



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of



DECISION

Case #: MGE - 211474

PRELIMINARY RECITALS

Pursuant to a petition filed on December 18, 2023, under Wis. Stat. § 49.45(5), and Wis. Admin. Code § HA 3.03(1), to review a decision by the Milwaukee Enrollment Services regarding her monthly cost share to participate in IRIS, a Medical Assistance (MA) come and community-based long term care program, a hearing was held on April 24, 2024, by telephone. Hearings scheduled for January 24, 2024, February 21, 2024, March 27, 2024, and April 10, 2024 were rescheduled at the request of the petitioner or her representative. The case was reassigned to the instant administrative law judge on or about March 28, 2024.

The issues for determination are whether Petitioner's appeal is timely and, if so, whether the Department of Health Services, by its agents, properly calculated Petitioner's cost share.

There appeared at that time the following persons:

PARTIES IN INTEREST:

Petitioner:



Petitioner's Representative:

Kathleen Miller
BOALTC
1402 Pankratz St Suite 111
Madison, WI 53704

Respondent:

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

By: Kyra Oberg
Milwaukee Enrollment Services
1220 W Vliet St
Milwaukee, WI 53205

ADMINISTRATIVE LAW JUDGE:

Jason M. Grace
Division of Hearings and Appeal

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Milwaukee County. She has been enrolled in the IRIS program since August 13, 2023, with First Person her IRIS consultant agency.
2. On May 10, 2023, the Petitioner signed an IRIS Authorization form that indicated she would have a monthly cost share of \$557.10. On that same date, the Petitioner signed a Medical and Remedial Expenses (MRE) Checklist used in determining the cost share. The MRE reflected monthly medical and remedial expenses of \$0.00.
3. On or about July 20, 2023 the IRIS consultant agency (ICA) verbally reminded the Petitioner and her POA of the \$557.10 monthly cost share. At that time, an offer by the ICA to complete a new MRE was declined by the Petitioner and her POA.
4. On August 16, 2023, an About Your Benefits notice was issued to the Petitioner. The notice indicated she was enrolled in Community Waivers as of August 13, 2023. It further directed she had a monthly cost share of \$557.10 as of August 13, 2023. It directed she must pay the cost share to keep getting benefits. She was also directed to check with your Care Manager about how and when to pay this amount. The notice informed of the right and process to request a Fair Hearing if she thought there had a been a wrong decision about her application or benefits. The deadline to request a hearing was indicated to be October 2, 2023
5. On September 11, 2023 and December 12, 2023, the Petitioner and/or her representative informed the ICA of concerns regarding the amount of the cost share.
6. On December 15, 2023, the Petitioner's POA again apprised the ICA of concerns over the amount of the cost share. The ICA failed to review or complete a new MRE to ensure all relevant medical and remedial expenses were captured in determining the cost share.
7. On December 18, 2023, the petitioner filed an appeal with the Division of Hearings and Appeals contesting her cost share.
8. On March 11, 2024, the petitioner's POA met with a representative of the ICA and filled out a new MRE. This reflected monthly expenses of \$373.50 for health insurance and \$2,121.00 for privately paid personal care. Verification was forwarded to the IRIS consultant agency, and the MRE was signed on or about March 12, 2024. The IRIS consultant agency forwarded the MRE and verification to IM to redetermine the petitioner's monthly cost share.
9. By notice dated March 19, 2024, the IM found that petitioner had a monthly cost share of \$0.00 as of March 1, 2024.

DISCUSSION

The Include, Respect, I Self-Direct (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. (available at <https://www.dhs.wisconsin.gov/publications/p0/p00708.pdf>.)

The cost share amount is the monthly amount Group B and B Plus members must pay toward the cost of their waiver services. Medicaid Eligibility Handbook, §28.6.4. The cost share amount is calculated in agency's computer system by applying the cost share deductions to members' gross income. The possible deductions include the personal maintenance allowance, family maintenance allowance, health insurance, special exempt income, and MREs. Id.

Petitioner seeks to have her cost share reviewed from August 2023 through February 2024. DHA can only hear cases on the merits if there is jurisdiction to do so. There is no jurisdiction if an appeal is untimely. The Petitioner's appeal was not filed until December 18, 2023.

The first issue that must be addressed is whether Petitioner's appeal is timely as to her cost share determination. Medical assistance (MA) appeals, which include appeals regarding IRIS cost shares, must be filed within 45 days of the date of the negative action. See, 42 C.F.R. § 431.221(d); Wis. Stat. § 49.45(5); Wis. Admin. Code § DHS 104.01(5)(a)3; Wis. Admin. Code § HA 3.05(3). A hearing request that is not received within the 45-day time period must be dismissed for lack of jurisdiction. Wis. Admin. Code § HA 3.05(4)(e).

The argument that the Petitioner lacked notice of the cost share was not found persuasive. She was issued an About Your Benefits notice on August 16, 2023 that apprised of the cost share and the right and process to file an appeal. Compelling evidence was not presented that rebutted the presumption of delivery and receipt of that notice. Moreover, she had been informed when she signed the IRIS Authorization there would be a monthly cost share and the amount thereof. She and her representatives were also verbally informed by the ICA of the cost share. The About Your Benefits notice of August 13, 2023, set forth the deadline to file an appeal. The Petitioner failed to meet that deadline. Thus, I lack the jurisdiction to address the cost share for the months prior to the filing of the appeal in December 2023. I have jurisdiction, however, to address the cost share as of December 2023.

