative medically necessary service which is reasonably accessible to the recipient; and
 9. Is the most appropriate supply or level of service that can safely and effectively be provided to the recipient.

Wis. Adm. Code §DHS 101.03(96m)(emphasis added).

Based on the foregoing, and the totality of the record before me, it is clear that MA does not pay for duplicative services. I find that the definition of "double staffing" as "providing the same or similar care services at the same time" equates to a duplication of services. Accordingly, I conclude that the IRIS program will not pay for double staffing.

CONCLUSIONS OF LAW

The IRIS program will not pay for double staffing.

THEREFORE, it is

ORDERED

The petition for review herein 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 22nd day of August, 2014.

\sPeter McCombs
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 August 22, 2014.

Bureau of Long-Term Support