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STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of



DECISION
Case #: CWA - 212112

PRELIMINARY RECITALS

Pursuant to a petition filed on February 6, 2024, under Wis. Admin. Code § HA 3.03, to review a decision by the Bureau of Long-Term Support regarding IRIS, a Medical Assistance (MA) long-term care waiver program, a hearing was held on April 24, 2024, by telephone. Hearings scheduled for March 6, 2024 and March 27, 2024 were rescheduled at the request of the Petitioner.

The issue for determination is whether the IRIS program correctly denied the Petitioner's request for a \$102,894.00 vehicle modification.

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: Melaine Malm, TMG
Bureau of Long-Term Support
PO Box 7851
Madison, WI 53707-7851

ADMINISTRATIVE LAW JUDGE:

Jason M. Grace
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES #) is a 20 year-old resident of Milwaukee County who lives with family. She is enrolled in the IRIS program, with TMG her IRIS consultant agency.
2. The Petitioner was receiving services from the Department of Workforce Development, Division of Vocation Rehabilitation (DVR) in 2021 and 2022. In 2021, she requested DVR fund the cost of a vehicle modification. The request was denied as she was enrolled in high school with comparable transportation benefits such as [REDACTED] door to door transportation service and [REDACTED]. Exhibit 1, DVR letter dated August 16, 2021.
3. Petitioner's most recent Long-Term Care Functional Screen (LTCFS) indicates the Petitioner meets the Physically Disabled Target Group. She has diagnosis that include arthrogyriposis, gastroesophageal reflux, migraine, pain in knee and hands, pain in left shoulder, intermittent asthma, anxiety disorder with panic attacks, and depression. She requires assistance with the Activities of Daily Living (ADLs) of bathing, dressing, eating, mobility in the home, toileting, and transfers. She also requires assistance with the Instrumental Activities of Daily Living (IADLs) of meal preparation, medication administration/management, money management, transportation, and laundry/chores. She uses a motorized and manual wheelchair for mobility. The screen noted that she does not have a driver's license.
4. The sole service in the Petitioner's IRIS plan is supportive home care.
5. On or about October 11, 2023, the Petitioner submitted an OTE request for a vehicle modification in the amount of \$102,894.00. The modification included the cost of hand controls for driving, ramp installation, and wheelchair securement. It was indicated that the modification would allow the Petitioner to drive herself for community outings, employment when obtained, and in-person educational pursuits. Included with the OTE was an accessibility assessment and LTCFS.
6. At the time of submission of the OTE the Petitioner was not employed or attending school.
7. By notice dated January 18, 2024, the Petitioner was informed that her OTE request for a vehicle modification was denied. The asserted grounds for the denial included the following:

The participant is requesting a van conversion with the long-term outcome of being able to get to places safely in the community on her own, such as school. The participant wants to obtain employment and drive herself back and forth from work and be as independent as possible. Currently, the participant is in college and working on getting a degree to obtain employment. The One-Time Expense Request (OTE) states that without the vehicle modification the participant would not reach her goal of living independently, and her desired outcome of employment would be limited based on access to transportation. The long-term goals are not inappropriate in and of themselves, however the request of a vehicle conversion that is over \$102,000 is not justifiable. There are transportation providers in Milwaukee County and surrounding areas to assist with transporting the participant to and from school and other activities. This would be the case when the participant finds employment. The cost of the vehicle modification is higher than the typical vehicle modifications requested of IRIS Waiver funds, which range from \$25,000 to \$38,000. Providing transportation through a provider and/or family supports is more cost effective. (This is very common of IRIS participants throughout the state of Wisconsin). The

maintenance/repairs need to be taken into consideration of the cost, as well as future requests for a vehicle modification. The participant can find other ways of enhancing independence in her home, community, and employment even if she is not independently driving. This request is not cost effective and can be supported in other ways safely and sufficiently and is therefore being denied.

Exhibit 1, January 18, 2024, Notice of Action.

