



**STATE OF WISCONSIN
Division of Hearings and Appeals**

In the Matter of

[REDACTED]
[REDACTED]
c/o [REDACTED]
[REDACTED]
[REDACTED]

DECISION

CWA/161737

PRELIMINARY RECITALS

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

The issue for determination is whether the IRIS agency correctly reduced massage therapy services.

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: Carrie Haugen
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 # [REDACTED]) is a resident of Milwaukee County.
2. Petitioner is 37 years old. She is diagnosed with autism and schizophrenia. She receives services from the IRIS program. She resides in a group home.

3. Petitioner has been receiving massage therapy since approximately 2010. In 2012 the IRIS program approved continued in-home massage therapy sessions for petitioner at the rate of 20 times per month. The approval was based significantly on a physical therapy note stating the petitioner “would likely benefit from continued relaxation massage and structured physical activity including exercise and ADL [activities of daily living] instruction.” Exhibit F.
4. In May, 2014, the IRIS agency questioned the high cost of the massage therapy (\$115 per session for a monthly cost of \$2,300). At that point a High-Cost Item Justification was filed. However, in September, 2014, the agency again questioned the cost of the massages. It was noted that although petitioner continues to receive 20 massages per month, she is involved in no other exercise activity or ADL instruction (it appears that she did not attempt either exercise or ADL instruction after the 2012 recommendation).
5. In September, 2014, the agency case manager informed petitioner’s guardian that 20 times per month massage therapy would not be continued unless a doctor’s order was submitted explaining why there was a medical need for the services, including why the service had to be done in petitioner’s home as opposed to the therapist’s office. Petitioner’s guardian provided a prescription from petitioner’s doctor to continue the massage therapy five times per week; the prescription had no explanation for why the service was needed.
6. On October 17, 2014, the agency sent petitioner a notice that massage therapy would be reduced to four times per month because no substantiation of the need for long-term, 20-times-per-month, services was provided. Services were continued at that rate pending this decision.
7. At the hearing petitioner’s guardian provided a two-line letter from petitioner’s doctor stating that massage should continue at the present rate because it relaxes petitioner’s muscles, relieves pain, and calms petitioner. Her massage therapist also recommends continuing the therapy.

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.

IRIS Program policy no. SC 16.1 provides guidance on coverage of customized goods or services under the program. Such goods or services are those that enhance the person’s opportunities related to living arrangement, relationship, community inclusion, work, and functional medical status. The item must meet all four of the following criteria:

- a. It must be designed to meet the person’s functional, vocational, medical, or social needs and also advance the desired outcomes in the individual service plan;
- b. It must be documented on the service plan;
- c. It cannot be prohibited by statutes or regulations;
- d. It cannot be available through another source or be experimental in nature.

In addition, the item must meet at least one of the following criteria:

- a. It will maintain or increase the person's safety in the home or community;
- b. It will decrease or prevent increased dependence on other Medicaid-funded services;
- c. It will maintain or increase the person's functioning related to his disability;
- d. It will maintain or increase the person's access to or presence in the community.

The agency must review questionable items that exceed the cost of average products necessary to meet an outcome. The agency must provide an item that is the most cost effective possible. See IRIS Program Operations Infrequent Expense Policy at www.dhs.wisconsin.gov/bdds/IRIS/BudgRevw.pdf. See also 42 C.F.R. §440.180(b)(9).

I agree with the agency that no justification for the continuance of the five-times-per-week therapy has been provided. Conclusory statements that the massages relieve pain and calm petitioner do not amount to justification, especially since petitioner has no listed physical impairments that would cause pain. I suspect that the reason for the lack of justification is that there is no justification. If the massages are so vital, then why is petitioner able to go weekends without them? It appears that petitioner likes the massages and that the massages have become part of her routine. There are concerns that petitioner might have negative behaviors resulting from the change of routine, but since there has been no change of routine petitioner's response truly is unknown. If petitioner's response is egregious the agency can always look at the situation again. This change is not necessarily a lifetime one.

That said, it is not clear to me why the agency decided to reduce the massages to once per week. However, it is the professional agency that deals directly with petitioner, and I give the agency leeway because of its knowledge of the case. Thus I conclude that the agency action should not be reversed. Petitioner's medical professionals have not provided justification for this expensive service. The agency that deals with petitioner regularly has concluded that she still should receive the service occasionally. With a lack of evidence to show that the agency is wrong, I will not reverse or modify the agency's determination.

CONCLUSIONS OF LAW

The IRIS agency justifiably reduced massage therapy services provided to petitioner because her medical providers did not provide a medical need for the amount of services previously provided.

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 11th day of March, 2015

\sBrian C. Schneider
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 March 11, 2015.

Bureau of Long-Term Support