



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

CWA/168738

PRELIMINARY RECITALS

Pursuant to a petition filed September 16, 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 05, 2015, at Milwaukee, Wisconsin.

The issue for determination is whether the agency properly denied the Petitioner's application for enrollment in the IRIS program.

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: Tina Miller

Bureau of Long-Term Support
1 West Wilson

Madison, WI

ADMINISTRATIVE LAW JUDGE:

Debra Bursinger
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner is a resident of Milwaukee County.

2. Petitioner was previously enrolled in the IRIS program from June 1, 2010 – June 30, 2015. On June 16, 2015, the IRIS agency issued a Notice of Action to the Petitioner informing him of the agency's intent to dis-enroll him based on the program's inability to ensure his health and safety.
3. On June 19, 2015, the Petitioner voluntarily disenrolled from the IRIS program. The agency process his request and effective June 30, 2015, the Petitioner was no longer enrolled in the IRIS program. A notice of voluntary disenrollment was issued by the agency to the Petitioner on June 24, 2015.
4. On July 1, 2015, the Petitioner enrolled in the Family Care program.
5. On July 21, 2015, the IRIS agency received a new referral to the program from the Petitioner.
6. Petitioner's diagnoses include paraplegia, pressure ulcers and incontinence of bowel/bladder. He has significant limitations in the areas of self-care, walking, performance of manual tasks, working and capacity for independent living. He needs assistance with all activities of daily living (ADLs).
7. The IRIS consultant (IC) conducted a home visit with the Petitioner on August 5, 2015. The IC found the Petitioner's home to be extremely cluttered, making it difficult for the Petitioner to safely maneuver his wheelchair. The Petitioner informed the IC at that time that he had told FC not to send any more workers because it is a waste of time. The IC assisted the Petitioner to complete paperwork and reminded the Petitioner of the need to submit paperwork to iLife (the Fiscal Service Agency) no later than August 13, 2015. The Petitioner did not submit the paperwork by the deadline.
8. The IC attempted to contact the Petitioner on August 17, 28, 19 and 20, leaving messages for the Petitioner to return the call. On August 24, 2015 the IC again attempted to contact the Petitioner but received a message that the number was not working. Attempts to contact the Petitioner were made again on September 3, 2015 and the agency received the same message. On September 4, 2015, the Petitioner contacted the agency to request a new IC complaining that his IC had not contacted him.
9. On September 25, 2015, the agency issued a Notice of Action to the Petitioner informing him that his enrollment into the IRIS program was denied. The agency cites IRIS Policy 3.3A.1 for its denial, asserting that it cannot develop an Individual Support and Service Plan (ISSP) to ensure the Petitioner's health and safety.

DISCUSSION

The IRIS program is an alternative to Family Care, PACE, or Partnership programs for individuals requesting a long-term care support program. Medicaid Eligibility Handbook, § 37.1.1.

The Petitioner was previously enrolled in the IRIS program. When the agency took steps to involuntarily dis-enroll the Petitioner, the Petitioner decided to voluntarily dis-enroll and enroll instead in the Family Care program. Shortly thereafter, the Petitioner requested to re-enroll in IRIS. Because his enrollment ended effective June 30, 2015, his request to re-enroll on July 21, 2015 is considered as a new application and the burden is on the Petitioner to demonstrate that he meets the criteria for enrollment.

The agency relies on Policy 3.3A.1(5) for its decision to deny the Petitioner's enrollment. That policy states as follows:

5. "Inability or unwillingness to develop an Individual Support and Service Plan (ISSP) that ensures the participant's health and safety" refers to situations wherein the participant is unwilling or unable to address identified health and safety concerns resulting in the IRIS Consultant Agency (ICA) being unable to ensure the health and

welfare of the participant as required by the 1915 (c) Home and Community-Based Services (HCBS) Waiver. The ICA must provide documentation of efforts to assist the participant in resolving the health and welfare concerns.”

The agency cites the difficulties noted in Findings of Fact #7 and 8 in contacting the Petitioner and getting him to timely complete the enrollment paperwork. In addition, the agency noted the condition of the Petitioner’s apartment and his unwillingness to have Family Care workers come to his home. The IC testified at the hearing regarding his home visit and his attempts to contact the Petitioner. The agency also submitted documentation of the attempts to contact the Petitioner and notes from the home visit.

In addition to the difficulties encountered in the enrollment process, the agency testified that previous situations with the Petitioner that led to the agency issuing the involuntary dis-enrollment in June, 2015 were also considered. Specifically, the agency cited an incident in March, 2015 in which the Petitioner chose to remain on the porch of his home for 3 days and nights, suffering frostbite, burns (from smoking) and dehydration. The Petitioner was hospitalized for 10 days at [REDACTED]. He was then admitted to [REDACTED] [REDACTED] for hyperbaric oxygen treatment/wound care. From there, he was transferred to [REDACTED] /wound care. The agency testified that the Petitioner did not inform his IC or the agency of his transfer to Wellspring. The agency noted that the Petitioner has a history of not maintaining contact with the IC and a “no contact” letter was issued to him on February 26, 2015.

The agency provided evidence that the Petitioner had the ability to contact the IC and had access to a phone during the March incident but he did not attempt to make contact. In addition, the Petitioner has refused the assistance of friends and family. Further, the Petitioner told his IC that he would leave Wellspring against medical advice so as not to exceed the 90 day maximum stay. Wellspring staff reported to the agency that the Petitioner refused to take prescribed medication and failed to comply with facility policies and procedures during his stay.

The agency presented additional evidence that the Petitioner has been receiving supportive home care services through Trinity Home Healthcare. The Petitioner’s niece is the Trinity employee providing those services to him. Though Trinity has billed and received payment for care hours, the IC noted that the condition of the Petitioner’s apartment is such that it is questionable whether the services are being provided. In addition, the agency noted that the caregiver submitted timesheets for services when the Petitioner was hospitalized. It was the Petitioner’s responsibility to ensure that the home health agency was not billing for services that were not provided.

The agency also noted that during the Petitioner’s previous enrollment, he had not been allowed to be the employer of his workers but instead received all cares via a provider agency. This was due to significant concerns regarding his ability to follow program rules and manage his caregiving staff. The Petitioner appealed that decision and the agency’s decision was upheld on appeal with the ALJ finding that the Petitioner was completing timesheets inaccurately and forging workers’ signatures. See DHA Case No. CWA/139547 (Exhibit I).

The agency presented the testimony of the IC and documentation of case notes, medical records and incident reports to support its assertion that it cannot develop an ISSP to ensure the health and safety of the Petitioner.

At the hearing, the Petitioner provided little evidence to rebut the primary basis of the agency’s action. He testified with regard to the agency’s previous decision to not allow him to hire workers. He also stated that an ISSP cannot be developed if he is not given a budget or allocation. He disputed that the IC attempted to contact him.

The IRIS program is a self-directed program and there must be evidence to demonstrate that the Petitioner has the ability and willingness to be able to direct his own cares. In this case, the agency has presented sufficient evidence to demonstrate that it cannot develop an ISSP to ensure the Petitioner's health and safety due to concerns with his ability to manage paperwork, follow medical advice, obtain the proper and necessary services and maintain necessary contact with the agency. Therefore, I conclude that the agency properly denied the Petitioner's request to enroll in the IRIS program.

CONCLUSIONS OF LAW

The agency properly denied the Petitioner's request to enroll in the IRIS program.

THEREFORE, it is ORDERED

That the Petitioner's 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 4th day of December, 2015

\sDebra Bursinger
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 December 4, 2015.

Bureau of Long-Term Support