



FH

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of



DECISION
Case #: CWA - 213277

PRELIMINARY RECITALS

Pursuant to a petition filed on May 4, 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 September 3, 2024, by telephone. The matter was originally set to be heard on June 25, 2024 but petitioner requested a reschedule due to witness unavailability. The matter was then scheduled for August 6, 2024 and a hearing was held. The appeal required a second day of hearing, and the matter was continued to September 3, 2024.

The issue for determination is whether the IRIS agency correctly seeks to terminate petitioner's enrollment in the IRIS program effective May 14, 2024 due to mismanagement of her employer authority.

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: Angela Sutherland, TMG
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 Milwaukee County and has been enrolled in the IRIS program since September 2016.
2. The IRIS agency and the petitioner first discussed program integrity issues in 2017 regarding one of petitioner's caregivers (██████████). The agency went over participant education with petitioner and discussed making sure that she is accurate when reporting dates, especially when terminating workers. The case was closed with insufficient documentation.
3. In June 2023 the IRIS agency and the petitioner again discussed program integrity issues after it was discovered that her caregiver/son (██████████) had his paychecks deposited in petitioner's bank account. The agency also reviewed his electronic verification punches and found they were entered consistently in other places besides petitioner's home. The agency went over participant education with petitioner on employer authority responsibilities.
4. At the end of June 2023, petitioner hired ██████████ as her caregiver. A hold was put on paying her because her paychecks were set to go to petitioner's bank account. ██████████ was never paid for her work as she failed to successfully complete the background check.
5. In August 2023, petitioner hired ██████████ as her caregiver. ██████████ hiring paperwork used petitioner's address as ██████████ mailing address.
6. In March 2024, the petitioner's IRIS Consultant (IC) received a telephone call from ██████████. ██████████ reports caused the IC to investigate petitioner's program integrity issues. The investigation showed that petitioner called the Fiscal Employer Agency (FEA) posing as ██████████ during which time petitioner placed a password on ██████████ account.
7. Petitioner's IC made several attempts thereafter to explain to petitioner that she needed to remove the password from ██████████ account.
8. On April 22, 2024, a program integrity visit was conducted with the petitioner and a Risk Agreement (RA) was presented to her, identifying the concerns raised in 2017, June 2023, and regarding ██████████. It was explained to petitioner that she could be disenrolled, that she should hire an agency for her cares, that she should not be financially benefitting from the program, and that she needed to follow the rules.
9. On April 29, 2024 the agency issued petitioner a notice of action advising her that she was being disenrolled from IRIS due to mismanagement of her employer authority. Specifically, it stated:

-In 2017, there were questions about some billing occurring after a Participant Hired Worker, M.H., was terminated. You changed the dates of termination while they provided a different date. You were educated on employer authority responsibilities.

-In June 2023, your bank account was being used for a Participant Hired Worker- ██████████ paychecks to be deposited into. ██████████ was terminated due to failing the background check. Additionally, ██████████ electronic verification punches were reviewed and found to be entered consistently in other places besides your home. You were education on employer authority responsibilities again.

-On 4/1/2024, your Participant Hired Worker, [REDACTED], called to say she had not been paid since December 2023. She advised TMG that she had given you her personal information and that she had not been part of filling out the new participant hired worker paperwork process at the time of her hire. Her paycard was mailed to your home. She also stated that she had agreed to receive \$300 a month from you but was unaware of the hours being submitted in her name on the timecards. She provided the ICA and FEA with her information that showed she is residing in [REDACTED]. A hold was placed on her account at the FEA since there were recordings of two different women contacting the FEA and posing as her. TMG identified those callers as [REDACTED] and as you. When you contacted the FEA claiming to be [REDACTED], you placed a passcode on the account so that [REDACTED] could not access it and change or discuss anything. [REDACTED] was attempting to change pay cards in order to directly receive funds.

-On 4/16/2024, you requested two new Participant Hired Worker packets for new workers as you terminated [REDACTED] effective 4/16 as you stated she did not want to work without receiving payment. You also stated that one of the new potential workers does not have a home address and would therefore be using your address.

-On 4/22/2024, a Program Integrity visit was conducted with you and a Risk Agreement was discussed. Self-direction responsibilities, fraud, participant education, and budget management were all discussed with you. You were advised that you were at risk for disenrollment. It was discussed that a Supportive Home Care Agency could and should be providing cares as opposed to individual Participant Hired Workers, but you were not open to that change. You also stated that you felt [REDACTED] was making false accusations against you stemming from a personal disagreement.

