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Redact

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

In the Matter of

[Redacted]
[Redacted]
Redact

DECISION

CWA/162846

PRELIMINARY RECITALS

Pursuant to a petition filed December 22, 2014, under Wis. Admin. Code § HA 3.03, to review a decision by the Bureau of Long-Term Support in regard to Medical Assistance-related IRIS benefits, a hearing was held on January 22, 2015, by telephone.

The issue for determination is whether the Department's agent correctly dis-enrolled the petitioner from the IRIS program, due to concerns about her financial mismanagement while participating in the program.

There appeared at that time the following persons:

PARTIES IN INTEREST:

Petitioner:

[Redacted]
Redact
[Redacted]

Respondent:

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

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

ADMINISTRATIVE LAW JUDGE:

Nancy J. Gagnon
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [Redacted]) is a resident of Milwaukee County.
2. The petitioner is financially eligible for the IRIS program, and has been enrolled in the program for some time. IRIS is a self-directed personal care program, created by a Medicaid waiver.

3. The petitioner, age 51, is physically disabled. She has diagnoses of arthritis (knees), lower back pain, neuropathy, congestive heart failure, edema, morbid obesity, hypertension, sleep apnea, hypothyroidism, and depression. The petitioner requires hands-on assistance with most activities of daily living (ADLs), such as bathing, lower body dressing, toileting and transferring. She is independent in eating, communication, money management, and use of the telephone.
4. The petitioner used her daughter, [Redacted], as an IRIS-paid caregiver through August 2014. The petitioner became embroiled in a tiff with her daughter over hours worked and signature of the required IRIS timesheets. The petitioner signed off on full-time timesheets for [Redacted] on June 2 and 18. Someone forged the petitioner's signature on [Redacted]'s timesheets dated July 3, July 12, and August 18, 2014. Submission of these timesheets caused [Redacted] to be paid for each two-week period reflected on the timesheet. On September 9, 2014, the petitioner reported to an IRIS worker that [Redacted] had not worked for her for two months. On September 18, the petitioner telephoned IRIS worker [Redacted] and complained that [Redacted] had not split contested paychecks with her.
5. On November 19, 2014, the IRIS agency issued written notice to the petitioner advising that she would be involuntarily dis-enrolled from the IRIS program, effective December 9, 2014. The notice advised the petitioner that she was being dis-enrolled because she mismanaged her IRIS funds. The petitioner appealed.
6. The petitioner's testimony was not credible.

DISCUSSION

The Include, Respect, I Self-Direct (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. This Section 1915(c) waiver document is available at <http://www.cms.gov/MedicaidStWaivProgDemoPGI/MWDL/list.asp>. IRIS is a fee-for-service, 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, and then develop a service plan based on the assessed needs. *Id.*, §441.466. The service plan may include personal care and homemaker services. *Id.*, §440.180(b). Further, "all of the State's applicable policies and procedures associated with service plan development must be carried out ..." *Id.* §441.468.

Both the federal Medicaid waiver statute and the pertinent federal rule require the Department to assure that correct records are kept to assure that these public funds can be accounted for:

§ 441.302 State assurances.

Unless the Medicaid agency provides the following satisfactory assurances to CMS, CMS will not grant a waiver under this subpart and may terminate a waiver already granted:

(a) *Health and Welfare*—Assurance that necessary safeguards have been taken to protect the health and welfare of the recipients of the services. ...

(b) *Financial accountability*— The agency will assure financial accountability for funds expended for home and community-based services, provide for an independent audit of its waiver program (except as CMS may otherwise specify for particular waivers), and it will maintain and make available to HHS, the Comptroller General, or other designees,

appropriate financial records documenting the cost of services provided under the waiver, including reports of any independent audits conducted.

42 C.F.R. § 441.302.

The Department's IRIS policy document, *IRIS Policy Manual (Manual)* available at <http://www.dhs.wisconsin.gov/publications/P0/P00708.pdf> and <https://www.dhs.wisconsin.gov/publications/p0/p00708a.pdf> (viewed in January 2015), does indicate that a participant who engages in financial fraud against the program should be disenrolled. *Manual*, § 10.A1.1.

A pertinent record for this type of case is the *Employee Time Report*, which the IRIS recipient, in her capacity as employer of a care worker, must sign to confirm the hours worked. The *Report* requires the signatures of both the petitioner and the employee (Redact). Timesheets were submitted to pay Redact throughout June, July and August 2014. On September 9, the petitioner told IRIS worker Redact that Redact had *not* done any work for her for about two months, implying that the petitioner's timesheet signatures were forged. However, at hearing the petitioner testified that Redact did perform personal care work throughout June, July and August. I have no idea if Redact did the work or not; the take-away is that the petitioner is not a credible person.

On September 18, the petitioner telephoned worker Redact, and asked about the status of timesheet submissions. Redact stated that signed timesheets had continued to be submitted. The petitioner replied that this should not be happening because Redact had not agreed to split contested paychecks with her. At hearing, the petitioner admitted that she allowed Redact to sign some of the timesheets as the employer. She also denied saying anything to the worker about splitting payments. However, the worker testified to this conversation, and the worker has no reason to dissemble. I found the worker to be credible, and the petitioner to not be credible. The petitioner has abdicated her responsibility to check the accuracy of timesheets and sign them. It is also wildly improper for her to even suggest splitting paychecks with the employee.

The agency's concern that the petitioner was mismanaging IRIS funds is justified; it has met its burden (preponderance of the credible evidence) of proving the same. Thus, I conclude that dis-enrollment from the IRIS program was necessary. This dis-enrollment does not prevent the petitioner from seeking assistance through the Family Care program, which has more financial oversight.

CONCLUSIONS OF LAW

1. The petitioner engaged in fiscal mismanagement by allowing another person to sign her employee's timesheets and by proposing to split the resulting paycheck between herself and the employee.
2. The Department's agent correctly sought to dis-enroll the petitioner from the IRIS program.

THEREFORE, it is

ORDERED

That the petition 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 26th day of January, 2015

\sNancy J. Gagnon
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 26, 2015.

Bureau of Long-Term Support