



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of



DECISION

CWA/164824

PRELIMINARY RECITALS

Pursuant to a petition filed March 18, 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 April 23, 2015, at Milwaukee, Wisconsin.

The issue for determination is whether the agency properly denied the Petitioner’s request to enroll due to substantiated fraud.

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: Carrie Haugen
Bureau of Long-Term Support
1 West Wilson

Madison, WI

ADMINISTRATIVE LAW JUDGE:

Debra Bursinger
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # ) is a resident of Milwaukee County.
2. On August 19, 2014, the Division of Hearings and Appeals issued a decision in Case No. CWA/158422 finding that the IRIS agency properly disenrolled the Petitioner from the IRIS

program for purchasing authority mismanagement. The agency referred the case to the Office of Inspector General.

3. In March, 2015, the Petitioner requested to re-enroll in the IRIS program.
4. On March 13, 2015, the agency issued a Notice of Action informing the Petitioner that her request to re-enroll in the IRIS program was denied. The basis of the denial was the Petitioner's previous disenrollment due to substantiated fraud. The agency noted that the Department of Justice had not closed its investigation into allegations of fraud.

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. IRIS policies are found online at <http://www.dhs.wisconsin.gov/publications/P0/P00708.pdf>.

IRIS policies enacted in March, 2015 require cases resulting in substantiated fraud to be referred to the Office of Inspector General (OIG). The OIG determines if there is sufficient cause for a Department of Justice investigation. Participants disenrolled from the program for substantiated fraud may re-enroll only after the closure of a DOJ investigation, finding the allegations of fraud to be unsubstantiated. See §10.1A.1 of the Iris Policy Manual Work Instructions, a separate manual found at <http://www.dhs.wisconsin.gov/publications/P0/P00708a.pdf>.

IRIS policies enacted in April, 2015 allow the program to deny an individual's request to enroll for previous involuntary disenrollment from IRIS or another long-term care program for substantiated fraud. See §3.3A.1 of the IRIS Policy Manual Work Instructions.

The policy defines "previous involuntary disenrollment from IRIS or another long term care program for substantiated fraud" as follows:

“. . .being disenrolled involuntarily from IRIS, Family Care, or any other long-term care program for substantiated fraud. Suspected fraud or abuse of Medicaid funds are not sufficient grounds to deny enrollment of an individual in the IRIS program. Individuals seeking re-enrollment who committed abuse of Medicaid funds or were suspected of fraud during a previous enrollment in IRIS or another long-term care program may expect to receive additional education on fraud prevention and monitoring of expenditures upon re-enrollment.”

At the hearing, the agency testified that there has been no notice that the Department of Justice has concluded its investigation. Until that time, policy states that the Petitioner may not re-enroll. I note that the policy allowing the agency to deny re-enrollment based on a previous involuntary disenrollment due to substantiated fraud was not adopted until after the Petitioner filed her request for re-enrollment and after the agency made its determination.

The Petitioner did not dispute that there is a case of substantiated fraud against her. She presented testimony regarding the original fraud allegations. This testimony is not relevant to the particular issue in this case of whether the agency can deny the request for re-enrollment.

Based on the evidence, I conclude the agency properly denied the Petitioner's request to re-enroll. The policy in effect at the time of her request is clear that she could not re-enroll unless the Department of Justice had closed her case as "unsubstantiated." At the time of her request, the DOJ had not yet made any determination and had not, therefore, closed the case as unsubstantiated.

CONCLUSIONS OF LAW

The agency properly denied the Petitioner's request to re-enroll in the IRIS program.

THEREFORE, it is

ORDERED

That 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.

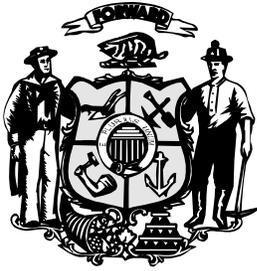
APPEAL TO COURT

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 Milwaukee,
Wisconsin, this 21st day of May, 2015

\sDebra Bursinger
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 21, 2015.

Bureau of Long-Term Support