8. The Petitioner timely appealed.

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 §1.1B*, *Medicaid Eligibility Handbook §28.1*, et. seq. and 42 C.F.R. §441.300, et. seq.

The IRIS waiver application most recently approved by the Centers for Medicare and Medicaid Services (CMS) is available on-line at <https://www.dhs.wisconsin.gov/iris/hcbw.pdf>. See *Application for 1915(c) HCBS Waiver: WI.0484.R03.00 - Jan 01, 2021 (“Waiver”)*. 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>), *IRIS Work Instructions* (available at <http://www.dhs.wisconsin.gov/publications/P0/P00708a.pdf>), and *IRIS Service Definition Manual* (available at <https://www.dhs.wisconsin.gov/publications/p00708b.pdf>).

Consistent with the terms of the approved waiver, every IRIS participant is assigned a budget which is generated based on information obtained during a screening of the participant’s long-term care functional needs. See Waiver, Appendix C-4. Relevant program policy provides: “The individual budget is an estimate of the participant’s expected needs and is based on information documented in the participant’s Long-Term Care Functional Screen (LTC FS).” *IRIS Policy Manual*, Sec. 5.3.

With the assistance of an IRIS Consultant Agency (ICA), participants identify waiver allowable services that they need to meet their long term care outcomes. The cost of those services must fall within the budget estimate. *IRIS Policy Manual*, Sec. 5.3A. If a person’s budget is insufficient to meet the needs of the IRIS participant, a budget amendment (BA) or one-time expense (OTE) request is able to be made to the budget. See Waiver, Appendix C-4.

The Petitioner has requested an OTE of \$102,894.00 to fund that cost of a vehicle modification. It is a well-established principle that a moving party generally has the burden of proof, especially in administrative proceedings. *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. By requesting the OTE for a vehicle modification, Petitioner is the moving party and must prove by a preponderance of evidence that the OTE request meets eligibility requirements.

In the case, the OTE for the vehicle modification was denied on grounds it is not the most cost-effective option to meet Petitioner's transportation needs. The respondent, by TMG, submitted a written summary further explaining the more cost-effective transportation options:

██████ does have access to IRIS Specialized Transportation services in her community. For example, ██████, which is \$35 one-way, ██████, which is \$26.25 one-way and \$2.00 per mile depending on the mileage range, or hiring someone to provide transportation. For medical appointments, ██████ has access to Medical transportation through MTM that is funded by Medicaid. If ██████ seeks employment in the future, she can access funding through DVR. DVR may provide participants with disability grants for wheelchair van or accessibility equipment and modifications. The DVR denial letter that was provided was from 2021 when ██████ had been participating in DVR services. She is not currently participating in DVR services and would need to start the process over before vehicle modifications would be considered. The IRIS Specialized Transportation services are more cost effective to meet ██████ transportation needs.

Exhibit 1, TMG Packet, pg. 2.

Vehicle modifications are part of the IRIS benefits package. *IRIS Policy Manual, § 5.8B*. Vehicle modifications are defined as:

... physical adaptations to the vehicle that is the participant's primary means of transportation. Vehicle modifications accommodate the specialized needs of a participant and enable the participant to function with greater independence in the community.

Waiver, pg. 154.

A request for a vehicle modification must be made as part of the OTE process. *IRIS Policy Manual, § 5.8*. IRIS policy also states that the most cost-effective approach to meeting the participant's long-term care related outcomes are considered during the review of the request. *IRIS Policy Manual, §5.8E*. IRIS policy excludes modifications that are "of general utility, and are not of direct medical or remedial benefit to the individual." *Waiver, pg. 154, see also IRIS Service Definition Manual, pg.44*. This services also must not duplicate any service that is provided under another IRIS service category. *IRIS Service Definition Manual, pg.45*. Vehicle modifications also may only be funded by the IRIS program when not otherwise available through the state plan or a responsible private or public entity. *Waiver, pg. 154, see also IRIS Service Definition Manual, pg.45 and IRIS Policy Manual, § 5.4B* (non-allowable services within the IRIS program are those services "that remain the responsibility of another agency."). Meaning, the IRIS program is the funding source of last resort, requiring exhaustion of all other avenues of public funding. *IRIS Policy Manual, §5.6A.4*. IRIS policy also requires that when employment or an employment outcome is being pursued, the participant must first seek eligibility for employment-related services provided by the DVR. *IRIS Policy Manual, § 5.9B*. If denied by the DVR, then the participant may use IRIS funds. *Id.*

