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

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In the Matter of



**DECISION**  
Case #: CWA - 211308

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**PRELIMINARY RECITALS**

Pursuant to a petition filed on December 5, 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 January 24, 2024, by telephone.

The issue for determination is whether the agency correctly denied petitioner's budget amendment request for therapeutic yoga services.

There appeared at that time the following persons:

**PARTIES IN INTEREST:**

**Petitioner:**



**Petitioner's Representative:**



**Respondent:**

Department of Health Services  
1 West Wilson Street, Room 651  
Madison, WI 53703

By: Laura Sutherland  
Bureau of Long-Term Support  
PO Box 7851  
Madison, WI 53707-7851

**ADMINISTRATIVE LAW JUDGE:**

Beth Whitaker  
Division of Hearings and Appeals

**FINDINGS OF FACT**

1. Petitioner (CARES # ) is a 29 year old resident of Dane County who is enrolled in the IRIS program.
2. Petitioner qualifies for IRIS services as a member of the developmental disability target group.
3. Petitioner receives IRIS services through the IRIS consultant agency TMG.
4. Petitioner resides with roommates and a live-in caregiver.
5. Petitioner participates in part-time supported employment through [REDACTED], with a placement at [REDACTED] kitchen.
6. Petitioner participates in [REDACTED] adult day care.
7. Petitioner 's diagnoses include intellectual disability, autism and anxiety; she requires assistance with four activities of daily living (ADLs) (bathing, dressing, eating and toileting) and with all instrumental ADLs. (IADLs).
8. Petitioner's ISSP for plan year March 1, 2023 through February 2, 2024 (modified on January 11, 2024) shows an annual budget of \$177,089.24 divided between community transportation, counseling and therapeutic services through [REDACTED] camp, facility-based Day Services and pre-vocational services through [REDACTED], supported employment, supportive home care, and support broker services and consultative clinical and therapeutic services through [REDACTED].
9. On May 15, 2023, petitioner's need for the requested [REDACTED] counseling and therapeutic services was identified, for the purposes of addressing deficits in muscle tone, balance, coordination and emotional self-regulation so that petitioner may remain safe in the community.
10. In approximately June 2023, the BA request was submitted requesting one session per week of one-on-one yoga therapy at a cost of \$160 per week.
11. July 14, 2023, Lindsey Dobyms, petitioner's IRIS consultant, communicated to petitioner's mother and guardian [REDACTED] that a letter from "licensed support" such as a primary physician was needed to document the need for [REDACTED] services.
12. On August 21, 2023, [REDACTED] and Dobyms agreed that [REDACTED] services would be beneficial for petitioner regarding body awareness, sensory and creating stability/balance.
13. Petitioner no longer receives counseling through the [REDACTED] because the provider left.
14. After discontinuation of [REDACTED] counseling, the BA request was amended to request .68 units of therapeutic yoga weekly.
15. [REDACTED] pays out-of-pocket for counseling services for petitioner through [REDACTED], because the provider no longer accepts Medical Assistance.
16. On September 7, 2023, petitioner's IRIS consultant agency TMG issued a Notice of Action informing petitioner that the Budget Amendment request for Counseling and Therapeutic Services through [REDACTED] was denied because the request was not considered the most cost effective way to support her outcome and because the request contradicted IRIS policy.
17. On October 18, 2023 Mara Krueger completed a Long Term Care Functional Screen (LTCFS) report regarding petitioner based on a screening of petitioner in her home on October 11, 2023.
18. On December 4, 2023, [REDACTED] [REDACTED] and [REDACTED] [REDACTED] transportation services were removed from petitioner's ISSP because they were not being used.

## 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(j) of the Social Security Act. It is a self-directed personal care program.

The federal government has promulgated 42 C.F.R. §441.450 - .484 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., §441.466. The Department's

agent must also develop a service plan based on the assessed needs. Further, “all of the State’s applicable policies and procedures associated with service plan development must be carried out ...” Id. §441.468

IRIS participants choose needed supports and services to meet long-term care outcomes as identified in an Individual Support and Services Plan (ISSP) which is developed as part of a collaborative effort between the participant, IRIS consultant and other individuals. IRIS Policy Manual, §§ 5.4 and 5.5. The IRIS agency is required to engage in ongoing plan monitoring to ensure services are implemented according to the plan, to assure participant health and safety and to assure appropriate use of the authorized budget. IRIS Policy Manual, § 5.5C. The IRIS agency also maintains regular, in-person contact with IRIS participants, based on established level of support, with intent to assess safety, efficacy of ISSP services, and to measure outcome achievement. Id.

A budget is an estimate of the participant’s expected needs, based on information in the LTCFS. IRIS Policy Manual, § 5.3. Participants have flexibility in managing their budget. An individual’s ISSP is developed based on the budget estimate. The cost of services on the ISSP must be within the budget estimate. Id. A request for a Budget Amendment (BA) can be made to increase the budget to pay for an ongoing need not met within the current budget. IRIS Policy Manual, § 5.7. A change in condition LTCFS is required any time a participant requests a budget increase of 25% or more for any combination of the 5 following caregiving-related services: adult day care, adult day services, daily living skills, supportive home care, and respite. Id.

Counseling and therapeutic resources are covered by the IRIS program. IRIS Policy Manual 5.4A.

“Counseling and therapeutic services is the provision of professional, treatment-oriented services, resources, or interventions to maintain or improve participant health, welfare, or functioning in the community. This service addresses a participant’s identified personal, social, physical, medical, behavioral, emotional, cognitive, mental, or substance abuse treatment needs and is recommended by a mental health professional or qualified health care professional. A “qualified health care professional” as defined under Wis. Admin. Code § DHS 107.24 means any of the following:

- A physician or physician assistant licensed under sub ch. II of ch. 448, Stats.
- A physical therapist licensed under subch. III of ch. 448, Stats.
- An occupational therapist licensed under subch. VII of ch. 448, Stats.
- A chiropractor licensed under ch. 446, Stats.

