FH

# STATE OF WISCONSIN
## Division of Hearings and Appeals

In the Matter of:

[redacted]

DECISION

CWA/161247

**PRELIMINARY RECITALS**

Pursuant to a petition filed October 15, 2014, under Wis. Admin. Code § HA 3.03, to review a decision by The Management Group ["TMG"] in regard to Medical Assistance ["MA"], a Hearing was held on January 21, 2015 at the Division of Hearings and Appeals ["DHA"] in Madison, Wisconsin. The Hearing for this matter was held at the same time as the Hearing for the following 5 closely related matters concerning the same petitioner: CWA-161243; CWA-161244; CWA-161245; CWA-161246; and, CWA-161248. At petitioner's request a Hearing scheduled for December 9, 2014 was rescheduled.

The issue for determination is whether it was correct for TMG to deny funding under the Include, Respect, I Self-Direct program ["IRIS"] for tickets for both of petitioner's 2 paid caregivers to attend 6 Rafters games (local baseball).

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[redacted]

Represented by:

[redacted] & [redacted]

Respondent:

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

BY: Carrie Haugen, Quality Services Specialist (appeared via telephone)
The Management Group
IRIS Consultant Agency
Suite 320
1 South Pinckney Street
Madison, Wisconsin 53703-2887

ADMINISTRATIVE LAW JUDGE:
Sean P. Maloney
Division of Hearings and Appeals

## FINDINGS OF FACT

1. Petitioner (25 years old) is a resident of Wood County, Wisconsin.
2. Petitioner has diagnosis of autism, seizure disorder, encephalopathy, right sided hemiparesis, epilepsy, and developmental delays; he has substantial physical limitations in the areas of self-care, self-direction, learning, mobility, manual tasks, communication, and capacity for independent living; he is non-verbal, incontinent of bladder and bowel, and will lash out aggressively (hit, bite, kick, grab hair, pinch, put others in headlocks).
3. Petitioner lives with his mother, father, and brother.
4. Petitioner's paid caregivers through the IRIS program are his mother and his father (his brother also sometimes helps with cares).
5. Petitioner's 2 paid caregivers (his mother & father) may accompany petitioner on outings and will receive their regular pay from IRIS for doing so.
6. Petitioner requested IRIS funding for tickets for both of his 2 paid caregivers (his mother & father) to attend 6 Rafters games (local baseball) [petitioner's current IRIS budget is approximately $10,000 per month].
7. By a *Notice of Action -- IRIS Program* dated September 5, 2014, TMG denied petitioner's request for IRIS funding for tickets for both of his 2 paid caregivers (his mother & father) to attend 6 Rafters games (local baseball); TMG approved IRIS funding for tickets for 1 of his paid caregivers to attend 6 Rafters games (local baseball)

## DISCUSSION

The IRIS program is a Home and Community Based Services program authorized under §1915 (c) of the Social Security Act and as approved by the Centers for Medicare and Medicaid Services ["CMS"]. The program provides funding for certain, specifically defined services to enrolled IRIS participants. In all cases, it is the expectation that natural and community supports or Medicaid card-coverable services will be used whenever available and that paid supports with funding from the IRIS program are the last means of obtaining those supports. Services approved on IRIS participant plans must be directly connected to individualized participant Long Term Care outcomes. *Medicaid IRIS Services Definitions and Codes Manual*, page 1.

Wisconsin is required to assure financial accountability for funds expended for IRIS. 42 C.F.R. § 441.302(b) (2012). In this regard, services funded by IRIS must be cost-effective and necessary to avoid institutionalization. 42 C.F.R. § 440.180(b)(9) (2012). IRIS funds must be used to pay for items that increase a participant's independence or substitute for human assistance. 42 C.F.R. § 440.482(b) (2012). Specifically, IRIS funds may not be used to pay for costs associated with trips (although IRIS funds may be used to pay for caregiver time while on a trip). *IRIS Funding for Goods, Supports and Services*,

Policy: SC 16.1, Effective Date September 1, 2010 ["Policy 16.1"], page 4. Additionally, goods, supports, and services that primarily benefit someone else are not covered by IRIS[1]. Policy 16.1, page 4.

Given all of the above, it was correct for TMG to deny IRIS funding for tickets for both of petitioner's 2 paid caregivers (his parents) to attend 6 Rafters games (local baseball). Petitioner's parents argue that petitioner requires 2 caregivers to meet his needs (for instance, his toileting needs). If that is the case then both of petitioner's caregivers (his parents) should accompany petitioner on outings and they will receive their regular pay from IRIS for the cares they provide -- but one will have to pay for their own tickets to Rafters games.[2]

## CONCLUSIONS OF LAW

For the reasons discussed above, it was correct for TMG to deny IRIS funding for tickets both of petitioner's 2 paid caregivers to 6 Rafters games (local baseball).

**NOW, THEREFORE, it is**

## ORDERED

That the petition for review herein be and the same is hereby 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

---

[1] Parents normally pay for their own tickets when accompanying their children to baseball games. Thus, petitioner's parents should pay for their own tickets when accompanying petitioner to baseball games. IRIS pays petitioner's parents for the care they must provide to petitioner due to his condition.

[2] It is noted that TMG has also approved IRIS funding for 1 paid caregiver (1 of his parents) for a Boys' and Girls' Club event and an SDS Conference. The purpose of this is to enhance petitioner's inclusion and presence in the community. Policy 16.1, pages 1 & 2.

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 30th day of January, 2015

\sSean P. Maloney
Administrative Law Judge
Division of Hearings and Appeals

**State of Wisconsin\DIVISION OF HEARINGS AND APPEALS**

Brian Hayes, Administrator
Suite 201
5005 University Avenue
Madison, WI 53705-5400

Telephone: (608) 266-3096
FAX: (608) 264-9885
email: DHAmail@wisconsin.gov
Internet: http://dha.state.wi.us

The preceding decision was sent to the following parties on January 30, 2015.

Bureau of Long-Term Support