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STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

██████████
██████████
██████████

DECISION
Case #: CWA - 210975

PRELIMINARY RECITALS

Pursuant to a petition filed on November 3, 2023, under Wis. Admin. Code § HA 3.03, to review a decision by the Bureau of Long-Term Support regarding Medical Assistance (MA), a hearing was held on December 20, 2023, by telephone.

The issue for determination is whether the agency correctly terminated Petitioner's IRIS program eligibility.

There appeared at that time the following persons:

PARTIES IN INTEREST:

Petitioner:

██████████
██████████
██████████

Respondent:

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

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

ADMINISTRATIVE LAW JUDGE:

Nicole Bjork
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner is a resident of Racine County.
2. On September 1, 2019, Petitioner was enrolled in the IRIS program. Her diagnoses included protein-calorie malnutrition, COPD, and alcohol abuse.

3. On September 5, 2023, Petitioner underwent a long term care functional screen (LTCFS). The LTCFS noted that Petitioner required assistance with the following activities of daily living (ADLs): bathing. Petitioner also occasionally needed assistance putting on her socks. Petitioner was noted to be independent in all other ADLs. Specifically, Petitioner was independent in her mobility. Previously, she had needed partial assistance. Further, with respect to Instrumental Activities of Daily Living (IADLs), Petitioner required assistance with meal preparation (weekly grocery shopping) and with her laundry. Petitioner was noted to have an increased need for assistance to help her with laundry due to an increase in urinary incontinence. Petitioner displayed concerns with memory loss, which led to memory screenings completed by the screener. Petitioner did not have a passing score on the Animal naming Test, her score was 13 and a passing score is 14. She passed the mini-cognitive assessment with a score of 3. Therefore, memory impairment could not be marked as a diagnosis on her diagnosis page per the LTCFS instructions.
4. On September 26, 2023, the agency sent Petitioner a notice informing her that, based on the September 5, 2023, LTCFS results, Petitioner was no longer functionally eligible for the IRIS program and her enrollment would be terminated effective October 11, 2023.
5. Petitioner filed an appeal of the September 26, 2023, notice.

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 General Information at www.dhs.wisconsin.gov/bdds/IRIS/general.htm. **The physical disabilities must be such that the person requires a level of care equal to the level of a nursing home.** DHS Medicaid Eligibility Handbook, §37.1.3 (emphasis added). 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. See Overview of the Long-Term Care Functional Screen, §1.2, found at www.dhs.wisconsin.gov/lcicare/FunctionalScreen/WebCT/instructions1.htm. IRIS plans of care are updated on an annual basis or when a participant requests a change in the plan. See IRIS Program Policies found at www.dhs.wisconsin.gov/bdds/IRIS/IRISPolicySummary.pdf.

The Department has developed a computerized functional assessment screening system. The system relies upon an interview with a quality assurance screener who has at least a bachelor of science degree in a health or human services related field, with at least one year of experience working with the target populations (or, if not, an individual otherwise specifically approved by the Department based upon like combination of education and experience). The screener asks the applicant, or a recipient at a periodic review, questions about his or 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's Division of Disability and Elder Services. 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.

Wis. Admin. Code, §DHS 10.33(2)(c) defines comprehensive functional capacity:

(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.
4. The person cannot safely or appropriately perform one or more ADL and 3 or more IADLs and has cognitive impairment.
5. The person cannot safely or appropriately perform 4 or more IADLs and has cognitive impairment... [No. 6 omitted as irrelevant to this case].

Comprehensive functional capacity level is equivalent to nursing home level. See Wis. Stat., §46.286. Although the above definition is found in the administrative code chapter relating to the Family Care Program, Division of Hearings and Appeals administrative law judges have applied the definition to the IRIS program as well. In August, 2014, the Deputy Secretary issued a Final Decision in case no. CWA-157032 holding that the code definition does not apply to the IRIS program, thus entailing that the results of the functional screen would be the final word in the level of care determination. That decision was vacated by the Department in April 2015, as part of a settlement of a Circuit Court appeal of that case. Thus, it is evident that the definition of comprehensive, nursing home level of care for IRIS is as set out in Wis. Admin. Code, §DHS 10.33(2)(c).

In this case, the IRIS agency noted that the comprehensive assessments done this year as evidenced by the LTCFS demonstrate that the Petitioner no longer meets a nursing home level of care and is therefore no longer functionally eligible for the IRIS program.

The Petitioner's daughter testified at the hearing. The Petitioner's daughter asserted that the agency interview of her mother took only 15-20 minutes and that her mother couldn't state that she takes medications due to her medical conditions. Further, the Petitioner's daughter testified that her mother's memory issues have increased. The Petitioner's daughter testified that her mother leaves food in places that she should not leave food, that she forgets to eat if not reminded, and that she creates cooking hazards by forgetting to add ingredients (such as water to macaroni and cheese).

The agency representative noted that the Petitioner was no longer eligible for enrollment because she was previously noted to require assistance with mobility, but no longer requires such assistance. The LTCFS found that the Petitioner requires assistance with bathing and also with two IADL, meal preparation and laundry. She does not meet the criteria for the nursing home level of care which is required to demonstrate functional eligibility for the IRIS program. Based on the evidence presented, I conclude that the IRIS agency correctly seeks to disenroll the Petitioner from the IRIS program due to no longer meeting functional eligibility requirements.

However, Petitioner's memory conditions appear to have deteriorated, affecting her ability to complete certain actions. While this decision must decide if the agency made the correct determination with the information available at the time the decision was made, nothing in this decision prevents Petitioner from requesting enrollment into the IRIS program with updated medical information. If Petitioner obtains new

diagnoses related to her memory issues, that will affect her LTCFS and may result in her being functionally eligible. However, Petitioner would have to obtain that information from her doctor or current medical provider.

CONCLUSIONS OF LAW

The IRIS agency correctly seeks to disenroll the Petitioner from the IRIS program due to no longer meeting functional eligibility requirements.

THEREFORE, it is ORDERED

That the Petitioner’s appeal 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, 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.

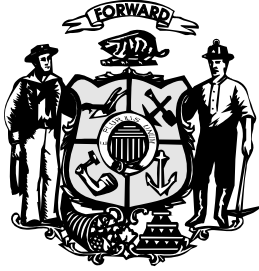
APPEAL TO COURT

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 Milwaukee,
Wisconsin, this 24th day of January, 2024

\s _____
Nicole Bjork
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 January 24, 2024.

Bureau of Long-Term Support