



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

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

DECISION
Case #: CWA - 211775

PRELIMINARY RECITALS

Pursuant to a petition filed January 11, 2024, under Wis. Admin. Code, §HA 3.03, to review a decision by TMG to discontinue the Include, Respect, I Self-Direct (IRIS) program, a hearing was held on February 29, 2024, by telephone.

The issue for determination is whether the agency correctly determined that that petitioner no longer meets the level of care requirement for IRIS eligibility.

PARTIES IN INTEREST:

Petitioner:

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

Petitioner's Representative:

Jean Jarosh
Disability Rights Wisconsin
1478 Midway Road
Menasha, WI 54952

Respondent:

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

By: Carol Taylor
TMG
2424 Rimrock Rd., Suite 230
Fitchburg, WI 53713

ADMINISTRATIVE LAW JUDGE:

Brian C. Schneider
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner is a 57-year-old resident of Chippewa County.
2. Petitioner has been eligible for IRIS since 2021 with TMG as his consulting agency. He has diabetes, chronic pain, neuropathy, obesity with sleep apnea, and hearing loss.

3. A required reassessment was done in October, 2023. Due largely to petitioner's adaptations to his illnesses, he was shown to be able to do almost all of his activities of daily living (ADLs) and instrumental ADLs (IADLs). He is able to do all ADLs but uses adaptive equipment for bathing and toileting. With regard to IADLs, he is independent in all except that he needs help with meal preparation weekly (mainly for grocery shopping) and with laundry/chores weekly. The assessor scored the level of assistance for both of those IADLs as a "one." He handles his own medications, money, telephone, and he is able to drive. He does not work by choice.
4. When the functional screen was run, petitioner was determined to no longer meet the nursing home level of care. By a notice dated January 4, 2024, the agency informed petitioner that IRIS would end effective January 19, 2024. Eligibility was continued pending this appeal.

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.

An IRIS participant must be elderly, or an adult with physical or developmental disabilities. See §1.1A of the IRIS Policy Manual at www.dhs.wisconsin.gov/publications/p0/p00708.pdf. The physical disabilities must be such that the person requires a level of care equal to the level of a nursing home. Manual, §1.2B.2. 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 when a participant requests a change in the plan. See Manual, §5.6. The plans are also updated at least on a yearly basis. Id.

The Department has developed a computerized functional assessment screening system. The system relies upon a face-to-face 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 screener enters information into the functional screen correctly, then it is assumed that the computer will accurately determine the level of care. However, it has been noted in many instances that the computer results in level of care determinations that conflict with the code definitions, and thus this office often handles appeals in which the issue is that the person's level of care meets the nursing home code definition, but the computer calculated a non-nursing home level.

To meet a nursing home level of care, the person must require

... 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....

Wis. Admin. Code, §DHS 10.33(2)(c). A sixth irrelevant criterion is not included in the above list. ADLs include bathing, dressing, eating, mobility, and transferring. Admin. Code, §DHS 10.13(1m). IADLs include meal preparation, medication management, money management, telephone, transportation, and the ability to function at a job site. Admin. Code, §DHS 10.13(32). Laundry and chores was added later by Department policy as an IADL.

Petitioner argues that Department policy is that if a person requires adaptive aids to complete activities, the activity should be considered as meeting the standards listed above. The argument is based upon a Department functional screen “information access” (which I refer to as the “logic” hereafter), the most recent dated 2019. See page 25 of the petitioner’s hearing submission; in August, 2022, a Department section manager confirmed that the 2019 version remains effective, and Ms. Jarosh stated that Disability Rights Wisconsin has not been informed of any revisions. TMG staff at the hearing confirmed an unawareness of any revisions to the functional screen logic.

Thus, although petitioner was noted as being independent in both bathing and toileting and scored a “zero” in the assistance level for both, under the 2019 logic he nevertheless would be considered to be unable to safely or appropriately perform those two ADLs, which would make him potentially eligible under number 2 of §DHS 10.33(2)(c) listed above. That logic has been approved in prior Final Decisions by the Department’s Deputy Secretary. See pages 17 and 28 of petitioner’s submission. Thus, if petitioner cannot perform one IADL, he would remain functionally eligible for IRIS.

That leads, however, to the issue of whether he is unable to perform one IADL. He was scored a “one” for both meal preparation and laundry/chores, and he did not dispute that he needs assistance in both areas only about once per week. I noted, during the hearing, that in the same 2019 functional screen logic, the following is stated regarding IADLs:

The following IADLs are counted, all other IADL answers are ignored:

- Meal Preparation is 2 or 3 (Help is required more than once a week)
- Medication Management is 1, 2a, or 2b (Help is required)
- Money Management is 1 or 2 (Help is required)
- Transportation is 1 b, 1 d, or 2 (Requires an adaptive vehicle or is impossible due to physical, psychiatric, or cognitive impairment)
- Employment Need for Assistance is 2 or 3 and applicant is employed (Need level is daily).
- Ability to Use Telephone is 1b (Hampered by physical or cognitive difficulties).

The meaning of that provision is difficult to ascertain. On one hand, it appears that a person must be found to score a "2" or higher in meal preparation to be considered to meet the requirement. However, laundry/chores is not even mentioned. Thus another reading is that, if a person meets any of the above statuses, he automatically requires assistance with all IADLs, as I note the language that all other IADL answers are ignored. That said, I believe that there is a third explanation. The IADL language was drafted at least as far back as 2008. See page 22 of petitioner's submission. As noted in the recitation of the code citations above, laundry/chores is not listed in the administrative code definition of IADLs. It was added by Department policy at some point after the code was drafted. Thus laundry/chores is not listed in the IADL portion of the logic because, when originally drafted, it was not considered an IADL. The simple fact is that the provision in the logic was never updated to include laundry/chores, even after the task was added to the list of IADLs by the Department.

I conclude that the third reading of the provision is the most logical one. If a person is found to need assistance with laundry/chores, he meets the requirement for that IADL. Frankly, I question whether a person who can drive to the grocery store truly needs assistance with grocery shopping (and under the logic described above petitioner may not meet the need for meal preparation because he was not scored at 2 or above), but I have no trouble finding that petitioner needs assistance with laundry/chores. Thus, under the code, he needs assistance with two ADLs and at least one IADL, and he meets the nursing home level of care.

Petitioner barely meets the level of care requirement to remain eligible for IRIS, and the closeness of the call is reflected in the relatively small amount services he receives (some supportive home care for the meal preparation and cleaning). I conclude, therefore, that petitioner remains eligible for IRIS, meeting the nursing home level of care requirement.

CONCLUSIONS OF LAW

Petitioner continues to meet the nursing home level of care because he needs assistance with two ADLs and at least one IADL.

THEREFORE, it is

ORDERED

That the matter be remanded to the agency with instructions to continue, within 10 days of this decision, petitioner's IRIS eligibility with the finding that he meets the required nursing home level of care.

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

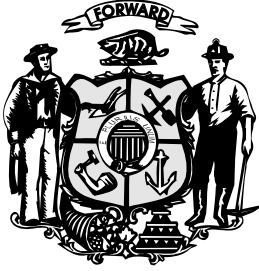
You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Health Services, 1 West Wilson Street, Room 651, **and** on those identified in this decision 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 5th day of March, 2024



\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 5, 2024.

Bureau of Long-Term Support
Attorney Jean Jarosh