



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

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

DECISION
Case #: CWA - 210721

PRELIMINARY RECITALS

Pursuant to a petition filed on October 16, 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 December 7, 2023, by telephone.

The issue for determination is whether the IRIS program correctly denied the petitioner's request for a residential elevator.

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: Melanie Malm, 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 Ozaukee County. He is enrolled in the IRIS program.
2. Petitioner lives at home with family. His diagnoses include quadriplegia due to spinal cord injury.

3. In February 2023 petitioner discussed with his IRIS Consultant (IC) that his elevator in his home was broken and that he was unable to access the lower living area of his home.
4. On May 1, 2023, an Accessibility Assessment (AA) was completed for the requested elevator. The AA recommended replacement of the elevator.
5. On July 24, 2023, petitioner submitted a one-time expense (OTE) request to the Department of Health Services (DHS) for review.
6. On September 19, 2023, the IRIS agency issued a notice to petitioner advising the OTE request was denied, stating in relevant part:

The participant and his family constructed the current home and installed a residential elevator. After 16 years the elevator stopped working. The parts needed for repair are no longer manufactured and the original installer is out of business. The elevator is used to access the lower level of the home where the participant utilizes an accessible workstation. Currently the participant is using a main floor bedroom for work and states it is too noisy when making calls. The AA report states an incline platform lift would not work due to the participant needing to go through the garage to get to the stairway to the lower level. DHS recommended using noise cancelling headphones while making calls during work time. The incline platform lift could be a viable option but was not explored further. Both options would be more cost effective. DHS also recommended the participant utilize DVR (Division of Vocational Rehabilitation) for funding support due to the elevator being utilized for work. IRIS Waiver Funds are a funding source of last resort. In addition, the original elevator is a homeowner's expense. The conclusion of the request is denied based on cost effectiveness and the outcome can be met through other goods, services, and supports.

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>. Under the *Waiver* the State is authorized to create policy to run the program. *Id.* at p.17. 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>). Under the *Waiver* a

State has the latitude to design a program that is cost-effective, and a *Waiver* is not granted to a State unless the State assures its financial accountability. *Id.* at p. 1 and 224.

The petitioner has requested a home modification for an elevator in his home. The *Waiver* states that home modifications are “physical adaptations to the private residence of a participant or participant’s family that ensure the health, welfare, and safety of the participant and enable the participant to function with greater independence in the home.” *Id.* at p. 114. Home modifications are allowable under the *Waiver* but are subject to program policy consistent with this service definition. *Id.* IRIS policy states that modifications that are not the most cost-effective approach to meeting the participant’s long-term care related outcomes are excluded. *IRIS Policy Manual*, §5.8A. Home modifications that do not address the participant’s independence, health, safety, or long-term care-related needs are not allowable. *IRIS Policy Manual* §5.8A.2.

The petitioner lives with his parents in the home they constructed, which included the elevator. It was used for approximately 16 years but has now become defunct. The new elevator was requested to provide petitioner with access to the lower level of the home where he has an accessible workstation, to socialize with his family, and to provide shelter in case of severe weather.

IRIS is required to ensure financial accountability and it has done so through policy, which it applies equally across the program to all members. Home modifications must demonstrate that the modification addresses disability related long-term care needs that increase self-reliance and independence or ensure safe access. Here, the petitioner already has a safe shelter on the main level in case of severe weather. He has safe access within the home and for egress. His employment goals have been furthered with the adaptive van and he is mostly working out of the home. Petitioner provided the letter that DVR provided to him after they denied his request for the elevator. DVR denied the request for the elevator because it did not find it necessary or appropriate to meet his employment goals, citing his remote work at approximately 1 hour per week and his success in using his bedroom as workspace over the past year. Further, modifications are specifically not allowed under policy when designed for socializing. *IRIS Policy Manual*, § 5.8A.2. I certainly understand that the elevator would be desirable, however public funding can only go so far in providing everything a member may want. With approximately \$40,000 in costs for the elevator, the program must look at the need for such a service and ensure that less costly alternatives to meet participant’s needs are in place. In the end, I find the IRIS agency acted within its authority here. The denial of the OTE request will be sustained.

I add, assuming petitioner finds this decision unfair, that it is the long-standing position of the Division of Hearings & Appeals that the Division’s hearing examiners lack the authority to render a decision on equitable arguments. See, Wisconsin Socialist Workers 1976 Campaign Committee v. McCann, 433 F.Supp. 540, 545 (E.D. Wis.1977). This office must limit its review to the law as set forth in statutes, federal regulations, and administrative code provisions.

CONCLUSIONS OF LAW

The IRIS program correctly denied petitioner’s OTE request for a residential elevator.

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.

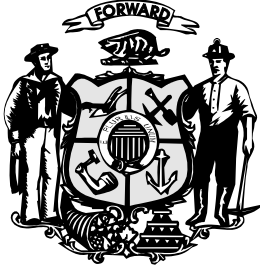
APPEAL TO COURT

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 3rd day of January, 2024

\s _____
Kelly Cochrane
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 January 3, 2024.

Bureau of Long-Term Support