



FH
[REDACTED]

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

CWA/166566

PRELIMINARY RECITALS

Pursuant to a petition filed June 11, 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 August 26, 2015, at Milwaukee, Wisconsin.

The issue for determination is whether the agency, IRIS, correctly reduced the petitioner's monthly Supportive Home Care from 86 hours to 48 hours.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]

Respondent:

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

By: Jenelle Fritz

Bureau of Long-Term Support
1 West Wilson
Madison, WI

ADMINISTRATIVE LAW JUDGE:

Corinne Balter

Division of Hearings and Appeals

FINDINGS OF FACT

1. The petitioner (CARES # [REDACTED]) is a resident of Milwaukee County.
2. The petitioner is enrolled in and receives services through the IRIS program.
3. On May 28, 2015 IRIS completed the IRIS Supportive Home Care Hours Assessment Tool. This tool estimated that the petitioner needed 48 hours per month for Supportive Home Care (SHC).

4. On June 8, 2015 IRIS sent the petitioner a notice stating that effective July 1, 2015 her Supportive Home Care (SHC) hours were reduced to 29.75 hours per month. The reason for the reduction was “the previous level of SHC hours [was] not justified based on the findings of the SHC Hours Assessment Tool.”
5. On June 11, 2015 the Division of Hearings and Appeals received the petitioner’s Request for Fair Hearing.
6. While the appeal was pending IRIS determined that some additional SHC hours were warranted. They believe that 48 hours per month of SHC hours would meet the petitioner’s needs. This determination is based on the May 28, 2015 IRIS Supportive Home Care Hours Assessment Tool.
7. In addition to the SHC hours, the petitioner receives 124 hours per month through the IRIS Self-Directed Personal Care program. Up to one-third of these hours can be for services incidental to personal cares including, but not limited to, chores such as laundry and light housecleaning.
8. The petitioner’s daughter, Z.R. is paid to provide the SHC hours to the petitioner.

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. 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 issue in this case is the SHC hours. The petitioner has the burden to prove, by a preponderance of the credible evidence, that the requested SHC hours meet the approval criteria. SHC “is the provision of a range of services for participants who require assistance to meet daily living needs, to ensure adequate functioning in the participant’s home, and to support safe access to the community. (See Exhibit 3 at F-1). SHC services can include personal services and household services. *Id.*

On May 28, 2015 IRIS completed a Supportive Home Care Hours Assessment Tool. This “tool uses the average length of time required to complete the tasks for people with above-average levels of need.” (See Exhibit 3 at E-11). The tool is designed to easily account for SHC in order to ensure responsible use of public funds. *Id.* The tool takes into account tasks funded by other sources. *Id.* Tasks funded by other sources cannot be covered under SHC services. *Id.*

At the hearing the petitioner’s daughter had difficulty identifying the specific areas in which the petitioner required additional time. When pressed she mentioned many personal care tasks. The problem is that the personal care tasks are not covered under the SHC hours. In addition even in mentioning those tasks, her testimony was not specific. She could not explain why the Assessment tool was flawed. She did not

articulate what quantity of additional time is needed for each task or what specific behaviors justify more time. Nothing was quantified. IRIS' analysis of petitioner's needs is the most thorough and credible determination in the record. The petitioner and her daughter received a copy of the documents presented by IRIS including the Assessment tool prior to the hearing, yet they offered no specific rebuttal to any of the points or time calculations offered by IRIS. The petitioner must offer some specificity and evidence to support the requested time. Without a better way to quantify the time for services, I have no basis upon which to find in favor of the petitioner's request for additional SHC hours.

CONCLUSIONS OF LAW

IRIS correctly reduced the petitioner's monthly Supportive Home Care from 86 hours to 48 hours.

THEREFORE, it is

ORDERED

That the petition 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.

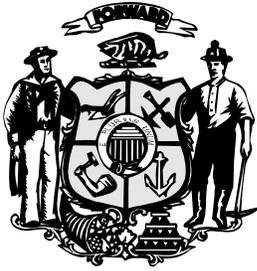
APPEAL TO COURT

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 9th day of September, 2015

\sCorinne Balter
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 September 9, 2015.

Bureau of Long-Term Support