-As of 4/24/2024, the passcode remains on [REDACTED] account and the FEA, despite you stating that you would remove it. The last pay issued to [REDACTED] was on 3/29 for \$1,273.18 and there are no current pending payments. There continues to be timesheets submitted through 4/10; however, they are not being paid at this time.

Because there have been issues with multiple Participant Hired Workers, you have been educated on your responsibilities as the employer and employer authority, but there continues to be mismanagement and you have declined to pursue options, you are being disenrolled from IRIS.

DISCUSSION

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. It is a self-directed personal care program. The federal government has promulgated 42 C.F.R. § 441.300 - .310 to provide general guidance for this program.

The regulations require that the Department of Health Services' agent must assess the participant's needs and preferences (including health status) as a condition of IRIS participation. Id., § 441.301(c)(2). The Department's agent must also develop a service plan based on the assessed needs. The broad purpose of 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 <https://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 on-line 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 *Medicaid Eligibility Handbook (MEH)* explains how Adult Home and Community-Based Waivers work amongst the various waiver subprograms. See *MEH*, § 28.1, available online at <http://www.emhandbooks.wisconsin.gov/meh-ebd/meh.htm#t=home.htm>.

The *Waiver* states that the following are reasons a participant may be involuntarily disenrolled from IRIS:

1. Failure to utilize IRIS funding (not spending funds in the budget);
2. Loss of financial eligibility, including falling into cost share arrears;
3. Loss of functional eligibility, including expiration of long-term care functional screen;
4. Mismanagement of Budget Authority responsibilities (misappropriation of funds);
5. Mismanagement of Employer Authority responsibilities;
6. Unable to contact for an extended period of time;
7. Health and safety cannot be assured;
8. Substantiated fraud;
9. Movement to an ineligible living setting; and
10. Material noncompliance with IRIS program requirements outside of reasons above.

Waiver, p. 202.

The IRIS program seeks to disenroll petitioner under “Mismanagement of Employer Authority responsibilities”. The IRIS program considers this to have occurred because petitioner misappropriated IRIS funds and/or was referred to the fraud allegation review and assessment (FARA) process. See Exhibit K10.

The IRIS agency has provided evidence to show that it has attempted to counsel petitioner and develop her skills over the course of her enrollment and has warned her of the risk of disenrollment. There were early concerns and she was educated as the issues came up. However, it rose to a level of great concern when the agency found that petitioner was posing as one of her caregivers as it related to her pay. The agency attempted to resolve the matter but petitioner was not willing or able to do so. The RA she signed off on indicates that petitioner understood her responsibilities, her options to mitigate the issues and the risks. To mitigate the issues with petitioner’s caregivers and their pay, the IRIS agency gave petitioner the option of using a Supportive Home Care agency to provide her cares as opposed to a Participant Hired Worker, but petitioner would not agree to do so. The IRIS agency also noted that even by the time of hearing, petitioner had not removed the passcode from [REDACTED] account. The agency presented the telephonic recording of petitioner calling the FEA, posing as [REDACTED], during which petitioner placed the password on [REDACTED] account.

Petitioner appeared at hearing and testified that she placed the password on [REDACTED] account at [REDACTED] request. Her testimony on this was not credible or corroborated by the evidence. The call was not made to place a password on the account, and it is clear petitioner was acting to control the account. Her refusal to use a SHC agency or remove the passcode from [REDACTED] account to mitigate the risks here to program integrity, as well as her own health and safety, is a sign of being unable and/or unwilling to follow IRIS rules and manage her employer authority. I find that the agency has met its burden to show that it correctly disenrolled her.

Petitioner may wish to seek eligibility for another MA program, and/or find a guardian, power of attorney, authorized representative, representative payee, or support broker to help her navigate the process.

CONCLUSIONS OF LAW

The agency correctly disenrolled petitioner from the IRIS program due to mismanagement of her employer authority.

THEREFORE, it is **ORDERED**

The petition for review 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.

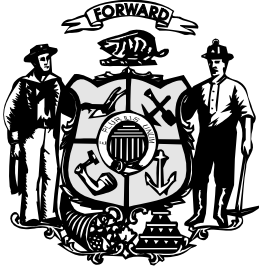
APPEAL TO COURT

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 27th day of September, 2024

\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 27, 2024.

Bureau of Long-Term Support