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STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

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

DECISION
Case #: CWA - 207110

PRELIMINARY RECITALS

Pursuant to a petition filed December 9, 2022, under Wis. Admin. Code, §HA 3.03, to review a decision by the Bureau of Long-Term Support regarding the Include, Respect, I Self-Direct (IRIS) program, a hearing was held on March 27, 2023, by telephone. Hearings set for January 18, February 1, March 1, and March 20, 2023 were rescheduled at the petitioner's request.

The issue for determination is whether the agency correctly denied a request for an extension of equine therapy.

PARTIES IN INTEREST:

Petitioner:

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

Petitioner's Representative:

Atty. ██████████
Disability Rights Wisconsin
131 W Wilson St Suite 700
Madison, WI 53703

Respondent:

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

By: ██████████ ██████████
Midwest Independent Living Choices
3262 Church Street
Stevens Point, WI 54481

ADMINISTRATIVE LAW JUDGE:

Brian C. Schneider
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner is a 51-year-old resident of Lincoln County.

2. Petitioner has a diagnostic history of a traumatic brain injury, anxiety, depression, affective/mood disorder, and borderline personality disorder. She is eligible for the IRIS program with Midwest Independent Living Choices (MILC) as her consulting agency and [REDACTED] as her IRIS consultant.
3. From May 19 through August 15, 2022, petitioner was referred for and received equine therapy through [REDACTED] and therapist [REDACTED]. The therapy “helped her in significant ways.” Petitioner’s hyper-vigilance decreased, as did attempts at self-harm. Her positive affect increased. See Letter from Therapist [REDACTED], page 33 of petitioner’s omnibus exhibit. During her time in the equine therapy she became more open with her psychiatric counselor and showed significant improvement in psychological dysfunction, remoralization, and depression. See Letter from [REDACTED], pages 34-35 of petitioner’s omnibus exhibit.
4. In August, 2022, [REDACTED] filed a budget amendment request for continued twice weekly equine therapy for a one-year period, with the hope that the need for such services will be abated following that period. By a letter dated September 20, 2022, the Department’s Bureau of Adult Programs and Policies (BAPP) denied the request as lacking cost effectiveness.
5. Since the denial petitioner has started to have decreased function. When a new budget year began, MILC was able to include twice monthly equine therapy within petitioner’s budget, and while that level has shown a modicum of effectiveness, petitioner’s counselors are unanimous that twice weekly therapy is the most medically effective level.

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(c) of the Social Security Act. It is a self-directed personal care program.

The federal government has promulgated 42 C.F.R. §441.300 - .310 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.*, §441.301(c)(2). The Department’s agent must also develop a service plan based on the assessed needs.

The IRIS program is a Medical Assistance long term care waiver program that serves elderly individuals and adults with physical and developmental disabilities. IRIS is an alternative to Family Care, Partnership, and PACE—all of which are managed long term care waiver programs. The IRIS program, in contrast, is designed to allow participants to direct their own care and to hire and direct their own workers. The broad purpose of all of these programs, including IRIS, is to help participants design and implement home and community-based services as an alternative to institutional care. See *IRIS Policy Manual*, §1.1B.

The requested equine therapy services were listed under Counseling and Therapeutic Services (Alternative Therapy). They were approved for three months, and thus when the period ended, it was technically the petitioner’s burden to prove the need for more counseling. I must say that she has done so with aplomb. Letters from two counselors, testimony from the equine therapist, her own testimony, and, frankly, the support of the IRIS consultant provides ample evidence of the continued benefit of the therapy. As I have complained in the past in cases such as this one, the BAPP decisionmakers do not attend the hearings, and thus I have only the BAPP’s written reason for denial that was rebutted thoroughly by the petitioner’s evidence. It appears, reading the BAPP’s denial, that the agency is suspicious of equine therapy itself. If that is the case, it is up to the agency to put together a policy

denying or limiting the service. That has not happened, and the agency's reason for denying the service has been rebutted. I thus conclude that the requested Budget Amendment should be approved.

CONCLUSIONS OF LAW

Petitioner has shown that the requested equine therapy is necessary to ensure her long-term care outcomes, and that the BAPP denial was incorrect.

THEREFORE, it is ORDERED

That the matter be remanded to MILC with instructions to take the necessary action to request a new Budget Amendment to provide for twice weekly equine therapy for one year, and the BAPP shall approve the request, to start upon submission of the request. The agency shall do so within 10 days of this decision.

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, 4822 Madison Yards Way, 5th Floor North, 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, **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).

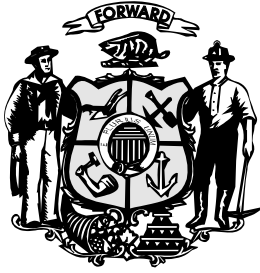
The process for Circuit Court Appeals may be found at Wis. Stat. §§ 227.52 and 227.53. A copy of the statutes may be found online or at your local library or courthouse.

Given under my hand at the City of Madison,
Wisconsin, this 29th day of March, 2023



\s _____
Brian C. Schneider

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 March 29, 2023.

Bureau of Long-Term Support
Attorney [REDACTED]