



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of



DECISION

CWA/164165

PRELIMINARY RECITALS

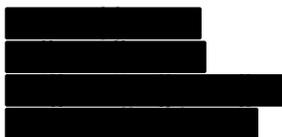
Pursuant to a petition filed February 24, 2015, under Wis. Admin. Code § HA 3.03, to review a decision by the Bureau of Long-Term Support in regard to Medical Assistance, a hearing was held on March 30, 2015, at Waukesha, Wisconsin.

The issue for determination is whether the agency correctly sought to discontinue Petitioner’s IRIS eligibility because of mismanagement of IRIS funds.

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:

David D. Fleming
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # ) is a resident of Waukesha County.
2. Petitioner was sent a notice, noting a decision date of February 13, 2015, that informed Petitioner that he was being disenrolled March 3, 2015 by the IRIS program because of fraud.
3. Petitioner has been eligible for the IRIS program. He lives with his mother and his brother with the brother being the paid caregiver.

4. The IRIS agency reviewed billing records submitted by Petitioner's mother, she is also his guardian. The agency concluded that she had submitted falsified supportive home care hours in the name of the caregiver brother, billed for hours not worked, submitted photocopied timesheets and forged an authorization for a prepaid debit card in the caregiver son's name in order to capture fraudulently billed IRIS funds. All of this occurred during the 2013-2014 time period.
5. One of the triggers for the review was a 2013 interview with the caregiver brother who said that he only provided transportation for Petitioner from home to the Curative Care Network site on [REDACTED] Avenue in Milwaukee. The agency calculated that this would be about 9 hours per month but 20 to 31 hours were being billed to IRIS.
6. Upon review of records the agency learned that IRIS funds were not paid to the caregiver brother but to the account of the mother and father of the boys.

DISCUSSION

The IRIS program was developed pursuant to a Medicaid 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. IRIS policies are found online at <http://www.dhs.wisconsin.gov/publications/P0/P00708.pdf>.

The agency in this case cited IRIS Policy 3.03.1, dated October 1, 2011 for its action to disenroll petitioner. The policy is not at the web sites cited above and below, but a copy of the policy was included in the agency's hearing package. That policy provides that a participant may be disenrolled when purchasing authority is mismanaged, including but not limited to possible fraud and misrepresentation/willful inaccurate reporting of services. There is a more recent policy at §10.1A.1, No. 18 of the IRIS Policy Manual: Work Instructions (updated monthly), found at <http://www.dhs.wisconsin.gov/publications/P0/P00708a.pdf>. This policy calls for involuntary disenrollment in cases of substantiated fraud. If the activity is unsubstantiated fraud or abuse of the program, there are a number of actions that can be taken but not disenrollment.

As the events that occurred here were in 2013-14 and the agency has applied the older policy, I will use that here also.

Petitioner's mother's testimony is that she did not intentionally overbill the program and that, though record keeping could be better, all money was used for the benefit of Petitioner. She indicated that the caregiver brother is also disabled and that she took care of all of his financial matters.

I am satisfied that the agency has demonstrated mismanagement of IRIS funds in this case. I am not sure why it took so long to act. Medicaid waiver funds were used in such an undocumented manner that there is no way to track what work was done or where the money actually went. Some of the time billed was for the brothers' social activities. Time sheets were photocopied and were completed by the guardian, not the caregiver. A forgery permitted IRIS funds to be deposited to the parent's account. Essentially, Medicaid funds were added to the family household income and used to make life more convenient. While Petitioner's family's life is certainly challenged by the brothers' disabilities this does not mean that IRIS program funds could be used without regard to timekeeping and other documentation. I conclude that the agency action was justified, funds here were mismanaged; thus the disenrollment appropriate.

I note here that disenrollment from IRIS does not necessarily mean that Petitioner is ineligible for future IRIS enrollment or other Medicaid services. Per the new policy a person may apply for re-enrollment in IRIS if the disenrollment is not, among other things, for substantiated fraud. See *IRIS Policy Manual: Work Instructions*, §3.3A.1; at <http://www.dhs.wisconsin.gov/publications/P0/P00708a.pdf>. This case is a mismanagement case. 'Fraud' is defined as an intentional deception, knowing and willing done, for personal gain or damage to another. *IRIS Policy Manual: Work Instructions*, §10.1A.1, No.14 at page 44. 'Unsubstantiated fraud' is defined as fraud allegations unsubstantiated by the facts. *Id.*, #15. Abuse is

defined as facts supporting fraud are found but the facts do not indicate knowing and willful fraud. *Id.* # 16. Lacking here is evidence of the personal gain element but there is certainly an abuse.

Petitioner might have to apply for Family Care or another program that does not include self-directed services but instead has more involvement from agency case managers to make certain that services are provided and paid for. The IRIS agency can assist with the transition.

CONCLUSIONS OF LAW

The IRIS agency correctly sought to disenroll Petitioner from the program due to intentional mismanagement of funds by Petitioner's guardian.

THEREFORE, it is ORDERED

That this 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 Milwaukee,
Wisconsin, this 13th day of May, 2015

\sDavid D. Fleming
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

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The preceding decision was sent to the following parties on May 13, 2015.

Bureau of Long-Term Support