FH
Redact

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

Redact

DECISION

CWA/161709

PRELIMINARY RECITALS

Pursuant to a petition filed November 4, 2014, under Wis. Admin. Code, §HA 3.03, to review a decision by the The Management Group (TMG) to discontinue Include, Respect, I Self-Direct (IRIS) eligibility, a hearing was held on February 4, 2015, by telephone. Hearings set for December 3, 2014 and January 7, 2015 were rescheduled at the petitioner's request.

The issue for determination is whether the agency correctly sought to close IRIS because of billing discrepancies.

PARTIES IN INTEREST:
Petitioner:

Redact

Respondent:

Department of Health Services
1 West Wilson Street, Room 651
Madison, Wisconsin 53703
By: Redact
TMG
1 S. Pinckney St., Suite 320
Madison, WI 53703

ADMINISTRATIVE LAW JUDGE:
Brian C. Schneider
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # Redact) is a resident of Milwaukee County.
2. Petitioner has been eligible for the IRIS program. She lives with her mother, who also is her guardian. Until the agency her primary caregiver was her twin sister, who provided both supportive home care (SHC) directly, and also personal care worker (PCW) services under

direction of the private agency Independence First (she was fired by Independence First in May, 2014 but continued to do SHC independently).

3. In September, 2013, IRIS staff met with petitioner's mother and sister because of discrepancies in billing by petitioner's sister, specifically that she was overbilling the agency. At that time agency personnel went over time sheets and explained how SHC services provided by petitioner's sister were limited to 121 hours per pay period and 243 hours per month. Petitioner's mother signed an agreement a self-direction responsibilities and information worksheet.

4. Beginning in December, 2013 petitioner's sister consistently filed time sheets over the pay period and monthly amounts, all co-signed by petitioner's mother. Hours were substantially over the time limits, with bi-weekly hours regularly over the monthly limits. For example, in March, 2014, petitioner's sister claimed 290 SHC hours for the first 15 days and 305 hours for the second 16 days. At that point petitioner's SHC was approved at 500 hours total per month; petitioner's sister alone submitted time sheets totaling 595 hours, resulting in overbilling of $2,084. By July, 2014, petitioner's sister billed a total of 682 SHC hours, again signed off by petitioner's mother.

5. The agency investigated the matter in the late summer, 2014. It found that not only was petitioner overbilling for SHC, but that petitioner's sister also was claiming PCW hours at Independence First that resulted in billing for total work of over 24 hours on many days. Petitioner's mother signed off on all time cards for both SHC and PCW hours. Other PCW providers also were providing care for petitioner during this time period, so total hours billed for petitioner's care regularly exceeded 24 per day.

6. By a notice dated October 31, 2014, the IRIS agency informed petitioner that her enrollment would be terminated effective November 18, 2014 due to abuse of the IRIS budget resulting from overbilling.

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. IRIS policies are found online at http://www.dhs.wisconsin.gov/publications/P0/P00708.pdf.

The agency in this case cited IRIS Policy 3.03.1, dated October 1, 2011 for its action to disenroll petitioner. The policy is not at the web sites cited above and below, but a copy of the policy was included in the agency's hearing package. The policy provides that a participant may be disenrolled when purchasing authority is mismanaged, including but not limited to possible fraud and misrepresentation/willful inaccurate reporting of services. There is a more recent policy at §10.1A.1, No. 18 of the IRIS Policy Manual: Work Instructions (updated February, 2015), a separate manual found at http://www.dhs.wisconsin.gov/publications/P0/P00708a.pdf. The policy there calls for involuntary disenrollment only in cases of substantiated fraud. If the activity is simply abuse of the program, there are a number of actions that can be taken but not disenrollment.

Petitioner's mother's primary position at the hearing is that she did not intentionally overbill the program. She noted that the PCW time sheets were complicated and that it was difficult for her to determine how many hours her daughter was claiming on those sheets. However, the PCW hours were a secondary issue that was discovered only after the agency investigated the SHC overbilling. Even leaving out the PCW issues, petitioner's mother regularly signed off on time sheets that were for drastically more hours than were approved. In July, 2014, petitioner's sister regularly reported 24 SHC hours in single days, and never less than 19 hours. Again, during that month petitioner also received PCW services from

Independence First employees, so petitioner's mother had to know that duplicate services were being billed to the two agencies.

I am satisfied that the agency substantiated fraud in this case. Frankly, I wonder why it took so long to act. It is clear that petitioner's sister was overbilling in early 2014, and that petitioner's SHC hours were regularly exceeding the 500 per month approved. I cannot accept petitioner's mother's claim that the overbilling was a mere mistake. Petitioner's mother also claims that the agency terminated IRIS enrollment without giving her an opportunity to make changes, but that claim simply is incorrect because IRIS staff met with the family in September, 2013 to address billing issues.

I conclude that the agency action was justified. I note here that disenrollment from IRIS does not necessarily mean that petitioner is ineligible for all Department services; she might have to apply for Family Care or another program that does not included self-directed services but instead has more involvement from agency case managers to make certain that services are provided and paid for. The IRIS agency can assist with the transition.

CONCLUSIONS OF LAW

The IRIS agency correctly sought to disenroll petitioner from the program due to intentional mismanagement of funds by petitioner's service provider that was abetted by petitioner's guardian.

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 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 10th day of February, 2015

\sBrian C. Schneider
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 February 10, 2015.

Bureau of Long-Term Support