



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

DECISION ON REHEARING
Case #: CWA - 208558

PRELIMINARY RECITALS

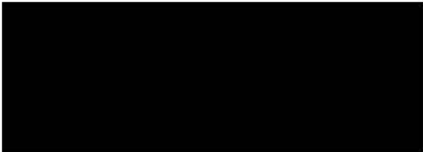
Pursuant to a petition filed on May 5, 2023, under Wis. Admin. Code § HA 3.03, to review a decision by the Bureau of Long-Term Support (the agency) regarding Medical Assistance (MA), specifically the IRIS program, a hearing was held on June 27, 2023, by telephone. On July 26, 2023 a Decision was issued dismissing the appeal. On August 8, 2023 the petitioner requested a rehearing. On August 30, 2023 the rehearing was granted. As the record was complete from the June 27, 2023 hearing, no additional hearing was held.

The issue for determination is whether the agency correctly denied petitioner's budget amendment (BA) request for an increased daily rate for supportive home care (SHC) hours.

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: Lyndsey Saatkamp
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 ██████████ County and is enrolled in the IRIS program.
2. Petitioner's diagnoses include autism, constipation, gene mutations, scoliosis, bilateral foot pain, hypotonia, and anxiety disorder. He requires hands-on assistance with 4 Activities of Daily Living (ADLs) including bathing, dressing, eating, toileting and supervision with mobility. He also requires assistance with all 6 Instrumental Activities of Daily Living (IADLs) including meal preparation, medication management/administration, money management, laundry/chores, telephone and transportation. He requires overnight care and supervision, assistance of a job coach at his place(s) of employment, multiple daily interventions for wandering, and an extensive list of self-injurious and violent/offensive behaviors.
3. Petitioner's current Individual Support and Services Plan (ISSP) has an IRIS budget of \$274,936.52 divided among Community Transportation (Miles), Supported Employment in Integrated Setting, Behavior Treatment Therapy, Routine Supportive Home Care (Daily), Community-Based Day Services and Respite in Other Setting. He also receives MA Personal Cares (MAPC) funded by a separate MA budget.
4. On July 21, 2022, a BA Request and Daily Rate Worksheet was submitted to the agency for an increase in the petitioner's SHC daily rate with ██████████. On September 22, 2022 an updated BA Request and updated Daily Rate Worksheet were submitted to the agency for an increase in the SHC daily rate to \$578.61/day.
5. From July 2022 to at least December 2022, petitioner's mother, as his representative, provided information to TMG (the agency's agent for purposes of the IRIS program) with the information it requested regarding petitioner and/or his BA request. See Exhibits 3-23.
6. By November 2022, petitioner's mother was requesting information on the status of the BA request. See Exhibit 19. She was told there were no updates.
7. On January 5, 2023, TMG, on behalf of the agency, issued an email to petitioner's mother. See Exhibit K. Specifically, it stated:

We met with DHS yesterday to discuss ██████'s BA request for the rate increase for ██████████. As you know, BA request require a deeper review of the ISSP, LTCFS, and services (paid/unpaid) that the individual receives. During the review of ██████'s BA request, DHS found a need for additional information to support the request for the rate increase. Please see the questions below:

How did the agency come up with the annual salaries of \$153,916.19 (a breakdown of salaries is needed)?

What level of support is needed to support ██████ i.e. an explanation of when 2:1 cares are provided and the number of 2:1 care hours provided each week.

What services are being provided? Who's providing each service? When are the services provided? A comprehensive break down of the Daily Caregiver Tasks Schedule would be helpful. See Attached.

Does ██████ receive paid services while at his parent's home Thursday-Sunday? If so, what services and the number of hours provided?

DHS will need this information by the end of the day next Wednesday, January 11, 2023. Please provide the information to me by Wednesday at noon to ensure that we meet DHS' deadline.

8. On January 6, 2023, petitioner's mother responded to TMG's email. See Exhibit K. Specifically, she stated:

We are surprised to receive more questions asking similar questions that have been asked repeatedly by TMG and DHS over the past five and a half months since [REDACTED]'s BA was submitted, and we will respond to the additional questions once we are in receipt of the copy of the BA request form and the accompanying supporting documents that were sent in by TMG. Since [REDACTED] became one of the original TMG participants back in 2008, I have asked for copies of BAs that have been prepared by TMG and each time I requested, the BA copy was promptly provided to me. I am disappointed that a simple request has been met with a response that requires yet additional paperwork, effort and time to make an official request that will take even more time to receive what I need to be responsive and respectful of the TMG/DHS demand for the answers by January 11th. I hope you will agree that it is not reasonable to expect that without the documents we requested, that we can meet your deadline.

Five and a half months is a very long time for a BA to sit with DHS in my experience and we have quickly and respectfully answered each and every question asked so we would like request additional time to receive back from DHS the documents that I have requested. We are requesting two weeks from the time that we receive the information supporting the BA and the other information we have requested in the attached form. Hopefully we will receive the documentation quickly and if so, we should be able to respond prior to the exhaustion of the two weeks.

Please write back and confirm to me that your deadline has been extended to allow for completion of the formal request for a copy of the BA and supporting documentation about which there still remains questions, submittal of the formal request for the copy, receipt of the requested paperwork needed, and time to compose answers per your request.

