



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

DECISION

CWA/168623

PRELIMINARY RECITALS

Pursuant to a petition filed September 08, 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 October 01, 2015, at Port Washington, Wisconsin.

The issue for determination is whether the agency correctly discontinued Include, Respect, I Self-Direct (IRIS) funding for Petitioner's Tae Kwon Do class.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

Respondent:

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

By: Carrie Haugen of TMG on behalf of the Department of Health Services
Bureau of Long-Term Support
1 West Wilson
Madison, WI

ADMINISTRATIVE LAW JUDGE:

David D. Fleming
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner is a resident of Ozaukee County.
2. Petitioner requested this hearing to contest the discontinuance of IRIS funding for a Tae Kwon Do class that Petitioner has been involved in for about 8 years.

3. Petitioner is 23 years of age (DOB [REDACTED]). He is diagnosed with autism, a seizure disorder and ADHD. He does work in a supported work environment. He does drive. He is independent as to his activities of daily living (ADLs) including mobility and transfers. He lives alone in his own apartment.
4. The IRIS program did discontinue funding for the Tae Kwon Do class. The rationale for the discontinuance is that a general gym membership at the local YMCA would be \$34.00 per month and Tae Kwon Do is \$130.00 per month and that, given Petitioner's abilities, the Tae Kwon Do is not cost effective, necessary to prevent institutionalization or a responsible use of tax dollars. Exhibit # 2-A1.

DISCUSSION

The Include, Respect, I Self-Direct (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. 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 CFR §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. The service plan may include homemaker services and "other services" allowed by the state agency. *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. The federal rule allows IRIS to pay for items that allow the client to reduce human assistance for program-covered human assistance expenditures. *42 CFR § 441.482*.

As with most public assistance benefits the initial burden of demonstrating eligibility for any particular benefit or program at the operational stage falls on the applicant, *Gonwa v. Department of Health and Family Services, 2003 WI App 152, 265 Wis.2d 913, 668 N.W.2d 122 (Ct.App.2003)*. In other words, it is a petitioner's burden to demonstrate that s/he qualified for the requested service by a preponderance of the evidence. It is not the program/Department's burden to prove that s/he is not eligible. Further, I note that all Medicaid is meant to provide the most basic and necessary health care services at a reasonable cost to a large number of persons and must authorize services according to the Wisconsin Administrative Code definition of medical necessity. *Wis. Admin. Code, § DHS 101.03(96m)*.

Petitioner was represented at the hearing by his father. He maintains that the Tae Kwon Do is a program Petitioner has been involved in for about 8 years and it is a specialized class for individuals with special needs. He stated that it helps Petitioner with discipline, balance and gross motor skills.

I am declining to reverse the discontinuance of the Tae Kwon Do. The IRIS program is to provide basic services necessary to keep a person from being institutionalized. Petitioner is independent as to his ADLs. He lives alone in the community. He has a car and drives. He does work. While Petitioner may benefit from the Tae Kwon Do class the evidence is not sufficient to demonstrate that it prevents institutionalization and is, therefore cost effective.

CONCLUSIONS OF LAW

That the evidence is not sufficient to demonstrate that a request by Petitioner to continue Include, Respect, I Self-Direct (IRIS) funding for the Tae Kwon Do class is cost effective or necessary to keep Petitioner from being institutionalized.

THEREFORE, it is

ORDERED

That this 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 27th day of November, 2015

\sDavid D. Fleming
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 27, 2015.

Bureau of Long-Term Support