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[REDACTED]

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

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In the Matter of

[REDACTED]  
[REDACTED]  
[REDACTED]

|

[REDACTED]  
[REDACTED]

CWA/166463

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**PRELIMINARY RECITALS**

Pursuant to a petition filed June 08, 2015, under Wis. Admin. Code § HA 3.03, to review a decision by the IRIS program to reduce the petitioner’s Supportive Home Care (SHC) hours, a telephonic hearing was held on July 14, 2015, at Wausau, Wisconsin. At the request of the parties, the record was held open for IRIS to submit a closing argument, and then for a responsive closing argument to be submitted by petitioner. The IRIS program timely submitted its closing argument to DHA and to petitioner which is received into the hearing record. However, petitioner failed to submit any closing argument to DHA even by the date of this decision.

The issue for determination is whether the IRIS program correctly reduced the petitioner’s monthly Supportive Home Care (SHC) hours effective July 1, 2015 from 110 to 34.75 hours.

There appeared at that time and place the following persons:

**PARTIES IN INTEREST:**

Petitioner:

[REDACTED]  
[REDACTED]  
[REDACTED]

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Respondent:

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

By: [REDACTED], IRIS supervisor  
The Management Group (TMG)  
1 S. Pinckney Street, Suite 320  
Madison, WI 53703

**ADMINISTRATIVE LAW JUDGE:**

Gary M. Wolkstein  
Division of Hearings and Appeals

**FINDINGS OF FACT**

1. Petitioner (CARES # [REDACTED]) is a 50 year old resident of Marathon County.

2. Petitioner has been a participant in the IRIS program since July 18, 2013. Her primary IRIS services have been personal care worker (PCW) and supportive home care (SHC) provided by various providers obtained by petitioner especially her son and her boyfriend.
3. The IRIS staff have been regularly informing petitioner that she needs to obtain a physician referral to pursue Medicaid SHC or PCW hours in order to maximize her MA services prior to IRIS funding. Despite those reminders, petitioner has consistently failed to obtain a physician referral for Medicaid payments for a personal care worker (PCW) hours to meet her care needs, prior to utilizing any IRIS paid funding for SHC hours.
4. The petitioner is required to utilize services covered by the Medicaid State plan to the fullest extent prior to using IRIS funding for Supportive Home Care (SHC) hours per the IRIS Waivers Manual, 4.06(b)(c) and 5.6(a)4.
5. On or about May 27, 2015, the IRIS staff conducted with petitioner her Supportive Home Care Hours Assessment Tool (document E), and determined that petitioner only required 34.75 hours per month for routine hands-on, SHC services mostly by her son.
6. The petitioner's last IRIS SHC assessment prior to May 27, 2015 was during 2013 in which she was determined to be eligible for 110 IRIS paid SHC hours per month.
7. The Department sent a June 2, 2015 Notice of Action to the petitioner stating that her IRIS funded Supportive Home Care (SHC) hours would be reduced effective July 1, 2015 from 110 to 34.75 hours per month because she does not need that level of service to support her outcome. Exhibit B1.
8. If petitioner obtained a physician referral, she would be eligible for MA personal care worker hours (MAPC) or self-directed personal care (SDPC) as a means to obtain additional funding for her care needs.

### 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. IRIS is a fee-for service self-directed personal care program. IRIS policies are found online at <http://www.dhs.wisconsin.gov/publications/P0/P00708.pdf>.

IRIS, which stands for Include, Respect, I Self-Direct, is designed to allow recipients in counties offering Family Care to direct their own cares, an option MA-Waiver recipients must have. It is a fee-for-service alternative to Family Care, PACE, or Partnership developed pursuant to waiver obtained through section 6087 of the Deficit Reduction Act of 2005 (DRA) and section 1915(j) of the Social Security Act. The waiver document providing the program's authority is available at <http://www.cms.gov/MedicaidStWaivProgDemoPGI/MWDL/list.asp>.

The federal government's general guidance for the program is found at 42 C.F.R. § 441.450 – 484. Those regulations require the Department's agent to assess the participant's needs and preferences and then to 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. Wisconsin IRIS policies are found online at <http://www.dhs.wisconsin.gov/publications/P0/P00708.pdf>.

#### I. JURISDICTION.

The first concern here is whether jurisdiction is present to review the IRIS Consultant Agency's actions. The federal waiver document makes the following declaration regarding Medicaid fair hearing rights being applicable to IRIS agency actions:

The State provides an opportunity to request a Fair Hearing under 42 CFR Part 431, Subpart E to individuals: (a) who are not given the choice of home and community-based services as an alternative to the institutional care specified ... ; (b) are denied the service(s) of their choice or the providers(s) of their choice; or (c) **whose services are denied, suspended, reduced or terminated.** The State provides notice of action as requested in 42 CFR §431.210.

...

§1915(c) *Home and Community-Based Services Waiver*, Appendix F. In this case, the IRIS Consultant Agency has reduced the petitioner's monthly Supportive Home Care (SHC) hours effective July 1, 2015 from 110 to 34.75 hours, so subject-matter jurisdiction is present.