The cost share for the months of December through February 2024 will be addressed below. Her cost share as of March 2024 was not contested. This is because a new MRE was forwarded by the ICA to IM on March 12, 2024 reflecting significant remedial expenses not previously considered. Upon factoring in those expenses, her cost share was determined by IM to be \$0.00 as of March 1, 2024. The remedial expenses were privately paid personal care expenses. Petitioner argued that her cost share calculation prior to March 2024 should have included the privately paid personal care expenses that ultimately were factored in the re-calculation of March 12, 2024. I agree.

According to the record, the Petitioner was privately paying for personal care services at all relevant times involved here. For unknown reasons that expense was not reflected in the first MRE completed by the ADRC in May 2023. The Petitioner and her representatives then declined the ICA's July 2023 offer to conduct a new MRE. My understanding is that offer was declined due to the recency of completing the MRE with the ADRC. However, on at least three occasions thereafter the Petitioner and/or her representatives expressed concerns to the ICA about the amount of the cost share. That occurred on September 11, 2023; December 12, 2023; and December 15, 2023. At no time during those interactions did the ICA offer to revisit the MRE or review relevant expenses captured by the MRE.

A significant change reflected in the most recent HCBS Waiver renewal is that ICAs now must maintain participant long-term care and MA eligibility. See Application for 1915(c) Home and Community-Based Services Waiver (HCBS Waiver): WI.0484.R0300 – Jan 01, 2021, page 2, found on-line at: <https://www.dhs.wisconsin.gov/iris/hcbw.pdf>. Of note, an IRIS participant can be involuntarily disenrolled from the IRIS program for falling into cost share arrears. Id. at pg. 202.

IRIS program policy further provides that the ICA has the following responsibilities: (1) to document the participant's cost share obligation as determined by the income maintenance agency at the time of initial referral; (2) to monitor a participant's ongoing MREs; and (3) to report any changes to medical or remedial expense payments to the income maintenance agency. IRIS Policy Manual (04/2024), § 2.2B.2.2.1. IRIS policy also indicates that the ICA is to be informed of the monthly status of the cost share payment and is to discuss any concerns with the participant at the next consultant visit. Id at § 2.2B.3.3.1. The ICA also is tasked with providing support to the participant to ensure the cost share obligation is understood. Id. at § 2.2D.3. Finally, the IRIS Provider Agreement between the Department and the ICAs indicates the ICA "is responsible for assisting a participant with the determination of medical/remedial expenses, as necessary." IRIS Provider Agreement with the Department of Health Services, effective 1/1/2023 – 12/31/2024, pg 79, found online at: <https://www.dhs.wisconsin.gov/iris/iris-2023-provider-agreement-generic-final.pdf>. I

Based on the foregoing and the record before me, I find that the ICA erred by failing to offer to review the MRE with the Petitioner (or her representatives) at or after the December 15, 2023 meeting. While the ICA may not calculate the cost share, it is aware that qualifying medical and remedial expenses impact the cost share calculation conducted by IM. Given that the cost share amount was an issue being repeatedly raised by the Petitioner and that the ICA and Petitioner had never reviewed the MRE together, the ICA erred for failing to offer to conduct that review to ensure all relevant medical and remedial expenses were captured. I do appreciate that the Petitioner had declined a July 2023 offer by the ICA to review the MRE. However, five months had lapsed since that offer and the Petitioner (or her representatives) continued to express to the ICA issues over the amount of the cost share. This should have triggered a MRE review. That review ultimately did occur but not until March 11, 2024. It should have occurred at or immediately after the December 15, 2023 meeting.

The Petitioner's cost share for December 2023 through February 2024 does not reflect her significant remedial expense associated with the privately paid personal care services provided during this time. Verification of that expense was previously provided to IM when her cost share was recalculated in March 2024, resulting in a cost share of \$0.00 as of March 1, 2024. As the verification of the medical and remedial expenses at issue already was provided to IM, I am remanding this matter to IM to calculate the cost share for the month of December 2023 through February 2024 using the MRE that was ultimately used to determine the March 2024 cost share.

CONCLUSIONS OF LAW

1. Petitioner failed to timely appeal her cost share for the months of August through November 2023.
2. Petitioner timely appealed her cost share for December 2023 through February 2024.
3. The Department did not correctly determine the Petitioner's cost share for the months of December 2023 through February 2024, as the IRIS consultant agency failed to properly review the Petitioner's medical remedial expenses and forward that to the income maintenance agency.
4. The Department properly calculated Petitioner's cost share as of March 2024.

THEREFORE, it is

ORDERED

The matter is remanded to the Department to, by its agents, to recalculate Petitioner’s December 2023 through February 2024 cost share after factoring in the remedial expense associated with privately paid personal care expenses for those months, using the verification previously submitted to calculate the cost share as of March 2024. The Department shall comply with this order within ten (10) days of the date of this decision. In all other regards 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).

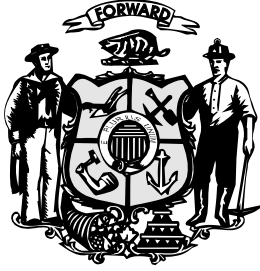
The process for Circuit Court Appeals may be found at Wis. Stat. §§ 227.52 and 227.53. A copy of the statutes may be found online or at your local library or courthouse.

Given under my hand at the City of Madison,
Wisconsin, this 20th day of May, 2024



\s _____

Jason M. Grace
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 May 20, 2024.

Milwaukee Enrollment Services
Division of Health Care Access and Accountability

