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STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

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

DECISION

Case #: CWA - 210734

PRELIMINARY RECITALS

Pursuant to a petition filed on October 17, 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 November 29, 2023, by telephone.

The issue for determination is whether the agency correctly denied Petitioner's request for IRIS funds to purchase an untrained service dog.

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

ADMINISTRATIVE LAW JUDGE:

Nicole Bjork
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner is a resident of Milwaukee County and is enrolled in the IRIS program.

2. On May 1, 2023, Petitioner was assessed utilizing a Long Term Care Functional Screen (LTCFS). Petitioner's primary diagnoses include hypertension, left side hemiparesis, chronic fatigue, chronic pain in her left arm and hand, facial neuropathy, benign meningioma, seizure disorder, hydrocephalus, amenorrhea, depression, visual impairment, and hearing loss. Petitioner requires assistance with all five activities of daily living (ADLs) and with all five instrumental activities of daily living (IADLs). Petitioner further requires assistance in the event of an emergency.
3. Petitioner's current Individual Support and Services Plan (ISSP) includes a total annual budget of \$32,244.84.
4. On October 13, 2022, Petitioner informed her IRIS consultant that the American Brain Injury Association had recommended that Petitioner would benefit from a service dog. The IRIS consultant explained the One-Time Expense (OTE) request process and that IRIS funds could be used to purchase an already trained service dog. Petitioner expressed understanding and noted that she would start that process.
5. Between October 2022 through September 2023, Petitioner and the IRIS consultant had numerous conversations about what documentation Petitioner would need to be approved for a trained service dog. Further, the IRIS consultant provided resources as to possible vendors. However, Petitioner responded that she wanted to use her IRIS funds to purchase an untrained dog and then use additional IRIS funds to cover the cost of training the dog to become a service dog. Again, Petitioner's IRIS consultant informed Petitioner that IRIS funds only covered the purchase of an already trained service dog. In June 2023, Petitioner noted that she would like an emotional support dog. However, the IRIS consultant responded that emotional support dogs are not covered but that a trained service dog would be.
6. Between October 2023 to November 2023, Petitioner submitted three doctor's statements indicating that Petitioner would benefit from an emotional support dog. Petitioner's IRIS consultant again informed her that IRIS funds cannot be used for an emotional support dog. Petitioner then reiterated her request to purchase an untrained dog and then train that dog to become a service dog.
7. On September 12, 2023, the agency sent Petitioner a notice informing her that her request to utilize IRIS funds to purchase an untrained dog and then train that dog to be a service dog was denied.
8. Petitioner filed an appeal of that denial.

DISCUSSION

The IRIS program was developed pursuant to a Medical Assistance waiver obtained by the State of Wisconsin, pursuant to section 6087 of the Deficit Reduction Act of 2005 (DRA), and 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. 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). The Department's agent must also develop a service plan based on the assessed needs.

The 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 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 www.dhs.wisconsin.gov/publications/P0/P00708.pdf), *IRIS Work Instructions* (available at www.dhs.wisconsin.gov/publications/P0/P00708a.pdf), and *IRIS Service Definition Manual* (available at www.dhs.wisconsin.gov/publications/p00708b.pdf).

The *Service Definition Manual* defines services dogs under “Aid, Equipment, and Supplies.” Included is the following policy language:

Assistive technology also includes the purchase of a service dog. A service dog is defined as a dog that is individually trained by a reputable provider experienced in providing structured training for service dogs to do work or perform tasks for the participant that are directly related to the participant’s disability. Costs are limited to the following:

- Purchase of a service dog;
- Post-purchase training that is necessary to partner a service dog with the participant owner; and
- Ongoing maintenance costs of a service dog that include preventative, acute, and primary veterinary care and items necessary for the service dog to perform its task or work.

Service dog costs must be consistent with program policy. Acquisition of all assistive technology including the use of assessments is subject to program policy consistent with this service definition. Assistive technology may be purchased, new or used, or leased to the participant. All assistive technology must meet all the applicable standards of manufacture, safety, design and installation such as Underwriters Laboratory and Federal Communication Commission.

Per the policy above, IRIS funds can only be used to purchase an already trained service dog. Petitioner is seeking to use IRIS funds to purchase an untrained dog and then use additional IRIS funds to train that dog to become a service dog. However, the agency representative accurately noted that IRIS funds can only be used to purchase an already trained dog. The policy exists because there are no guarantees that an untrained dog would be capable of becoming a service dog, even with training.

Petitioner testified that she is having difficulty finding an already trained dog. However, the agency representative noted that she provided Petitioner with numerous resources to assist her with finding an already trained dog. Other than stating she is having difficulty finding an already trained dog, Petitioner did not provide any information regarding how she has attempted to find an already trained dog. Petitioner should use the resources that the agency has provided in order to find a trained service dog.

CONCLUSIONS OF LAW

Under IRIS policy the program cannot cover veterinary expenses to purchase an untrained dog because the policy only covers purchases of an already trained service dog, as defined by program policy.

THEREFORE, it is

ORDERED

That the petition for review is hereby dismissed.

REQUEST FOR A REHEARING

Current Individual Support and Services Plan (ISSP) shows a total annual budget of \$32,244.84.

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.

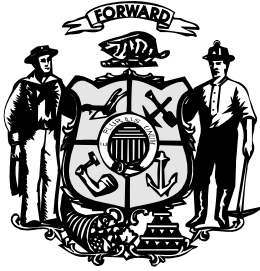
APPEAL TO COURT

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 5th day of January, 2024

\s _____
Nicole Bjork
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 5, 2024.

Bureau of Long-Term Support