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STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of



DECISION
Case #: CWA - 207522

PRELIMINARY RECITALS

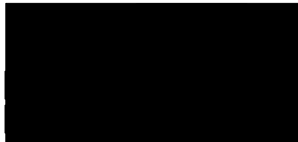
Pursuant to a petition filed on January 26, 2023, under Wis. Admin. Code § HA 3.03, to review a decision by the I Respect I Self-Direct (IRIS) Policy Section, Bureau of Long-Term Support (BAPP) regarding Medical Assistance (MA), a hearing was held on March 29, 2023, by telephone.

The issue for determination is whether the respondent correctly denied a requested budget amendment for an in-home care provider for petitioner.

There appeared at that time the following persons:

PARTIES IN INTEREST:

Petitioner:




Petitioner's Representative:

Attorney Mary Colleen Olson
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:  (written appearance)
Bureau of Long-Term Support
PO Box 7851
Madison, WI 53707-7851

ADMINISTRATIVE LAW JUDGE:

Peter McCombs
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner is a resident of Green County, but is a Dane County resident for Medicaid-related purposes.
2. Petitioner is eligible for IRIS with TMG as her consulting agency.
3. Petitioner's most recent LTCFS dated December 30, 2022, establishes that petitioner meets the requirements for both the physical disability and Federal DD target groups. Exhibit P-31. Petitioner has no effective communication. Exhibit P-28. Her diagnoses include cerebral palsy, brain injury, scoliosis and skin disease. Exhibit P-18. Petitioner is physically resistive to care, and she experiences self-injurious behaviors that include eating anything small within her reach, including dog hair, fuzz, small rocks, string, erasers, etc. Exhibits P-27 and 29. A caregiver must be present throughout all ADLs. Exhibits P-19 and 20. She is incontinent of bowel and bladder daily and is at risk of falling Exhibits P-19 and 21. She has no awareness of safety issues. Exhibit P-29. Petitioner does not sleep through the night and requires cares and supervision during the nighttime hours. Exhibit P-25. She is never left alone for any length of time. Exhibit P-28.
4. Petitioner resides at [REDACTED], a multi-unit apartment complex in [REDACTED], with her brother, and both require home health care.
5. Until January 27, 2023, petitioner's (and her brother's) in-home supportive home care was handled by an agency named Best Life, which charged a daily rate for petitioner's care ranging between \$236.80 and \$505.00. Exhibit P-2. Best Life gave notice in December, 2022 that it was ending its contract as of January 27, 2023 primarily because it was unable to maintain appropriate staffing at [REDACTED].
6. TMG, along with petitioner's family, began a search for a replacement home-health agency. The only agency they could find that would cover the types of services needed by the clients in the [REDACTED] area was For Pete's Sake (FPS), but FPS's quoted rate was \$493.09 per day for petitioner.
7. TMG submitted a budget amendment request, on petitioner's behalf, seeking approval of FPS' daily rate. By a letter dated February 20, 2023, the Bureau of Programs and Policies (BAPP) denied the request as it determined that the requested rate is not cost effective, as the requested rate exceeds the standard rate in the local area.
8. FPS has been providing the services at the lower rate to the satisfaction of all parties involved, but FPS has informed TMG that they cannot continue to do so at the lower rate and will cease coverage unless the rate is increased.

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.

It is the petitioner's burden to prove the need for the higher rate. I note that the BAPP decisionmaker did not attend the hearing in this matter, and thus I have only the BAPP's written reason for denial; the denial was rebutted thoroughly by the petitioner's evidence. Argument provided by Attorney Olson established petitioner's qualification for services and IRIS regulations and policy covering provision of said services. Testimony from both Ms. [REDACTED] and [REDACTED] of TMG and from petitioner's mother established that they have been able to find no other providers to handle the petitioner's necessary cares in [REDACTED], and that FPS has been providing appropriate and necessary care. TMG established that the rate request is, indeed, higher than DHS has previously approved, but I also am aware of the difficulties in finding qualified caregivers in the current market. Again, FPS was noted by a TMG representative to be the only provider serving the [REDACTED] community at this time. While basing its denial on a cost-effectiveness argument, the respondent has established no other provider in the area to permit a proper analysis of cost-effectiveness. I thus must conclude that the requested Budget Amendment should be approved, retroactive to the original requested start date.

CONCLUSIONS OF LAW

The requested rate for supportive home care for the agency FPS is medically necessary and cost effective as no other alternatives have been found, and the BAPP has not shown a more cost-effective alternative.

THEREFORE, it is

ORDERED

That the matter be remanded to TMG with instructions to take the necessary action to request a new Budget Amendment to provide for supportive home care from For Pete's Sake at the requested daily rate of \$493.09, and the BAPP shall approve the request, retroactive to the original requested start date of January 28, 2023. 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).

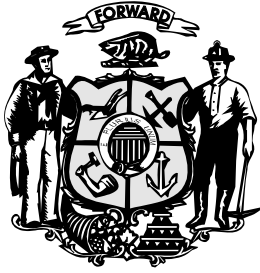
The process for Circuit Court Appeals may be found at Wis. Stat. §§ 227.52 and 227.53. A copy of the statutes may be found online or at your local library or courthouse.

Given under my hand at the City of Madison,
Wisconsin, this 18th day of April, 2023



\s

Peter McCombs
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 April 18, 2023.

Bureau of Long-Term Support
Attorney Mary Colleen Olson