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**STATE OF WISCONSIN**  
**Division of Hearings and Appeals**

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In the Matter of



**DECISION**  
Case #: CWA - 213161

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**PRELIMINARY RECITALS**

Pursuant to a petition filed on April 24, 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 October 24, 2024, by telephone.

The issue for determination is whether the IRIS agency correctly seeks to terminate petitioner's enrollment in the IRIS because it cannot ensure his health and safety needs.

There appeared at that time the following persons:

**PARTIES IN INTEREST:**

**Petitioner:**



**Petitioner's Representative:**

Kayla J. Smith  
Board on Aging & Long Term Care  
1402 Pankratz Street  
Suite 111  
Madison, WI 53704

**Respondent:**

Department of Health Services  
1 West Wilson Street, Room 651  
Madison, WI 53703  
By: Pam Schreiber, 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 is currently enrolled in the IRIS Program.
2. Petitioner is a 68-year-old male who lives alone. He has physical, cognitive, and memory deficits which impact his daily functioning. He has a confirmed diagnosis of Schizophrenia, which impacts his short-term, mid-term, and long-term memory. He struggles with mental health and substance abuse issues.
3. Petitioner has not had a paid participant hired worker (PHW) for supportive home care (SHC) tasks since November 2023.
4. Petitioner has a Power of Attorney for healthcare (HCPOA), but the HCPOA has expressed she no longer wishes to be involved with the care or decision making for the petitioner.
5. In February 2024, a potential PHW for the petitioner contacted petitioner's IRIS Consultant (IC) and advised her that she had been terminated by the petitioner. The agency then created risk agreement to address the health and safety concerns with the petitioner, which had not been mitigated. It was explained to petitioner and his HCPOA that he could be involuntarily disenrolled if he did not have a find a reliable PHW by the end of March.
6. There is not a robust back-up plan in place for this petitioner.
7. On April 11, 2024, he was sent a Notice of Action stating he is being disenrolled from the IRIS program effective April 26, 2024, because the IRIS program was unable to ensure his health and safety.

## 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 program seeks to end the petitioner's IRIS enrollment. 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 agency contends petitioner's health and safety is at risk because he has had no PHW for SHC tasks since November 2023 and no robust back up plan. His Long Term Care Functional Screen identifies the assistance petitioner needs with his activities of daily living and instrumental activities of daily living. The agency must prove by the preponderance of the credible evidence that the petitioner's health and safety is at risk so as to warrant disenrollment.

The IRIS program bestows considerable independence on its recipients. But the program and its workers have a duty to supervise those within the program to ensure their safety. There was no dispute that APS has been involved to get petitioner a legal decision maker/guardian to assist with decision making as his HCPOA has indicated that she no longer wants to act in this capacity. Case notes corroborate that her ability to stand in for the petitioner is questionable. A PHW and/or personal care or supportive home care agency needed to be hired by the end of March 2024 pursuant to the risk agreement. This did not occur. There has been an ongoing issue with retaining PHWs as it appears petitioner will fire them for unknown reasons. There is also a history of fires in the home when petitioner has attempted to cook something on his own. Because of APS involvement, inconsistent providers, and lack of a robust back up plan to meet this petitioner's needs, the agency argues it is unable to ensure his health and safety.

Petitioner's representative testified to petitioner's desire to remain in the IRIS program. She argues it is not his fault that his HCPOA has not been able or willing to perform her role for the petitioner. She testified that APS is in the process of getting a new legal decision maker for the petitioner.

The IRIS program has given the petitioner and his legal representatives multiple opportunities to mitigate the issues with petitioner's cares and participation in the program. There is no blame or fault cast upon this petitioner, but rather, the agency is under legal obligation to ensure his health and safety. It has met its burden to show that it cannot under these facts. Therefore, the program correctly seeks to end his enrollment in the IRIS program because his health and safety cannot be assured. The petitioner may still reapply for this program or another MA program.

### **CONCLUSIONS OF LAW**

The IRIS program correctly seeks to disenroll petitioner from the program because it cannot ensure his health and safety.

**THEREFORE, it is**

**ORDERED**

The petitioner's appeal 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, 5<sup>th</sup> 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.

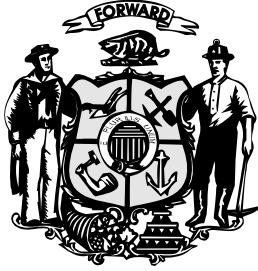
## APPEAL TO COURT

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 28th day of October, 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 October 28, 2024.

Bureau of Long-Term Support

