



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[Redacted]
[Redacted]
Redact
[Redacted]

DECISION

CWA/161968

PRELIMINARY RECITALS

Pursuant to a petition filed November 12, 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 December 18, 2014, at Hayward, Wisconsin.

The issue for determination is whether the IRIS program correctly seeks to disenroll the petitioner because he continued to bill the program for supportive home care while he was in the hospital.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[Redacted]
[Redacted]
Redact
[Redacted]

Respondent:

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

By: [Redacted]
Bureau of Long-Term Support
1 West Wilson
Madison, WI

ADMINISTRATIVE LAW JUDGE:

Michael D. O'Brien
Division of Hearings and Appeals

FINDINGS OF FACT

- 1. The petitioner (CARES # [Redacted]) is a resident of Sawyer County.
2. The petitioner receives medical assistance waiver benefits through the Wisconsin IRIS program.

3. The petitioner was in the hospital from March 1, 2014, through March 7, 2014, and from March 10, 2014, through March 25, 2014. During this time, he used IRIS funds to pay for 105 hours of supportive home care.
4. The petitioner knew that he did not require supportive home care while in the hospital.

DISCUSSION

Wis. Admin. Code, § DHS 104.02(5)(j). The petitioner receives medical assistance waiver services through IRIS, which stands for Include, Respect, I Self-Direct. It is designed to allow recipients in counties offering Family Care to direct their own cares, an option MA-Waiver recipients must have. That program's waiver document approved by the federal government allows it to disenroll recipients if "purchasing authority is mismanaged." <http://www.cms.gov/MedicaidStWaivProgDemoPGI/MWDL/list.asp>. Appendix E-1, § m. IRIS seeks to end the petitioner's enrollment because his guardian used IRIS funds to pay for supportive home care while he was in the hospital.

(Iris relies upon the *IRIS Policy Manual*, § 3.03.1, for its authority. It did not provide a copy of this policy, and the online version of the manual appears to be missing several chapters, including this one. See <https://www.dhs.wisconsin.gov/publications/p0/p00708.pdf>. Because of this, I will rely upon the waiver document.)

The petitioner was in the hospital all but two days from March 1 through March 25, 2014. During this period, his mother, who is guardian, used funds received through IRIS to pay for 105 hours of supportive home care. His mother contends that her son has extensive needs, including that he be positioned properly, that the hospital could not meet. She also contends that the hospital encouraged the supportive home care worker to remain in the hospital. She could not assist her son because she was too hospitalized part of this time.

I do not doubt that the petitioner has great needs. But this does not mean that he required that a supportive home care worker accompany him to the hospital. The purpose of a hospital is to provide care to those who need it most, regardless of how serious the needs are. This means that if the petitioner needed frequent repositioning, the hospital had a duty to ensure that he was frequently repositioned. I do not find it credible that a hospital would rely on someone without medical training—which is what a supportive home care worker is—to provide basic medical care. Doing so would make the hospital liable if the outside worker provided insufficient care. For this claim to have any plausibility, the evidence would have to include testimony—or at least a statement—from the hospital employee who allegedly made the request. The petitioner presented no such evidence.

I understand that medical assistance rules are confusing and that a lay person cannot be expected to know all of them. But IRIS allows the petitioner and his mother to direct his own supports, which requires them to have at least basic knowledge of the program. It is not overly burdensome for them to be aware that a supportive home care worker provides "a range of services for participants who require assistance to meet their daily living needs, ensure adequate functioning in their home and permit safe access to the community." *Medicaid Waivers Manual*, p. IV-158. The term *supportive home care* itself should have warned the petitioner and his mother that the services are not meant for someone whose medical condition leaves him unable to stay at home.

IRIS gives the petitioner the authority to purchase supportive home care. Using his authority to purchase this care while being treated in a hospital mismanages that authority. IRIS rules do not require the program to disenroll all those who mismanage their purchasing authority. But the preponderance of the credible evidence in this matter proves that the petitioner's mismanagement involved either a substantial

level of negligence or outright deception. Proof of either justifies IRIS's decision to disenroll him from the program to prevent him from mismanaging funds again.

I note that although IRIS may disenroll the petitioner, it must still help him make the transition to some other program.

CONCLUSIONS OF LAW

IRIS correctly seeks to disenroll the petitioner from the program because he mismanaged his purchasing authority.

THEREFORE, it is ORDERED

The petitioner's 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 Madison,
Wisconsin, this 22nd day of January, 2015

\sMichael D. O'Brien
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 22, 2015.

Bureau of Long-Term Support