



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

In the Matter of

██████████
██████████
██████████ ██████████

DECISION

CWA/██████████

PRELIMINARY RECITALS

Pursuant to a petition filed December 29, 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 February 10, 2015, at Wautoma, Wisconsin.

The issue for determination is whether the appeal is timely.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

██████████
██████████
██████████ ██████████

█

Respondent:

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

By: Ashley Waters
Bureau of Long-Term Support
1 West Wilson

Madison, WI

ADMINISTRATIVE LAW JUDGE:

John P. Tedesco
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner is a resident of ██████████ County.
2. Petitioner is enrolled in IRIS.
3. Petitioner had been receiving 63 hours of supportive home care.
4. Petitioner’s caregiver lives in her home and is a friend.

5. Petitioner requested additional SHC hours increased to 85.
6. The agency reviewed petitioner's needs and realized that her paid caregiver also lives with her and is her friend. The agency determined that some of the previously paid services are more appropriately designated a natural support that would typically be done by a household member.
7. The agency sent notice to petitioner indicating this change effective 11/1/14.
8. Petitioner appealed by sending a request for hearing to the DHA on 12/29/14. The request was signed and dated 12/21/14.

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. IRIS (Include, Respect, I Self-Direct) is a statewide self-directed home and community-based waiver program. Within their individually assigned monthly budget allocation, IRIS participants use public funds and natural supports to craft creative support and service plans that meet their self-identified long-term care outcomes and maximize their independence. See the *Medicaid Eligibility Handbook*, §37.1.1.

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.

I. TMELINESS.

Appeals that concern a negative action taken against a recipient's Medical Assistance, include MA sub-program like the IRIS Waivers program, must be filed within 45 days of the effective date of the negative action. See, Wis. Stat. § 49.45(5); Wis. Admin. Code § 3.05(3). A negative action includes a denial, reduction or termination of benefits, or a refusal to pay for services on behalf of the recipient. In this case, the notice and change were effective on 11/1/14. The deadline for filing an appeal was, thus, December 16, 2014. The request was 13 days late and was untimely.

Even if the request were timely, however, I would not have found in favor of petitioner.

The Department's IRIS policy document, *IRIS Program Policies*, available at <http://www.dhs.wisconsin.gov/bdds/IRIS/IRISPolicySummary.pdf>, echoes the federal waiver document requirement, at "IRIS Funding for Goods, Supports and Services," Policy SC 16.1.

The agency calculated the number of specific SHC hours needed per month at 16. The agency determined that the 89 hours sought by petitioner were not justified on the basis that it had recently learned that petitioner lives with a man who can perform many of the services as a natural support. There was some dispute over whether the relationship between the two is one of a purely practical nature as petitioner argued, or whether the two have an emotional relationship beyond that. Petitioner attempted to argue that the two are merely friends and that he has elected to live with her so that he can care for her. I note that petitioner initially responded "yes" to the question of whether she and this friend are "partners in life." She later backtracked and explained that they are just friends. It really does not matter, as the friend lives in the home and there is some level of agreement between them that he is to care for her needs. It is only reasonable to expect that some of the things that would be normally maintained in a home such as cleaning and meal preparation and snow removal, yard work, caring for the house pet are all tasks that would be done by a member of the household.

Petitioner was unconvincing and not credible in her attempt to argue that this individual is little more than a paid caregiver. I understand that this change means that there will be significantly less money paid into the household's income. The hours might again be appropriate if petitioner were to live alone in the household.

CONCLUSIONS OF LAW

The appeal was not timely filed.

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 10th day of March, 2015

\sJohn P. Tedesco
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 10, 2015.

Bureau of Long-Term Support