



STATE OF WISCONSIN  
Division of Hearings and Appeals

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In the Matter of

[REDACTED]  
[REDACTED]  
c/o [REDACTED]  
[REDACTED]  
[REDACTED]

DECISION

CWA/171062

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**PRELIMINARY RECITALS**

Pursuant to a petition filed December 31, 2015, under Wis. Admin. Code § HA 3.03, to review a decision by the Bureau of Long-Term Support in regard to IRIS, a Medical Assistance (MA) – related program, a hearing was held on April 12, 2016, by telephone. Hearings set for February 10 and March 9, 2016, were rescheduled at the petitioner’s request. Also, the hearing record was held open 28 days for submission of updated medical records from the petitioner, which were received.

The issue for determination is whether petitioner meets nonfinancial requirements for continued IRIS eligibility.

There appeared at that time the following persons:

**PARTIES IN INTEREST:**

Petitioner:

[REDACTED]  
[REDACTED]  
c/o [REDACTED]  
[REDACTED]  
[REDACTED]

Respondent:

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

By: Ms. [REDACTED] [REDACTED], Screening Spec.  
TMG

**ADMINISTRATIVE LAW JUDGE:**

Nancy J. Gagnon  
Division of Hearings and Appeals

**FINDINGS OF FACT**

1. Petitioner is a resident of Milwaukee County.

2. Petitioner has been a participant in the IRIS program since 2013. He was scheduled for an annual eligibility review in December 2015. A long-term care functional screen was completed on November 24, 2015.
3. The screener found that petitioner is independent in all of his activities of daily living (ADLs) – bathing, dressing, eating, toileting, transferring, and mobility. She also concluded that the petitioner needs assistance with the IADL of transportation. The screener concluded that the petitioner is independent in the IADLs of meal preparation, medication administration, money management, laundry/chores, communication and telephone use. The petitioner is unable to drive due to seizure history.
4. When the petitioner was screened in December 2014, he was experiencing seizures weekly, with poor control. At that time, his screener concluded that he needed physical assistance with bathing, eating, and in-home mobility; help was not needed with dressing, toileting or transfers. She also concluded that he needed significant help with meal preparation, laundry/chores, and transportation. It was determined that the petitioner was eligible as a member of the Physical Disability Target Group.
5. The petitioner, age 44, is not cognitively disabled, although he has some short term memory deficits. His diagnoses include seizure disorder (focal epilepsy), arteriovenous malformation (AVM) resulting in childhood surgery, memory loss, rhinitis, mild chronic airway obstruction, esophageal reflux, reduced vision in one eye related to the AVM, panic disorder, depression, and alcohol abuse. The seizures began in 2008.
6. When the results of the 2015 screening were run, the petitioner was found to no longer meet a target group definition or a level of care requirement for IRIS eligibility. He was informed of the proposed discontinuance by an IRIS notice dated November 15, 2015. Additionally, the Department mailed the petitioner a notice dated November 30, 2015, which advised that his IRIS eligibility was ending effective January 1, 2016.
7. The petitioner was seen by a medical provider for a seizure occurring on February 8, 2016, and for a flurry of seizures occurring on February 25-29, 2016. He was not seen by medical providers for seizures from March 1 through the date of hearing.
8. As of April 2016, the petitioner requires physical assistance with in-home mobility after seizures. He does not require assistance with bathing, dressing, eating, or transferring. The petitioner also requires assistance with transportation and laundry/chores. He is independent in medication administration, meal preparation, money management, and communication/telephone use. The petitioner does not have a protective payee for his disability benefits.

### 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 Policy Manual (Manual)*, § 2.1 at <https://www.dhs.wisconsin.gov/publications/p0/p00708.pdf> . The

physical disabilities must be such that the person requires a level of care equal to the level of a nursing home, “as determined by the LTC Functional Screen.” *Medicaid Eligibility Handbook*, §37.1.3; this requirement is mandated by 42 C.F.R. §440.40. 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. *Manual*, § 2.1. IRIS plans of care are updated annually or when a participant requests a change in the plan. *Manual*, § 1.2E.1.

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 college degree in a health or human services related field, and with at least one year of experience working with the target populations (or the equivalent). The screener asks the applicant/recipient questions about his /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. 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. Here, the 2015 program results was that the petitioner both (1) no longer met a target group definition and (2) no longer met the functional level of care requirements.

