



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

Redact

DECISION

CWA/163658

PRELIMINARY RECITALS

Pursuant to a petition filed February 2, 2015, under Wis. Admin. Code, §HA 3.03, to review a decision by The Management Group in regard to the Include, Respect, I Self-Direct (IRIS) program, a hearing was held on May 6, 2015, by telephone. Hearings set for March 3 and April 1, 2015 were rescheduled at the petitioner's request.

The issue for determination is whether petitioner meets the level of care requirement for continued IRIS eligibility.

PARTIES IN INTEREST:

Petitioner:

Redact

Petitioner's Representative:

Redact
Disability Rights Wisconsin
Redact
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 55-year-old resident of Milwaukee County. She resides alone.
2. Petitioner has been eligible for IRIS services since 2013 (if not earlier; the record is unclear when IRIS eligibility began). An annual assessment was done in December, 2014.

3. Petitioner is diagnosed with respiratory disease, chronic pain, a history of renal cancer. Symptoms include dizziness and weakness, and petitioner has significant limitations with walking requiring her to use a cane.
4. In the most recent assessment screen prior to December, 2014, petitioner was found to need assistance with five activities of daily living (ADLs), including hands on assistance with bathing and dressing. Assistance was needed with four instrumental activities of daily living (IADLs). The assessor found that petitioner was at imminent risk of institutionalization without assistance.
5. At the rescreen in December, 2014, the assessor found that petitioner was able to bath herself with assistance with washing her hair. The assessor changed the result for dressing to no assistance based upon petitioner's report that she is able to dress herself usually but is unable to reach around to her back. Results for toileting and transferring were changed to no assistance based upon petitioner's report and observing petitioner transfer. Mobility was kept at slight assistance because, although petitioner was seen to ambulate around the apartment, the assessor accepted that she could not ambulate longer distances and that even in the apartment she reported feeling dizzy and light-headed at times. The assessor changed the institutionalization risk to a high risk of negative health outcomes.
6. Petitioner still needs assistance with dressing.
7. After the December, 2014 screen was completed, petitioner was found to no longer meet the required nursing home level of care. She was informed that IRIS eligibility would end by a notice dated December 18, 2014. Eligibility has remained in place pending petitioner's appeal.

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.

An IRIS participant must be elderly, or an adult with physical or developmental disabilities. See IRIS General Information at www.dhs.wisconsin.gov/bdds/IRIS/general.htm. The physical disabilities must be such that the person requires a level of care equal to the level of a nursing home. DHS Medicaid Eligibility Handbook, §37.1.3. To qualify for a nursing home level of care a person must have a long-term care condition expected to last at least one year. See Overview of the Long Term Care Functional Screen, §1.2, found at www.dhs.wisconsin.gov/lc/FUNCTIONALScreen/WebCT/instructions1.htm.

IRIS plans of care are updated when a participant requests a change in the plan. See IRIS Program Policies found at www.dhs.wisconsin.gov/bdds/IRIS/IRISPolicySummary.pdf. The plans also are updated at least on a yearly basis.

The Department has developed a computerized functional assessment screening system. The system relies upon a face-to-face interview with a quality assurance screener who has at least a bachelor of science degree in a health or human services related field, with at least one year of experience working with the target populations (or, if not, an individual otherwise specifically approved by the Department based upon like combination of education and experience). The screener asks the applicant, or a recipient at a periodic

review, questions about his or her medical conditions, needs, cares, skills, activities of daily living, and utilization of professional medical providers to meet these needs. The assessor then submits the Functional Screen Report for the person to the Department's Division of Disability and Elder Services. The Department enters the Long Term Functional Screen data into a computer program to see if the person meets any of the required levels of care.

If the assessor enters information into the functional screen correctly, then it is assumed that the computer will accurately determine the level of care.

The big issue in this case is the change on the dressing score. As noted, the functional screen instructions provide that a Level 2 risk (imminent risk of institutionalization) should be chosen if the person requires assistance with at least three ADLs. If assistance is needed with only two ADLs, a Level 1 risk (risk of negative health outcomes) is chosen, and it is likely that the difference between Level 2 and Level 1 is the reason that petitioner no longer met the functional requirements for IRIS eligibility.

After hearing both sides, I conclude that petitioner still needs help with dressing. She thus remains at Level 2 risk status, and she passes the functional screen for IRIS eligibility. The case is close, and if this were a new application I could easily find that petitioner has not met the burden of proving that she requires the requisite assistance. However, this is a discontinuance and the agency has the burden, which swings the decision.

The assessor found that petitioner is unable to reach around her back and that she would need assistance with any clothing item that has a back fastener. Beyond that, petitioner's caregiver testified credibly that on bad days, which are more frequent than not, petitioner has trouble bending to put on pants, socks, and shoes. In addition, petitioner's medications can cause drowsiness and dizziness, affecting her ability to do ADLs.

I acknowledge that petitioner testified that when the assessors visited she was having a bad day, and as was pointed out, she did not have trouble bending that day. I am not convinced that petitioner understood the impact of her testimony, and I accept the more objective testimony of her caregiver regarding her capabilities on good and bad days. Given that petitioner has been eligible for the program, I would prefer to err on the side of continuing eligibility in a close case, if indeed my finding is erroneous.

CONCLUSIONS OF LAW

Petitioner continues to meet the level of care requirement for IRIS eligibility.

THEREFORE, it is

ORDERED

That the matter be remanded to the agency with instructions to continue petitioner's IRIS eligibility on the basis that she meets the nursing home level of care requirement. The agency shall take the action within 10 days of this decision.

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 18th day of May, 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 May 18, 2015.

Bureau of Long-Term Support

Redact @drwi.org