



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]

DECISION

CWA/166859

PRELIMINARY RECITALS

Pursuant to a petition filed June 25, 2015, under Wis. Admin. Code §§ HA 3.03, to review a decision by the Wisconsin Department of Health Services’ agent in regard to IRIS program benefits, a hearing was held on August 11, 2015, by telephone.

The issue for determination is whether the agency correctly denied the petitioner’s One-Time Expense Request for a Bowflex tread climber.

There appeared at that time the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]

█

Respondent:

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

By: [REDACTED] Quality Serv. Spec.
TMG (IRIS consulting agency)

ADMINISTRATIVE LAW JUDGE:

Nancy J. Gagnon
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner is a resident of La Crosse County.
2. The petitioner, age 48, has diagnoses of Ehlers-Danlos Syndrome (EDS) – hypermobility type, chronic pain syndrome, migraines, and irritable bowel syndrome. She sometimes uses a walker for ambulation (she does not use a cane, as it is too hard on her shoulder). Historically, the

petitioner required physical therapy for the symptoms of her EDS. She resides alone, and is able to work part-time in a home-based, computer-related business.

3. The petitioner enrolled in the IRIS program in 2013 and has an individualized service plan (Plan). Her current Plan includes up to 103 hours of personal care monthly, 25 hours of generic supportive home care (SHC) monthly, PERS services (*e.g.*, Lifeline), over the counter supplies, and purchase of a food processor.
4. In April 2015, the petitioner requested a Bowflex tread climber costing \$3,480, from the IRIS program. The request was for a One-Time-Expense that was above and beyond her \$11,537 annual IRIS budget. The IRIS agency denied this request on May 9, 2015. The petitioner then filed this appeal.
5. The petitioner requested the Bowflex tread climber because she would like to exercise at home without supervision. Physical activity and strengthening are helpful in slowing the worsening of the petitioner's EDS symptoms.
6. The agency is not willing to fund the tread climber because it views the purchase as unsafe for this petitioner to use when home alone. The IRIS program must, per federal requirement, approve only services that consistent with preserving the health and safety of the participant
7. Unsupervised use of a treadmill climber by the petitioner is inconsistent with protection of her health and safety.

DISCUSSION

The Include, Respect, I Self-Direct (*IRIS*) program was developed pursuant to a Medical Assistance waiver [Waiver WI.0484.R01.06] 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. This Section 1915(c) waiver document is available at <http://www.cms.gov/MedicaidStWaivProgDemoPGI/MWDL/list.asp>. IRIS is a fee-for-service, 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, and then develop a service plan based on the assessed needs. *Id.*, §§ 441.466. Further, "all of the State's applicable policies and procedures associated with service plan development must be carried out ..." *Id.* §441.468.

Preliminarily, I am not sure that a non-customized piece of exercise equipment is even a covered service under the IRIS waiver. *I.e.*, it is not customized, is not medical equipment, and is not an adaptive aid. *See*, Waiver WI.0484.R01.06, Appendix C, "Summary of Services Covered." However, that argument was not raised by the agency, and I will address the issue as presented at hearing.

Both the federal Medicaid waiver statute and the pertinent federal rule require the Department to assure a recipient's health and welfare:

§ 441.302 State assurances.

Unless the Medicaid agency provides the following satisfactory assurances to CMS, CMS will not grant a waiver under this subpart and may terminate a waiver already granted:

(a) *Health and Welfare* —Assurance that necessary safeguards have been taken to protect the health and welfare of the recipients of the services. Those safeguards must include—

- (1) Adequate standards for all types of providers that provide services under the waiver;
 - (2) Assurance that the standards of any State licensure or certification requirements are met for services or for individuals furnishing services that are provided under the waiver; and
 - (3) Assurance that all facilities covered by section 1616(e) of the Act, in which home and community-based services will be provided, are in compliance with applicable State standards that meet the requirements of 45 CFR Part 1397 for board and care facilities.
- (b) ...

42 C.F.R. § 441.302. The responsibility for assurance of a recipient’s welfare is not limited to the enumerated items above, it is a generic responsibility tied to use of Medicaid-based funds. *E.g.*, the prefatory rule on waiver services directs the agency to “prevent the provision of unnecessary or *inappropriate* services and supports. *Id.*, § 441.301c(2)(xii).

In this case, the nurse who observed the petitioner for the purpose of performing an annual functional assessment repeatedly made note of the petitioner being at risk for falls multiple times daily. *See*, Exhibit 1, p. D17. She is at risk for falling while walking, to say nothing of moving on a more precarious treadmill climber. She requires daily assistance getting in and out of the shower, relies on a service dog to catch her falls when transferring, reports the need for dressing, eating, and toileting help due to the joints in her hands dislocating, and also requires toileting help due to balance and dizziness issues. The agency suggested that she exercise in a supervised environment, such as the YMCA. The YMCA is open from 7:00 a.m. to 8:00 p.m. The petitioner would prefer to exercise at home, and at times when no caregiver is present. This sounds dangerous to the agency, and sounds dangerous to me.

I conclude that the petitioner has not met her burden of proving that purchase of a treadmill climber for unsupervised home use is consistent with preservation of her safety. Thus, the denial is upheld.

CONCLUSIONS OF LAW

- 1. The IRIS agency correctly denied the petitioner’s One-Time-Expense Request for a treadmill climber.

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 Madison,
Wisconsin, this 28th day of September, 2015

\sNancy J. Gagnon
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 28, 2015.

Bureau of Long-Term Support