



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

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

DECISION
Case #: CWA - 208558

PRELIMINARY RECITALS

Pursuant to a petition filed on May 5, 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 June 27, 2023, by telephone. The appeal was originally set for June 13, 2023 but was rescheduled to June 27 at petitioner's request.

The issue for determination is whether the Division of Hearings and Appeals (DHA) has authority to make a determination on the merits of an Include, Respect, I Self-Direct (IRIS) provider issue, specifically petitioner's supportive home care rate.

There appeared at that time the following persons:

PARTIES IN INTEREST:

Petitioner:

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

Petitioner's Representative:

Attorney Lori Kornblum
Law Offices of Lori S. Kornblum
10936 N Port Washington Rd Ste 296
Mequon, WI 53092

Respondent:

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

By:

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

ADMINISTRATIVE LAW JUDGE:

Kelly Cochrane
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner is a resident of Waukesha County. He is enrolled in the IRIS program.
2. On May 9, 2023 the IRIS agency issued a notice of action to petitioner stating that it denied the petitioner's budget amendment (BA) request for the supportive home care (SHC) rate paid to petitioner's SHC provider.

DISCUSSION

The IRIS program is a MA long term care waiver program that serves elderly individuals and adults with physical and developmental disabilities. The IRIS program was developed pursuant to a MA waiver obtained by the State of Wisconsin, pursuant to section 1915(c) of the Social Security Act. 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). IRIS is an alternative to Family Care, Partnership, and PACE—all of which are managed long term care waiver programs in Wisconsin. The IRIS program 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*, (available online at <http://www.dhs.wisconsin.gov/publications/P0/P00708.pdf>),

The IRIS waiver application (*Waiver*) most recently approved by the Centers for Medicare and Medicaid Services (CMS) is available online at <https://www.dhs.wisconsin.gov/iris/hcbw.pdf>. State policies governing administration of the IRIS program are included in the *IRIS Policy Manual*, *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>).

The *Waiver* directs that participants have fair hearing rights as follows:

The state provides the opportunity to request a Fair Hearing under 42 CFR §431 Subpart E, to individuals: (a) who are not given the choice of home and community-based waiver services as an alternative to institutional level of care specified for this waiver; (b) who are denied the service(s) of their choice or the provider(s) of their choice; or (c) whose services are denied, suspended, reduced or terminated. Appendix F specifies the state's procedures to provide individuals the opportunity to request a Fair Hearing, including providing notice of action as required in 42 CFR §431.210.

Waiver, p.8 of 274 and Appendix F-1.

These appeal rights do not extend to providers but are for the participant. In this case there is no denial, suspension, reduction, or termination of SHC services for petitioner under paragraph (c) above, nor does the appeal concern paragraphs (a) or (b) above. Rather this is, in essence, an appeal by a provider as to a rate for those services. The DHA does not have authority to make a decision as to providers under the *Waiver*. This determination has been upheld by the Department of Health Services in Final Decision No. CWA/133085, dated December 21, 2011.

Further, the DHA does not possess equitable powers. See, e.g., *Wisconsin Socialist Workers 1976 Campaign Committee v. McCann*, 433 F.Supp. 540, 545 (E.D. Wis.1977). The DHA must limit its review to the law as set forth in statutes, federal regulations, and administrative code provisions. Given the *Waiver*

language, the DHA may not make a substantive decision as to the rate determinations involved here. Therefore, I must conclude the DHA does not have jurisdiction to consider petitioner's appeal of this issue.

CONCLUSIONS OF LAW

The DHA does not have the authority to make a determination on the merits of petitioner's SHC rate.

THEREFORE, it is ORDERED

The petition for review herein 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.

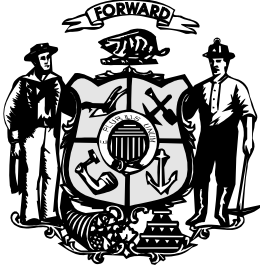
APPEAL TO COURT

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 Milwaukee,
Wisconsin, this 26th day of July, 2023

\s _____
Kelly Cochrane
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin \DIVISION OF HEARINGS AND APPEALS

Brian Hayes, Administrator
Suite 201
5005 University Avenue
Madison, WI 53705-5400

Telephone: (608) 266-3096
FAX: (608) 264-9885
email: DHAmail@wisconsin.gov
Internet: <http://dha.state.wi.us>

The preceding decision was sent to the following parties on July 26, 2023.

Bureau of Long-Term Support
Attorney Lori Kornblum