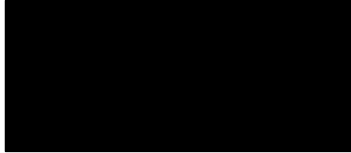




STATE OF WISCONSIN  
Division of Hearings and Appeals

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In the Matter of



**DECISION**

Case #: CWA - 211105

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**PRELIMINARY RECITALS**

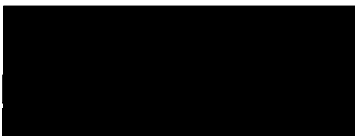
Pursuant to a petition filed on November 21, 2023, under Wis. Admin. Code § HA 3.03, to review a decision by the Bureau of Long-Term Support regarding Medical Assistance (MA), a hearing was held on March 27, 2024, by telephone. The hearing record was held open through April 1, 2024 for submission of additional evidence. Petitioner's representative requested an extension of the deadline. The request was denied because the representative did not establish that she had relevant evidence to submit.

The issue for determination is whether the agency correctly denied petitioner's application for enrollment in the IRIS program based on its inability to ensure petitioner's health and safety because of the absence of an approved restrictive measures application.

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: Lindsey Saatkamp  
Bureau of Long-Term Support  
PO Box 7851  
Madison, WI 53707-7851

**ADMINISTRATIVE LAW JUDGE:**

Beth Whitaker  
Division of Hearings and Appeals

**FINDINGS OF FACT**

1. Petitioner (CARES # ) is a 21-year-old resident of Green Lake County.
2. Petitioner resides with [REDACTED], who is his mother, guardian and primary caregiver.
3. Petitioner's diagnoses include intellectual disability, autism, encephalopathy, epilepsy, Lennox-Gastaut Syndrome, Kohlschutter-Tonz Syndrome, Fetal Alcohol Syndrome, Chiari I Malformation, cognitive impairment due to I/DD, hypothyroidism, carnitine deficiency, growth hormone deficiency, dysarthria, PTSD, disinhibited social engagement disorder, reactive attachment disorder, mood disorder and ADHD. (Ex. C)
4. Petitioner was previously enrolled in the Family Care program.
5. On April 7, 2022, while petitioner was enrolled in the Family Care program, the IRIS Consultant Agency (ICA) MyChoice Wisconsin created a Behavioral Support Plan (BSP) and a Crisis Intervention Plan. Exhibits F and G.
6. On November 15, 2022, petitioner was referred to the IRIS program through the ICA TMG.
7. An ISSP was created for the period beginning November 15, 2022.
8. TMG established a deadline of January 14, 2023 for submission of a Restrictive Measures Application.
9. No Restrictive Measures Application was completed or submitted to the Department of Health Services ("Department") by January 14, 2023
10. On January 15, 2023, the IRIS referral was withdrawn. (Exhibits C and D)
11. The ISSP in effect beginning November 15, 2022 ended January 18, 2023 following the withdrawal of the IRIS referral.
12. On February 16, 2023, the [REDACTED], Chief [REDACTED] wrote that his agency was contacted concerning a Law Enforcement Plan for petitioner and stated that the BPD was limited in its ability to assist with petitioner. Exhibit G1.
13. Petitioner does not have a current Crisis Plan. Exhibit F5.
14. On July 7, 2023 petitioner was again referred to the IRIS program and petitioner and his guardian signed an IRIS Authorization form completed by [REDACTED] an employee of the Local ADRC, for the purpose of enrolling in IRIS. (Exhibit C)
15. On July 7, 2023, a Long Term Care Functional Screen was completed showing that petitioner meets the criteria for physical disability, developmental disability and severe and persistently mentally ill target groups. (Exhibit C)
16. The July 7, 2023 LTCFS established that petitioner requires hands-on assistance with all six activities of daily Living (ADLs) and instrumental ADLs (IADLs), requires overnight care and has behaviors more than five times per day that require intervention. (Exhibit C)
17. The July 7, 2023 LTCFS established that petitioner's behaviors requiring intervention include anxiety, disordered thought and impulsivity, hitting, kicking, biting, punching, pulling hair, verbal aggression, property destruction, elopement, homicidal ideations, over-eating. Obsessions or compulsions, inappropriate voiding and inappropriate sexual behaviors. (Exhibits C, F and G)
18. The LTCFS stated that a Behavioral Support Plan was in effect on July 7, 2023. (Exhibit C20)
19. THE LTCFS stated that A Crisis Plan was in effect on July 7, 2023. (Exhibit C20)
20. On August 18, 2023, an IRIS Incident report was completed by IC Kristy Blochwitz regarding an incident in which petitioner assaulted a [REDACTED] [REDACTED] clerk requiring law enforcement action. (Exhibit K)
21. On August 28, 2023, TMG issued to petitioner a Notice of Action denying his request for enrollment and identified four bases for the denial: 1) the request is not considered a safe way to support your outcome; 2) You have failed to develop an IRIS plan; 3) There is insufficient documentation to justify your request and 4) the request contradicts IRIS policy. (Exhibit B)
22. On September 12, 2023, the July 7, 2023 IRIS referral was withdrawn.
23. On November 21, 2023 petitioner filed a timely appeal of the enrollment denial determination.