The agency explained that a major difference between last year’s “positive” screening, and this year’s negative screening was that the petitioner was no longer experiencing seizures on a weekly basis. As a result, his mobility and self-care ability has improved. This lowered the level of his needs in the screening process. The petitioner argues that the 2015 screen did not correctly capture his seizure frequency, and asserts that he needs physical help with eating (choking prevention) and in-home mobility in the recovery period that follows a seizure. He also asserts that he needs help with meal preparation, medication administration, money management, laundry/chores, and transportation. The agency agrees that he needs help with transportation.

A person must fit within a target group definition to be IRIS-eligible. The petitioner is not elderly, and the relevant target group for him is that of physical disability. To fit within the physical disability target group, a person must have a “physical condition, including a ... neurological ... impairment, which results from injury, disease or congenital disorder and which significantly interferes with ... at least one major life activity of a person.” Wis. Stat. § 15.197(4)(a)(2). The pertinent portion of the same statute’s definition of “major life activity” includes the ability to perform “self care, manual tasks..., walking, receptive and expressive language, breathing, ... and capacity for independent living.”

When the petitioner is not having a seizure or in a post-seizure recovery phase, he is capable of independent living and can perform all of the ADL and IADL skills mentioned in the Findings, with the exception of transporting himself. When he is in the recovery phase, he is too unsteady to perform ambulation. The petitioner continues to have a seizure disorder diagnosis, and continues to have bouts of seizures. In the immediate aftermath of the seizures, he is not capable of independent living. Although it is a close call, I conclude that he continues to meet the definition for the vaguely defined Physical Disability target group.

Having said that he fits within the target group does not end the nonfinancial eligibility inquiry, however. The petitioner must need a level of care at the “comprehensive functional capacity level.” There is no state code chapter for the IRIS program. The functional eligibility criteria for the related Family Care program are found at Wis. Admin. Code § DHS 10.33(2). A pertinent excerpt sets out the alternative types of needs that create functional eligibility:

**(c) *Comprehensive functional capacity level.*** A person is functionally eligible at the comprehensive level if the person requires 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. ...

*Id.*, (2)(c).

For either an IRIS or a Family Care eligibility case, this petitioner would be functionally eligible if he needed help with either (1) two ADLs and one “instrumental activities of daily living” (IADL), or (2) five IADLs. *See*, Wis. Admin. Code §§ DHS 10.33(2)(c), & 10.13(32). The petitioner needs physical assistance at times (post-seizure) for his in-home mobility; I gave him the benefit of the doubt and found that assistance was needed with in-home mobility.

The petitioner argued that he also needs assistance for bathing/showering. The petitioner offered no documentation from a medical professional that supported his argument that he cannot bathe independently. I recognize that the petitioner probably should not shower within a few hours of a seizure, but showers for this unemployed person can be postponed. Thus, I did not find that he needed bathing assistance as of April 2016.

The petitioner is physically capable of cutting up food and eating it. Therefore, I found that he does not need physical assistance with the ADL of eating. Thus, of the six ADLs, the petitioner only requires physical assistance with one (ambulation).

The remaining inquiry is whether the petitioner needs help with five IADLs. I agree that he needs help with laundry/chores. All agree that he needs transportation help. He told the 2015 screener that he was capable of preparing simple meals, which is all that is required for the meal preparation IADL. Regarding the medication management IADL, the petitioner is physically and cognitively capable of taking his twice daily oral medications independently. He advised the screener that he successfully uses a pill sorter, and that he adequately calls in his prescription refills. As a result, I found that he does not require help with medication administration in 2016. I note that the medical notes submitted post-hearing do indicate a pattern of the petitioner abusing alcohol and then forgetting to take anti-seizure medication, which not surprisingly leads to a seizure episode. However, the petitioner can choose to not use alcohol and to take his medication.

I also found that the petitioner does not need assistance with money management. His disability benefits are not paid to a protective payee, which is quite telling. He is able to complete transactions and identify money denominations, and told his screener that he can manage his money (his aunt disagreed at hearing). I found that he is capable of money management. Finally, all parties agree that the petitioner is independent in the use of a telephone. The end result of these findings is that the petitioner requires assistance with two IADLs (laundry/chores, and transportation), which is not enough. The standard for eligibility is five IADLs.

When the petitioner failed the functional screening standards in § DHS 10.33(2), he became ineligible for IRIS. The Department’s practice is to first screen a person for functional eligibility under § DHS 10.33, and if the person is found eligible, to then let the person choose between the Family Care and IRIS programs for receipt of services.

**CONCLUSIONS OF LAW**

The petitioner no longer meets the functional capacity/level of care requirement for IRIS eligibility.

**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 18th day of May, 2016

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\sNancy J. Gagnon  
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 May 18, 2016.

Bureau of Long-Term Support