## II. REDUCTION OF PETIONER'S IRIS SUPPORTIVE HOME CARE HOURS

The federal self-directed personal assistance services rule requires that a state have an approved § 1915(c) waiver document before an IRIS-type program can be offered. 42 C.F.R. § 441.452(a). It does have a service category of "customized goods and services." § 1915(c) *Home and Community-Based Services Waiver*, #0485R01.05., Appendix C-1, p.86. The Waiver's requirements for approved services in this category include (1) that it meets an assessed long term support need, **(2) that the support is not available through another source**, and (3) that it will maintain the participant's safety in the home/community *or* will decrease dependence on other Medicaid-funded services, *or* will maintain/improve the participant's functioning related to the disability *or* will increase the participant's access to the community. (Emphasis added).

In this case, the petitioner was unable to refute that **support is available through another source**. If Ms. Nadeau obtained a physician referral, she would be eligible for MA personal care worker hours (MAPC) or self-directed personal care (SDPC) as a means to obtain additional funding for her care needs. However, as of the July 14, 2015 hearing date, petitioner has refused to do so.

The federal code language governing waiver programs such as IRIS allows for coverage of the following categories of services:

- (1) Case management services.
- (2) Homemaker services.
- (3) Home health aide services.
- (4) **Personal care services.**
- (5) Adult day health services.
- (6) Habilitation services.
- (7) Respite care services.
- (8) Day treatment or other partial hospitalization services, psychosocial rehabilitation services and clinic services (whether or not furnished in a facility) for individuals with chronic mental illness, subject to the conditions specified in paragraph (d) of this section.
- (9) Other services requested by the agency and approved by CMS as cost effective and necessary to avoid institutionalization.

(Emphasis added).

42 CFR § 440.180(b).

During the July 14, 2015 hearing and in its written closing argument, the IRIS program established through testimony and evidence that petitioner has refused and/or failed to pursue the process to obtain a physician referral to pursue Medicaid paid supportive home care (SHC) or personal care worker (PCW) hours. Despite ongoing IRIS staff reminders, petitioner has consistently failed or refused to obtain a physician referral for Medicaid payments for a personal care worker (PCW) hours to meet her care needs, prior to

utilizing any IRIS paid funding for SHC hours. The Department established that IRIS policy requires that an IRIS participant utilize services covered by the Medicaid State plan to the fullest extent prior to using IRIS funding for Supportive Home Care (SHC) hours per the IRIS Waivers Manual, 4.06(b)(c) and 5.6(a)4. The only reasonable explanation for petitioner's refusal to pursue Medicaid funding of her home care is that Medicaid does not pay any family member for care, while the IRIS program does pay relatives for SHC and PCW services for an IRIS recipient. The petitioner appears to want her son to be paid from IRIS funds for her SHC services.

In its closing argument, IRIS manager, [REDACTED], stated in pertinent part:

. . . Ms. Nadeau's additional hours were continued through her 2014 annual plan year to allow her time to establish a new primary physician and then subsequently secure personal care services. As discussed during the Fair Hearing, the IRIS Consultant began to remind Ms. Nadeau of the program requirement to maximize Medicaid State plan services prior to IRIS funding in preparation for the 2015 annual plan review (document L). In accordance with IRIS Operational Guidelines . . . and the Medicaid Waivers Manual 4.06 the participant service plan must utilize services covered by the Medicaid State plan to the fullest possible extent before using waiver funds.

While petitioner's apparent desire to use IRIS funds to pay her son as an SHC worker is understandable, IRIS policy clearly requires an IRIS participant to utilize services covered by the Medicaid State plan to the fullest extent prior to using IRIS funding for Supportive Home Care (SHC) hours per IRIS Waivers Manual policy, 4.06(b)(c) and 5.6(a)4. Thus, petitioner failed or refused to meet that requirement as an IRIS participant.

The IRIS representative further established that on May 27, 2015 IRIS staff conducted petitioner's Supportive Home Care Hours Assessment Tool (document E). That assessment determined that petitioner only required 34.75 hours per month for SHC household services by her son or her boyfriend. The petitioner's prior 2013 assessment of 110 SHC hours is outdated, and thus the recent assessment is more reliable regarding petitioner's current SHC needs. While the petitioner was quite argumentative during the hearing, she was unable to provide any reliable testimony evidence to refute the IRIS program's case to support that it correctly reduced the petitioner's SHC hours from 110 to 34.75 hours effective July 1, 2015. Furthermore, the IRIS program submitted a persuasive written closing argument to DHA and to the petitioner. The petitioner failed to submit any responsive closing argument to DHA even by the date of this decision. Accordingly, based upon the above, I conclude that the IRIS program correctly reduced the petitioner's monthly Supportive Home Care (SHC) hours effective July 1, 2015 from 110 to 34.75 hours.

### CONCLUSIONS OF LAW

The IRIS program correctly reduced the petitioner's monthly Supportive Home Care (SHC) hours effective July 1, 2015 from 110 to 34.75 hours.

**THEREFORE, it is**

**ORDERED**

The petition for review herein be and the same is hereby 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 9th day of November, 2015

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\sGary M. Wolkstein  
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 November 9, 2015.

Bureau of Long-Term Support