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**STATE OF WISCONSIN**  
**Division of Hearings and Appeals**

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In the Matter of



**DECISION**  
Case #: CWA - 212780

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**PRELIMINARY RECITALS**

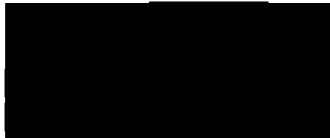
Pursuant to a petition filed on March 23, 2024, under Wis. Admin. Code § HA 3.03, to review a decision by the Bureau of Long-Term Support regarding Medical Assistance (MA), a hearing was held on May 1, 2024, by telephone.

The issue for determination is whether the agency correctly reduced SHC-Routine hours by notice dated 3/12/24.

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: The Management Group by M. Malm  
Bureau of Long-Term Support  
PO Box 7851  
Madison, WI 53707-7851

**ADMINISTRATIVE LAW JUDGE:**

John Tedesco  
Division of Hearings and Appeals

## FINDINGS OF FACT

1. Petitioner is a resident of Pierce County.
2. Petitioner is a member of the IRIS Program.
3. Petitioner has various diagnoses including Traumatic Brain Injury and visual impairment. Petitioner meets the developmentally disabled target group for IRIS eligibility.
4. Petitioner cannot safely and independently complete 4 Activities of Daily Living (ADL's) including bathing, dressing, eating, and mobility in home as well as cares for 4 Instrumental Activities of Daily Living (IADL's) including meal prep, money management, laundry/chores, and transportation.
5. Petitioner had previously been receiving IRIS Supportive Home Care-Routine as well as Supportive Home Care-Companion Care.
6. The SHC-Routine hours were 52 hours per week for the 2023 service year.
7. The SHC-Companion Care hours were 9 hours per week for the 2023 service year.
8. In January 2024 the IRIS agency completed a new Long-Term Care Functional Screen. There were no significant changes in from the 2023 screen to the 2024 screen.
9. On 3/12/24 the IRIS agency issued a notice informing petitioner that the SHC-Routine hours would be reduced from 52 hours per week to 47 hours per week.
10. On 3/12/24 the IRIS agency issued a notice to petitioner informing him that the SHC-Companion Care hours would be terminated.

## 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.*

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*. 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>).

IRIS Consultant Agencies (ICAs), are contracted by the Department of Health Services to help IRIS participants, as needed, identify paid and unpaid services that will meet their long term care needs and to then develop an “individual services and supports plan” (ISSP) that reflects those services and needs. In addition, ICAs are responsible for ensuring that the cost of paid services authorized by IRIS for a participant remain within that participant’s budget amount. *IRIS Policy Manual*, §5.2B. An IRIS participant’s budget is generated based on information obtained during a screening of the participant’s long-term care functional needs.

“Once an IRIS participant decides upon needed services, the process for obtaining approvals for service authorizations begins. All [service plans] require [IRIS Consultant] and/or ICA approval. The participant’s IC and/or ICA cannot ‘approve’ the ISSP when the total cost of the plan exceeds the approved budget amount.” *IRIS Policy Manual*, §5.2B. Participants may however submit a budget amendment to the Department of Health Services with the assistance of their ICA. A budget amendment is “...a request made by the IRIS participant to increase the participant’s budget to pay for an ongoing need not met within the current budget. Typical supports, services or goods requested through the BA process include additional Supportive Home Care, Respite, Daily Living Skills, Supported Employment, and other such services needed by an IRIS participant on an ongoing basis.” *IRIS Policy Manual*, Sec. 5.7. When the Department of Health Services denies a BA request, the participant may appeal the budget amount using the Medicaid fair hearing process. *Id.*

Supportive home care services are a permissible cost under the IRIS Waiver. See Application for a §1915(c) Home and Community-Based Services Waiver, Waiver Number WI.0485.R01.00, Effective January 1, 2011. SHC services are permitted as follows:

Supportive Home Care (SHC) is the provision of a range of services for participants who require assistance to meet their daily living needs, ensure adequate functioning in their home and permit safe access to the community.

Supportive home care services include:

1. Personal Services
  - a. Assistance with activities of daily living such as eating, bathing, grooming, personal hygiene, dressing, exercising, transferring and ambulating;
  - b. Assistance in the use of adaptive equipment, mobility and communication aids;
  - c. Accompaniment of a participant to community activities;
  - d. Assistance with medications that are ordinarily self-administered;
  - e. Attendant care;
  - f. Supervision and monitoring of participants in their homes, during transportation (if not done by the transportation provider) and in community settings;
  - g. Reporting of observed changes in the participant’s condition and needs; and
  - h. Extension of therapy services. "Extension of therapy services" means activities by the SHC worker that assist the participant with a PT/OT or other therapy/treatment plan. Examples of these activities include assistance with exercise routines, range of motion exercises, standing by during therapies for safety reasons, having the SHC worker read the therapist's directions, helping the participant remember and follow the steps of the exercise plan or hands on assistance with equipment/devices used in the therapy routine. It does not include the actual service the therapist provides.

2. Household Services
  - a. Performance of household tasks and home maintenance activities, such as meal preparation, shopping, laundry, house cleaning, simple home repairs, snow shoveling, lawn mowing and running errands;
  - b. Assistance with packing/unpacking and household cleaning/organizing when a participant moves.

Application for a §1915(c) Home and Community-Based Services Waiver, Waiver Number WI.0485.R01.00, Effective January 1, 2011 (emphasis added).

The agency acted to reduce services from what had previously been deemed necessary and appropriate under the IRIS program rules. These services were apparently determined based on member needs that were, the agency concedes, no different than petitioner's current needs. The agency vaguely suggested that now the agency feels the family members should provide more "natural supports" that it thought was appropriate last year. The agency gave no reason for why this is the case. This was not a persuasive case from the agency in the least.

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). This well-established principle assigns the burden to the party seeking to change a present state of affairs. *Id.* The Department acknowledged this principle in Final Decision ATI-40/87198 where Deputy Secretary Richard Lorang ruled on August 17, 1995, that in any fair hearing concerning the propriety of an agency action, the county or state agency must prove that it took the proper action given the facts of the case. At the very least, the agency must present a prima facie case to go forward. Only after the agency presents a prima facie case must the petitioner submit enough evidence to rebut that case.

The agency did not establish a prima facie case justifying the action in the first place. The simple question remains as to why a reduction is appropriate and justified if needs have not changed remains unanswered even after hearing.

### CONCLUSIONS OF LAW

The agency did meet its burden of demonstrating that it correctly reduced SHC-Routine hours.

**THEREFORE, it is** **ORDERED**

That the matter is remanded to the agency with direction to reverse the 3/12/24 reduction in SHC-Routine hours. This action must be completed within 10 days of this Decision.

### **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**

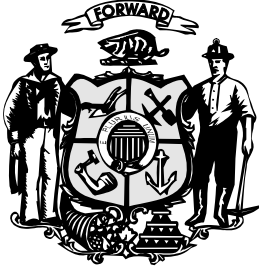
You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Health Services, 1 West Wilson Street, Room 651, **and** on those identified in this decision 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 10th day of June, 2024



John Tedesco  
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 June 10, 2024.

Bureau of Long-Term Support