24. At the time of hearing, petitioner was not enrolled in Family Care or any other MA waiver program.

## DISCUSSION

The IRIS program is a Medical Assistance (MA) home and community-based long term care waiver program authorized under §1915(c) of the Social Security Act. IRIS is an alternative to Family Care, Partnership, and PACE—all of which are managed care 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 waiver approved by the Centers for Medicare and Medicaid Services (CMS) which proves the program’s authority is available at <https://www.dhs.wisconsin.gov/iris/hcbw.pdf> . State policies governing administration of the IRIS program are included in the IRIS Policy Manual (available at <http://www.dhs.wisconsin.gov/publications/P0/P00708.pdf> ) and IRIS Work Instructions (available at <http://www.dhs.wisconsin.gov/publications/P0/P00708a.pdf> ).

The Department has the right to deny an application for the IRIS program during the referral stage for the following reasons: cost share in arrears, substantiate fraud during a previous enrollment in IRIS or another long term care program, living in an ineligible residential setting, or inability or unwillingness to develop an Individual Support and Service Plan (ISSP) that ensures the participant’s health and safety. IRIS Policy Manual: Work Instructions, 3.3A.1. The latter ground for denial refers to “ ...situations wherein the participant is unwilling or unable to address the identified health and safety concerns resulting in the IRIS Consulting Agency (ICA) being unable to ensure the health and welfare of the participant as required by the 1915© Home and Community-Based Services (HCBS) Waiver...” Id.

The IRIS Policy Manual, quoting the waiver application, provides the following additional language regarding the ICA’s obligations to ensure health and safety:

Participation in a self-directed waiver provides participants with new opportunities, responsibilities, and risks. Finding the right balance between the participants’ right to make choices with OIM’s (Office of IRIS Management) obligation to ensure participant safety requires special consideration and careful planning.

ICAs are required to collaborate with participants to identify potential risks and to help identify and implement strategies to mitigate identified risks. ICAs [IRIS consultant agencies] are able to define their own practices for assessing risks to participants during the ISSP [Individual Support and Service Plan] development process.

OIM monitors the health and safety of participants through the record review process, which has indicators in place that ensure the ICA addressed all health and safety risks. Health and safety issues must be addressed in the ISSP based on the participant’s needs and preferences.

As part of risk mitigation, participants are required to have comprehensive emergency backup plans in the event that needed services are for any reason not accessible. Emergency backup plans must contain the following components:

- Medical needs
- Behavior needs
- Medication and medical equipment needs
- General overview of the participant’s daily schedule
- Contact information for emergency backup providers

- Contact information for service providers including medical providers and the IRIS consultant

Other pertinent participant-specific information ICAs may implement their own emergency backup plan format approved by OIM. All formats must provide sufficient information to ensure a backup caregiver can provide the participant with needed care to ensure the participant's health and safety in the absence of the participant's primary caregiver.

The participant and IRIS consultant collaborate to develop the emergency backup plan as part of the ISSP development process. The participant and the IRIS consultant review the accuracy and effectiveness of the emergency backup plan during every face-to-face visit and every phone contact. The participant is responsible for notifying the IRIS Consultant of any changes to their emergency backup plan.

IRIS Policy Manual, Sec. 4.1.

In an administrative proceeding, a moving party generally has the burden of proof. *State v. Hanson*, 295 N.W.2d 209, 98 Wis. 2d 80 (Wis. App. 1980). The court in Hanson stated that the policy behind this principle is to assign the burden to the party seeking to change a present state of affairs. As this case involves the denial of an application for the IRIS program, the petitioner is the moving party and must prove by a preponderance of evidence that the denial was not justified. Petitioner has the burden of proof in this matter.

