



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

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

DECISION
Case #: CWA - 207408

PRELIMINARY RECITALS

Pursuant to a petition filed January 17, 2023, under Wis. Admin. Code § HA 3.03, to review a decision by the Bureau of Long-Term Support to deny a service under the Include, Respect, I Self-Direct (IRIS) program, a hearing was held on April 12, 2023, by telephone. A hearing set for March 15, 2023 was rescheduled at the petitioner's request.

The issue for determination is whether the agency correctly denied coverage of a veterinary expense.

PARTIES IN INTEREST:

Petitioner:

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

Petitioner's Representative:

██
██
██

Respondent:

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

By: ██████████
Bureau of Long-Term Support
PO Box 7851
Madison, WI 53707-7851

ADMINISTRATIVE LAW JUDGE:

Brian C. Schneider
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner is a resident of Sauk County who is eligible for the IRIS program with Connections as the consulting agency.

2. Petitioner owns a dog she has trained to assist her in the home, including picking things up and opening doors for her. The dog also helps her psychologically. Petitioner has a background in training rescue dogs, particularly Dobermans like her own dog.
3. In late 2022 petitioner submitted to IRIS a veterinarian bill for \$283 for her dog. By a notice dated December 28, 2022, the requested IRIS reimbursement was denied. Petitioner filed a grievance, but the denial was affirmed on January 12, 2023. The primary reason for the denial was that the dog was not trained by a reputable provider, and secondarily that the dog's apparent primary task was emotional support.

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 IRIS waiver application most recently approved by the Centers for Medicare and Medicaid Services (CMS) is available on-line at www.dhs.wisconsin.gov/iris/hcbw.pdf. See *Application for 1915(c) HCBS Waiver: WI.0484.R03.00 - Jan 01, 2021*. State policies governing administration of the IRIS program are included in the *IRIS Policy Manual* (available at www.dhs.wisconsin.gov/publications/P0/P00708.pdf), *IRIS Work Instructions* (available at www.dhs.wisconsin.gov/publications/P0/P00708a.pdf), and *IRIS Service Definition Manual* (available at www.dhs.wisconsin.gov/publications/p00708b.pdf).

The *Service Definition Manual* defines services dogs under “Aid, Equipment, and Supplies.” Included is the following policy language that is the crux of this case:

Assistive technology also includes the purchase of a service dog. A service dog is defined as a dog that is individually trained by a reputable provider experienced in providing structured training for service dogs to do work or perform tasks for the participant that are directly related to the participant's disability. Costs are limited to the following:

- Purchase of a service dog;
- Post-purchase training that is necessary to partner a service dog with the participant owner; and
- Ongoing maintenance costs of a service dog that include preventative, acute, and primary veterinary care and items necessary for the service dog to perform its task or work.

Service dog costs must be consistent with program policy. Acquisition of all assistive technology including the use of assessments is subject to program policy consistent with this service definition. Assistive technology may be purchased, new or used, or leased to the participant. All assistive technology must meet all the applicable standards of manufacture, safety, design and installation such as Underwriters Laboratory and Federal Communication Commission.

Petitioner's dog essentially acts as a service animal for her, but because she trained him herself, she is not a "reputable provider" as required by the Department. Petitioner has a history of training Doberman rescue dogs, but that simply is not the same as training a dog to be a service dog.

A Department administrative law judge must apply Department policies unless they violate a statute or code provision. Petitioner submitted a 2020 Comment by Disability Rights Wisconsin that, among other items, objected to the "reputable provider" requirement for a dog to be considered a service dog under IRIS. Clearly the Department did not act on that objection, as the policy remains in effect. Thus, although petitioner's medical professionals (and apparently, the Family Care Program that petitioner previously was enrolled in) consider petitioner's dog to be a service dog, I must follow the IRIS policy and conclude that the denial of coverage of the veterinary bill was correct. I need not address the issue of whether the dog primarily is an emotional support provider (a conclusion that I note petitioner strenuously objected to). I also note that petitioner raised issues under the Americans with Disabilities Act (ADA), but this office has no authority to act under that law.

CONCLUSIONS OF LAW

Under IRIS policy the program cannot cover veterinary expenses for petitioner's dog because he is not a "service dog" as defined by program policy.

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, 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

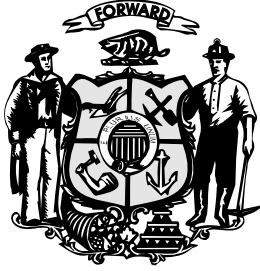
IN INTEREST” **no more than 30 days after the date of this decision** or 30 days after a denial of a timely rehearing (if you request one).

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 17th day of April, 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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Madison, WI 53705-5400

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The preceding decision was sent to the following parties on April 17, 2023.

Bureau of Long-Term Support