The Accessibility Assessment submitted with the OTE recommended against the use of paratransit van services to meet the Petitioner's transportation needs for the following reason:

Reliance on the paratransit van services for transportation to and from work would make it very difficult for her to arrive or depart work in a timeframe that meets her employers'

requirements, and would limit her ability to seek employment outside of Milwaukee County.

Exhibit 1, Independence First, dated July 22, 2023. The basis for the recommendation against the use of transportation services was not supported by the record and is speculative. That recommendation was not found persuasive.

Petitioner is seeking the vehicle modification for employment and to provide more freedom in the community. I understand that using a transportation service as argued by the Department/TMG is less desirable than having one's own vehicle. However, the IRIS program also requires the Department/TMG to consider what is most cost-effective to meet the needs and goals within the program, even though those options may not be preferred. She has access to IRIS funded transportation services identified above to access her community and MA funded transportation for medical appointments. Moreover, IRIS is a funding source of last resort. IRIS policy requires she first seek funding from other programs, such as DVR for employment-related services. She last sought funding for the vehicle modification from the DVR over three years ago. The DVR denied that prior request as she was in high school at the time and had access to comparable transportation from the school. See Finding of Fact 2. As she has since graduated, she no longer has access to school supported transportation services from her old high school. Given the length of time that has elapsed and that she no longer has access to what was deemed to be a comparable transportation service in the prior DVR denial, the Department/TMG's requirement that a new request be made to DVR is reasonable and consistent with IRIS policy. Based on the record, I find that Petitioner has failed to meet her burden to prove that respondent erred in denying the OTE request.

I would also note that IRIS policy does not provide for funding of modifications of a vehicle's steering controls if the IRIS participant is to be the driver and they do not have a driver's license. *See IRIS Work Instructions, pg. 48.* Such modifications were being sought in this case to allow the Petitioner to drive the vehicle. However, the record indicates she does not have a driver's license. See Finding of Fact 3. IRIS policy also indicates that the cost of the modification cannot exceed the value of the vehicle being modified. *See Waiver, pg. 154, see also IRIS Service Definition Manual, pg.44.* Here, the value of the vehicle to be modified is not known as it has not yet been procured. To comply with IRIS policy, the value of the vehicle obtained would have needed to exceed \$102,894.00 as that is the cost of the modification. These are additional IRIS policy considerations that need to be addressed if the Petitioner later submits a new OTE for a vehicle modification.

Finally, at hearing the Petitioner and/or her family set forth a new vehicle modification proposal. Specifically, IRIS fund the cost of modifying a van that had already been equipped with a wheelchair accessible ramp. As indicated at hearing, that is outside the scope of the current OTE request and appeal. As such, a new or amended OTE request would need to be first submitted to the Department for review and consideration. She would have the right to appeal a denial of any new OTE request.

CONCLUSIONS OF LAW

Petitioner did not meet her burden to establish the Department erred in denying her one-time expense request.

THEREFORE, it is

ORDERED

That 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

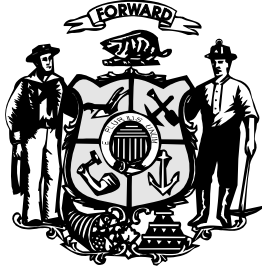
You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Health Services, 1 West Wilson Street, Room 651, **and** on those identified in this decision 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 7th day of June, 2024



\s _____
Jason M. Grace
Administrative Law Judge
Division of Hearings and Appeals



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The preceding decision was sent to the following parties on June 7, 2024.

Bureau of Long-Term Support