



STATE OF WISCONSIN  
Division of Hearings and Appeals

---

In the Matter of

[REDACTED]  
[REDACTED]  
[REDACTED]

DECISION

[REDACTED]

---

**PRELIMINARY RECITALS**

Pursuant to a petition filed December 10, 2015, under Wis. Admin. Code, §HA 3.03, to review a decision by the Bureau of Long Term Care to discontinue eligibility under the Include, Respect, I Self-Direct (IRIS) program, a hearing was held on January 6, 2016, by telephone.

The issue for determination is whether the agency correctly determined that petitioner no longer meets the level of care requirement for IRIS eligibility.

**PARTIES IN INTEREST:**

Petitioner:

[REDACTED]  
[REDACTED]  
[REDACTED]

Respondent:

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

By: [REDACTED]  
TMG  
1 S. Pinckney St., Suite 320  
Madison, WI 53703

**ADMINISTRATIVE LAW JUDGE:**

Brian C. Schneider  
Division of Hearings and Appeals

**FINDINGS OF FACT**

1. Petitioner is a 64-year-old resident of Milwaukee County who has been eligible for IRIS.
2. Petitioner has been eligible for IRIS. His diagnoses are diabetes, obesity, and a mid-calf amputation of his right leg.
3. The agency did an annual reassessment in December, 2015. A screener met with petitioner to do a new functional screen. She found that petitioner was independent in his activities of daily living (ADLs). He is able to ambulate with a prosthetic, also with a cane or walker.

- 
4. Petitioner needs assistance with meals (grocery shopping in particular), laundry/chores, and transportation. Those areas are considered to be instrumental activities of daily living (IADLs).
  5. After the assessment the agency determined that petitioner no longer meets the IRIS level of care requirement. By a notice dated December 2, 2015 the agency informed petitioner that IRIS would be discontinued. The effective date would be January 1, 2015, but eligibility was ordered to be continued pending this decision.

### 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](http://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. To qualify for a nursing home level of care a person must have a long-term care condition expected to last at least one year. See Overview of the Long Term Care Functional Screen, §1.2, found at [www.dhs.wisconsin.gov/lc/FUNCTIONALSCREEN/WebCT/instructions1.htm](http://www.dhs.wisconsin.gov/lc/FUNCTIONALSCREEN/WebCT/instructions1.htm).

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](http://www.dhs.wisconsin.gov/bdds/IRIS/IRISPolicySummary.pdf). The plans also are updated at least on a yearly basis.

The Department has developed a computerized functional assessment screening system. The system relies upon a face-to-face interview with a quality assurance screener who has at least a bachelor of science degree in a health or human services related field, with at least one year of experience working with the target populations (or, if not, an individual otherwise specifically approved by the Department based upon like combination of education and experience). The screener asks the applicant, or a recipient at a periodic review, questions about his or her medical conditions, needs, cares, skills, activities of daily living, and utilization of professional medical providers to meet these needs. The assessor then submits the Functional Screen Report for the person to the Department's Division of Disability and Elder Services. The Department enters the Long Term Functional Screen data into a computer program to see if the person meets any of the required levels of care.

If the assessor enters information into the functional screen correctly, then it is assumed that the computer will accurately determine the level of care. In this case, I find that the screen was completed correctly.

To meet a nursing home level of care, the person must require

... ongoing care, assistance or supervision from another person, as is evidenced by any of the following findings from application of the functional screening:

1. The person cannot safely or appropriately perform 3 or more activities of daily living.



- 2. The person cannot safely or appropriately perform 2 or more ADLs and one or more instrumental activities of daily living.
- 3. The person cannot safely or appropriately perform 5 or more IADLs.
- 4. The person cannot safely or appropriately perform one or more ADL and 3 or more IADLs and has cognitive impairment.
- 5. The person cannot safely or appropriately perform 4 or more IADLs and has cognitive impairment.
- 6. The person has a complicating condition that limits the person's ability to independently meet his or her needs as evidenced by meeting both of the following conditions:
  - a. The person requires frequent medical or social intervention to safely maintain an acceptable health or developmental status; or requires frequent changes in service due to intermittent or unpredictable changes in his or her condition; or requires a range of medical or social interventions due to a multiplicity of conditions.
  - b. The person has a developmental disability that requires specialized services; or has impaired cognition exhibited by memory deficits or disorientation to person, place or time; or has impaired decision making ability exhibited by wandering, physical abuse of self or others, self neglect or resistance to needed care.

Wis. Admin. Code, §DHS 10.33(2)(c). At this point in time petitioner does not require assistance with ADLs. He requires assistance with three IADLs, but that is not sufficient to rise to the nursing home level of care. Petitioner does not have a cognitive impairment that would meet no. 6 in the list.

Petitioner's main concern is that his diabetes is likely to worsen. If it does, he absolutely can reapply for the IRIS program. However, his situation at the time of the reassessment did not meet the level of care requirement, and thus I must conclude that the determination by the IRIS agency was correct.

**CONCLUSIONS OF LAW**

The IRIS agency correctly determined that petitioner did not meet the required nursing home level of care at this reassessment in December, 2015.

**THEREFORE, it is** **ORDERED**

That the petition for review 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 13th day of January, 2016

---

\sBrian C. Schneider  
Administrative Law Judge  
Division of Hearings and Appeals



**State of Wisconsin \DIVISION OF HEARINGS AND APPEALS**

Brian Hayes, Administrator  
Suite 201  
5005 University Avenue  
Madison, WI 53705-5400

Telephone: (608) 266-3096  
FAX: (608) 264-9885  
email: [DHAmail@wisconsin.gov](mailto:DHAmail@wisconsin.gov)  
Internet: <http://dha.state.wi.us>

The preceding decision was sent to the following parties on January 13, 2016.

Bureau of Long-Term Support