



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[Redacted]
[Redacted]
[Redacted]

DECISION

CWA/165689

PRELIMINARY RECITALS

Pursuant to a petition filed April 28, 2015, under Wis. Admin. Code, §HA 3.03, to review a decision by The Management Group (TMG) to discontinue petitioner’s eligibility for the Include, Respect, I Self-Direct (IRIS) program, a hearing was held on May 14, 2015, by telephone.

The issue for determination is whether the agency correctly seeks to disenroll petitioner from the IRIS program due to mismanagement of his case.

PARTIES IN INTEREST:

Petitioner:

[Redacted]
[Redacted]
[Redacted]

Respondent:

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

By: [Redacted]

TMG
One 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 # [Redacted]) is a resident of La Crosse County.
2. Petitioner is a participant in the IRIS program. He has a history of a traumatic brain injury. He operates a family farm, and therefore his IRIS plan includes assisting him with doing farm chores.
3. The agency has had concerns with petitioner’s operation of his IRIS plan for some time. As far back as 2009 staff had to work with him to make sure that IRIS care givers were not ordered to do farm work exclusive of their care tasks. There were allegations that petitioner required workers to

kick back pay to him. IRIS staff have worked with petitioner on these issues and as late as November, 2014 petitioner signed a Participant Education form explaining his duties as an IRIS participant.

4. Concerned that petitioner continued to press employees to turn over money and that employees were doing farm work, but a notice dated April 14, 2015, the agency informed petitioner that it was terminating IRIS eligibility effective May 1, 2015. Eligibility has continued pending this 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. IRIS policies are found online at <http://www.dhs.wisconsin.gov/publications/P0/P00708.pdf>.

IRIS policies allow the program to end a participant's enrollment when the program substantiates mismanagement of employer authority. See §7.1A.1, No. 18 of the IRIS Policy Manual: Work Instructions, a separate manual found at <http://www.dhs.wisconsin.gov/publications/P0/P00708a.pdf>. Disenrollment from IRIS does not necessarily mean that the person is ineligible for all Department services; the person 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.

IRIS Policy 3.01.1 describes situations where the agency may voluntarily disenroll a participant. See Exhibit C1. One condition is if purchasing authority is mismanaged, including possible fraud or misrepresentation of willful inaccurate reporting of services.

Fraud is defined in the Work Instructions at §10.1A.1, no. 14, as "any intentional deception made for personal gain or to damage another individual, group, or entity.... Fraud is knowingly and willfully executing, or attempting to execute, a scheme or artifice to defraud any health care benefit program or to obtain, by means of false or fraudulent pretenses, representation, or promises, any of the money or property owned by, or under the custody or control of, any health care benefit program."

It is evident that mismanagement by an IRIS participant that can lead to disenrollment must include an aspect of intent by the enrollee. It does not appear that unintentional mismanagement is a basis for involuntary disenrollment.

The agency raises two types of mismanagement by petitioner. First, it found that petitioner had IRIS care workers complete farming tasks. Second, petitioner demanded that care workers give him a portion of their pay.

With regard to the second issue, the agency has not provided any clear instances of such behavior beyond some hearsay allegations. The only situation acknowledged by petitioner has to do with his son. He testified that his son owed him money, and that he said he would withhold some of his son's pay for repayment purposes. His son minimized the situation when asked by agency staff.

The first allegation is more troubling. However, even IRIS agency staff admit that there is bound to be some crossover in IRIS caretaker activities and petitioner's work activities. There appear to be legitimate issues concerning the roles of the care givers and petitioner's understanding of those roles, in particular since he has a brain injury that affects his ability to understand his role. He has a support broker paid by

IRIS. The current support broker is Lutheran Social Services (LSS), and it is acknowledged that the role of the support broker is vital in keeping petitioner on task and within program requirements. The LSS director testified that his most recent LSS broker acted inappropriately, and that many of his recent difficulties revolve around her. She since has left employment at LSS and a new broker is in place.

I conclude that petitioner has not intentionally mismanaged his status as an IRIS participant. It is evident that he needs support, in both his daily life and in managing the IRIS case. Most of his problems are old, from 2009 to 2012. It appears to me that LSS has stepped in to assist petitioner in operating his IRIS case appropriately, and thus I am willing to allow petitioner to continue at this time. I would suggest that if petitioner's relationship with LSS ends, it might be time for the IRIS agency to look at disenrollment again, but at this point I am willing to allow LSS to act as his broker to make sure that IRIS activities are handled appropriately.

CONCLUSIONS OF LAW

Petitioner has not intentionally mismanaged his authority as an IRIS employer and therefore should be allowed to continue in the program with the oversight of his support broker.

THEREFORE, it is

ORDERED

That the matter be remanded to the IRIS agency with instructions to continue petitioner's IRIS eligibility with the finding that petitioner has not intentionally mismanaged his IRIS program, but that petitioner must have active involvement of a competent support broker to assist him with his program. 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 27th day of May, 2015

\sBrian C. Schneider
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 27, 2015.

Bureau of Long-Term Support

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