



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

██████████ ██████████
████████████████████
██

DECISION

CWA/173292

PRELIMINARY RECITALS

Pursuant to a petition filed March 31, 2016, under Wis. Admin. Code § HA 3.03, to review a decision by the Bureau of Long-Term Support in regard to Medical Assistance (MA), a hearing was held on April 28, 2016, at Milwaukee, Wisconsin, with all parties appearing by telephone.

The issues for determination are (1) whether the agency (Fiscal Employer Agent) permissibly changed the petitioner's IRIS SDPC authorizations from a monthly to a weekly authorization, effective April 1, 2016, and (2) whether this office has jurisdiction to review this action.

There appeared at that time the following persons:

PARTIES IN INTEREST:

Petitioner:

██████████ ██████████
████████████████████
██

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Respondent:

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

By: ██████████ ██████████ Quality. Serv. Spec.
IRIS SDPC agency

ADMINISTRATIVE LAW JUDGE:

Nancy J. Gagnon
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner is a resident of Milwaukee County.
2. The petitioner is an ongoing participant in the IRIS self-directed personal care program. Prior to April 2016, her service plan declared that she would receive funding for 221 hours monthly/2,660.75 hours annually of self-directed personal care (SDPC). That amount of SDPC is acceptable to the petitioner.

3. On March 22, 2016, the IRIS SDPC oversight agency issued a notice (Notice) to the petitioner. That Notice advised that the petitioner's level of benefits was not changing. It did advise, however, that billing and reimbursement to care workers was being changed to a bi-weekly, rather than monthly, schedule. Further, it advised that the hours authorization was being changed from a monthly number to a weekly number.
4. The application of the Notice's policy change to the petitioner's case resulted in a shift from 221 hours authorized monthly to 50 hours authorized weekly. The petitioner incorrectly concluded that this was a service reduction.
5. The petitioner's service plan identified 221 hours monthly of SDPC, based on her need for 2,660.75 care hours (10,643 units at 15 minutes per unit) shown on her Personal Care Screening Tool. Her authorizations have historically and are currently done on a 53-week basis, to allow one week of overlap, thereby avoiding coverage gaps. Apparently, the plan was that the 53rd week of service would not be needed if the authorization renewal occurred on the exact date of the new authorization's commencement. The old, monthly authorization computation looked like this:

$$2,660.75 \text{ hours divided by } 12 \text{ months} = 221 \text{ hours monthly.}$$

The new, weekly computation is as follows:

$$2,660.75 \text{ hours divided by } 53 \text{ weeks} = 50 \text{ hours weekly (rounded down from } 50.2)$$

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 https://www.medicaid.gov/medicaid-chip-program-information/by-topics/waivers/waivers_faceted.html. See, Waiver #WI.0485.R01.00. 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. The service plan may include personal care and homemaker services. *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 state waiver document also allows for fair hearings where services are denied, suspended, reduced or terminated. See, *Waiver* at Appendix F-1.

The Department states that the process change to weekly authorizations is not an appealable issue. I agree. There is no specific statutory basis for IRIS appeals. The state code section that identifies the topics over which the Division of Hearings and Appeals has jurisdiction contains this pertinent passage:

HA 3.03 Right to appeal. (1) Any person applying or receiving medicaid, food stamps, social services or public assistance may appeal any of the following administrative actions of the department or an agency:

- (a) Denial of an application for benefits or the overt denial of the right to apply.
- (b) ...
- (f) For the COP program and medicaid waiver services, the denial of eligibility for services or reduction or termination of services as provide in s.46.27(7m, Stats.). ...

Wis. Admin. Code § HA 3.03(1). The petitioner has not suffered an eligibility denial, or a reduction or termination in the amount or type of services in her service plan. Thus, this office lacks jurisdiction to review the IRIS program's action here.

CONCLUSIONS OF LAW

1. The Division of Hearings and Appeals lacks jurisdiction to review the IRIS program's decision to issue service authorizations on a weekly rather than monthly basis, as long as the total number of annual service hours is not reduced.

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 27th day of June, 2016

\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 June 27, 2016.

Bureau of Long-Term Support