When reviewing a discretionary determination, a reviewing decision maker must determine if the agency erroneously exercised its discretion. *Brookfield v. Milwaukee Sewerage Dist.*, 171 Wis. 2d 400, 423 (1992). An erroneous exercise of discretion is when a decision maker fails to apply the appropriate legal standard to the relevant facts. *Hedtcke v. Sentry Ins. Co.*, 109 Wis. 2d 461, 471, (1982). "The exercise of discretion must depend on facts that are of record or that are reasonably derived by inference from the record and the basis of the exercise of discretion should be set forth." *Howard v. Duersten*, 81 Wis. 2d 30, 305 (1977). Thus, if a discretionary action has a rational basis, it is not an erroneous use of discretion.

The dispute in this case involves disagreement between the ICA and petitioner's mother, [REDACTED], about what restrictive measures are being and should continue being used to manage the care of the petitioner. The ICA did request a proposed plan for use of restrictive measures in order to prepare and submit for approval a Restrictive Measures Application. It established a deadline of January 14, 2023. [REDACTED] did not submit the information required for this application to be submitted to the Department for review. [REDACTED] acknowledged at hearing that a Restrictive Measures Application has, to date, not been completed, submitted to the Department or approved by the Department.

The ICA relies on the Department's Restrictive Measures Guidelines and Standards for authority to deny enrollment for petitioner's failure to obtain this approval to use restrictive measures:

Individuals enrolled in IRIS who fail to obtain approval for use of restrictive measures may be subject to involuntary disenrollment due to health and safety risks that participants are unwilling or unable to resolve. Restrictive Measures Guidelines and Standards, DHS, P02572 (1/2024)

It is not disputed that the required approval has not been obtained for use of restrictive measures. It is clear that one is required. The ICA presented evidence of multiple communications from ██████ indicating that certain restrictive measures are a necessity for controlling petitioner's behaviors and the agency credibly expressed concerns that the proposed measures are a threat to the health and safety of the petitioner. At hearing, ██████ testified that no restrictive measures are currently being used and did not propose to use them except in an emergency. This is inconsistent with her documented position over a long period of time, in which she said that such measures were at times used and would continue to be required. The ICA has presented testimony and documentary evidence demonstrating attempts to agree upon what restrictive measures may be used with petitioner. The ICA's goal was to eliminate restrictive measures. ██████ stated that she must continue to use restrictive measures at times. The ICA correctly required ██████' cooperation for submission of a Restrictive Measures Application to obtain the Department's consent for use of restrictive measures in the IRIS program.

Although, a great deal of testimony was taken in this matter regarding disputes between the ICA and ██████ about whether certain restrictive measures should be used, it is outside the scope of this decision to determine what restrictive measures should be allowed and which should be prohibited for this particular petition. That is for the ICA, the Department and the petitioner/his representative to agree upon. It cannot be disputed that they have not done so. It is within the agency's discretion to deny enrollment due to health and safety concerns in the absence of approval of restrictive measures by the Department. That decision is justified and not arbitrary. The absence of Department approval of a proposal from ██████ for restrictive measures use is a reasonable basis for denial of enrollment under these facts. The petitioner has not established a basis to overturn the agency's determination to deny the application for IRIS enrollment.

### CONCLUSIONS OF LAW

The agency acted reasonably and within its discretion in denying petitioner's application for IRIS enrollment based on concerns about petitioner's safety and health in the absence of Department approval of proposed restrictive measures.

**THEREFORE, it is**

**ORDERED**

That the petition for review 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, 5<sup>th</sup> 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

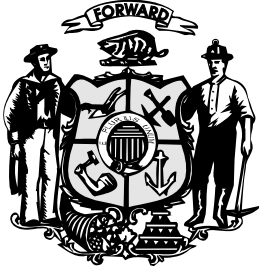
You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Health Services, 1 West Wilson Street, Room 651, **and** on those identified in this decision 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 19th day of April, 2024

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Beth Whitaker  
Administrative Law Judge  
Division of Hearings and Appeals



**State of Wisconsin \DIVISION OF HEARINGS AND APPEALS**



The preceding decision was sent to the following parties on April 19, 2024.

Bureau of Long-Term Support