9. On January 11, 2023 TMG, on behalf of the agency, issued an email to petitioner's mother. See Exhibit K. Specifically, it stated, "DHS would like to schedule some time to meet with you to provide an opportunity to ask questions. Can you provide me with a couple of dates and times that you would be available to talk with DHS?"
10. On January 24, 2023 TMG on behalf of the agency, issued an email to petitioner's mother. See Exhibit 31, p.127. Specifically, it stated, "Sheldon informed that they would like to meet to discuss DHS' concerns as to how the rate for SHC was determined."
11. By January 26, 2023 the parties agreed to meet on February 9, 2023. Exhibit 32, p.129.
12. On February 9, 2023 the meeting was canceled. Exhibit 33.
13. On March 21, 2023 TMG issued an email to petitioner's mother asking to schedule another meeting. Exhibit 34.

14. On April 27, 2023, the agency issued a letter to petitioner stating that the BA request was denied and that he could request an independent review.
15. On May 5, 2023 petitioner appealed to the Division of Hearings and Appeals.
16. On May 9, 2023, the agency issued a Notice of Action indicating that the BA request was denied due to insufficient documentation to justify the request.

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 an 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 agency’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>).

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. Relevant program policy provides:

The individual budget calculation for IRIS is based upon characteristics, and long-term support needs as collected on the Long-term care Functional Screen (LTC FS). A profile of the individual is developed based upon this information and that profile will be used to determine the projected cost of services and supports for that individual if he or she were enrolled in Family Care. Only services that are included in the IRIS Waiver are included in this calculation. The prospective participant will know this budget amount when deciding whether to participate in IRIS or another Long-term care Program.

IRIS Policy Manual, § 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 typically fall within the budget estimate. *Id.* at § 5.3A. Participants may however submit a budget amendment to the agency 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.” *Id.* at § 5.7.

IRIS policy further states:

The Bureau of Long Term Support has developed a review group of DHS employees from the IRIS section and the Legacy Waiver section to review both IRIS requests and requests from the COP/CIP Waivers. This was designed to ensure consistency in decision-making across programs. The review group analyzes the request and recommends one of the following: approval, partially approved, request for further information, or denial. In cases where the request was denied or only partially approved, the participant has the option to request an Independent review by DHS. A committee convened by the IRIS Section Chief conducts this review. No individual who was part of the initial decision may be part of the Independent Review committee. This committee then reviews the recommendation for final approval or denial. If the request is denied, or the participant chooses not to engage in an Independent Review, the IRIS participant is afforded Medicaid Fair Hearing rights.”

Id.

In this case, the petitioner pursued a BA to request an increase in the daily rate for his SHC. From the time the BA request was filed in July 2022, the evidence shows that petitioner (by way of his mother) and his SHC provider had responded to numerous questions posed by the agency. There were responses about the types of services, hours of services, and rates. The BA Request was amended after the agency requested the health insurance be removed. There was no showing that petitioner’s mother was not cooperative with the agency’s various requests. By November, she was asking what the delay was about for the agency to decide on the request. Then there was the January 5, 2023 email. See Finding of Fact #7. Petitioner’s mother became concerned and confused as to why the agency was asking the same questions that she had already answered. She asked for the BA file in an attempt to show that she had already answered the questions. She requested an extension to the deadline she was given to answer the questions again. Then, the agency requested a meeting with her. That meeting never occurred, through no fault of the petitioner. Petitioner’s mother repeatedly asked the agency what information the agency wanted from her and what the meeting was about. The responses given were to provide an opportunity for her to ask questions and to discuss DHS’ concerns as to how the rate for SHC was determined. See Finding of Fact #9 and 10. She was never informed that if the questions in the January 5 email were not answered that the BA would be denied. She attempted to gather the information, yet again, after that request to determine what the agency actually had. She was never informed that the information she had been providing to TMG all along was not part of the BA request. She was never informed that the information she had been giving TMG apparently never made it to the agency. She was never informed that the requested meeting apparently had nothing to do with the agency’s questions per the January 5 email. Even at the hearing, the agency’s representatives could not answer the question of “what was still missing” and stated that they were at the mercy of the agency. Despite her attempts to comply with requests for information and meetings, the agency simply denied the BA stating they did not have enough information to justify it. It is still unknown what is missing.

The record is full of the communications between the petitioner’s mother and the agency. The *IRIS Work Instructions* detail a comprehensive schedule of how the BA process is supposed to work. See *IRIS Work Instructions*, pp. 60-62. There is no explanation for the delay in the decision to deny the BA. There is simply no evidence to show that the petitioner failed to provide the requested information to the agency. If TMG was asking for information about petitioner’s daily rate, cares and hours all along, but did not include that as part of the BA or pass it along to the agency, the petitioner was not made aware of it. She

had reason to believe the meeting was an attempt to answer *everyone's* questions after the January 5 email.

Based upon the above, as well as the entirety of the record before me, I find that the respondent has failed to establish that it correctly denied petitioner's BA request due to insufficient documentation. As such, this matter shall be remanded to the respondent.

CONCLUSIONS OF LAW

The agency failed to establish that it correctly denied petitioner's BA request for an increased daily rate for SHC.

THEREFORE, it is

ORDERED

That this matter is remanded to the respondent to take all administrative steps necessary to rescind the BA denial, review the BA request, and issue a decision letter to the petitioner. These actions shall be completed within 20 days of the date of this Decision. If the agency requires additional information, that is not already part of this record, the agency shall issue a letter to the petitioner specifically stating what is necessary to complete the review, within 10 days of the date of this Decision. The agency shall give the petitioner 14 days to provide the information to the agency. The respondent shall then take all administrative steps necessary to review the BA request with the additional information and issue a decision letter to the petitioner within 30 days of the date of this Decision.

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 5th day of September, 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 September 5, 2023.

Bureau of Long-Term Support
Attorney Lori Kornblum