These services include aging or disability adjustment and adaptation counseling, interpersonal therapy, recreational therapy, music therapy, art therapy, aquatic therapy, massage therapy, nutritional counseling, medical counseling, behavioral counseling, weight counseling, and grief counseling. Costs directly associated with any counseling or therapies received are included in this service. Services not specifically described above may be covered, if approved by the DHS.

IRIS Service Definition Manual, p. 28.

At hearing, TMG’s representative Angela Sutherland testified that the agency did not dispute that petitioner would benefit from the requested services. There is additional documentation in this record that the IRIS consultant communicated the same position to [REDACTED]. The record contains documentation of discussion between the IRIS consultant and [REDACTED] about the need for a letter from a physician documenting the need for the service, but there is no evidence that this letter was provided to the Department. There is no such letter in this record. [REDACTED] testified that an unnamed provider associated

with ██████████ suggested ██████████ services as a replacement for the ██████████ services that ██████████ is paying for. I am asked to rely on ██████████ testimony that the unnamed person recommending this service is a “mental health professional or qualified health care professional.” I have reservations about relying on ██████████ testimony regarding her general understanding of the opinion of this person to show that the requested services are recommended by a mental health professional or qualified health care professional. It could be argued that, without that, the service does not meet the definition in the IRIS Service Definition Manual and is not a covered service. However, in this case because this documentation was clearly discussed between ██████████ and Dobyms and the agency did not cite the lack of this documentation as a basis for denial of the BA request, I will find that the service is covered.

The agency asserts first that the petitioner has not demonstrated that the BA request is cost-effective. Second, the agency asserts that the request must be denied based on IRIS Policy Manual 5.6A.4, Funding of Last Resort, because petitioner did not show that “Medicaid ForwardHealth card, primary insurance, other governmental-funded programs or other formal or informal supports, cover the requested good or service.”

Regarding cost-effectiveness, the requested service cost is \$160 per unit. The current BA request is for .68 units per week, amended from one unit per week because the remainder is now within petitioner’s existing IRIS budget after discontinuation of other counseling services. Sutherland testified that the service is more costly than other yoga classes readily available in the community through gyms and yoga studios. ██████████ responded that the ██████████ services are not the equivalent of a gym exercise class, but are therapeutic services to treat symptoms of autism. She explained that petitioner’s developmental level would not allow her to navigate a gym to attend a yoga class independently. She said that petitioner would not be able to tolerate this public setting and could become emotionally dysregulated and begin screaming in response to things like high noise levels or a perception of being trapped in a room. For those reasons, she explained that a typical gym yoga class is not a feasible alternative. Second, she said that even if it were possible for petitioner to attend such a class, this type of class would not serve the purposes for which one-on-one ██████████ services are sought. She said that this service is a specialized type of counseling designed for people with autism and autism-related behaviors and uniquely meets petitioner’s physical and emotional needs in the areas of body awareness, emotional regulation, physical balance and muscle development. She asserted that neither a gym yoga class nor traditional counseling is the equivalent of this service. Finally, she explained that the cost-effectiveness of the requested in-home service must take into account the cost of transportation for services out of the home and the cost of a support person to travel with petitioner to the service.

██████████ also testified that the counseling petitioner previously received through the ██████████ program is no longer available because the provider who specialized in autism left the program. She also indicated that the counseling was not effective. She said that the counseling petitioner previously received through ██████████ is not available because the provider stopped taking medical assistance. She said that on a temporary basis she pays for counseling there out-of-pocket until ██████████ services are approved. In summary, petitioner is not receiving needed counseling that she seeks to provide through the BA request; and her IRIS expenditures have been decreased through the cessation of these counseling services. The agency concedes that the requested services is not duplicated by ██████████ services. ██████████ testified persuasively that a one week camp funded by ██████████ Wisconsin is not counseling or therapy and that no therapy or counseling is provided through ██████████-funded day care, pre-vocational or vocational services.

██████████ testimony was persuasive. I conclude that the lower cost alternatives suggested by the agency are not the equivalent of the service requested and are not appropriate for consideration in cost-effectiveness analysis. The IRIS Budget Amendment Provider Quote Comparison contains 3 quotes. Exhibit F10. The

only one that is a lower cost than [REDACTED] is not an IRIS provider. The third quote listed is more costly than the requested service. Petitioner presented evidence to show by a preponderance of the evidence that the requested one-on-one [REDACTED] therapeutic service is the most cost effective option that meets petitioner's needs and serves the desired outcomes identified in the current ISSP.

Petitioner's argument addresses the second basis for denial described at hearing, the requirement to exhaust other funding sources. While some types of counseling are covered by MA, there is no evidence that therapeutic yoga of the type sought is a MA-covered service or that there is any other funding source that the petitioner failed to exhaust.

It is not disputed that the requested service is covered by IRIS. Petitioner's ISSP and most recent LTCFS document that the service will benefit petitioner in reaching her desired outcomes, specifically "to continue gaining independence and taking care of my needs." Petitioner showed that the service requested is the most cost-effective option available and that there are no equivalent services available through other funding sources.

### CONCLUSIONS OF LAW

The petitioner established that the agency erred in denying the Budget Amendment request for weekly [REDACTED] in-home therapy based on its conclusion that there are more cost-effective alternatives and alternatives covered by alternative fundings sources.

**THEREFORE, it is**

**ORDERED**

That this matter is remanded to the agency to take all administrative steps necessary to approve the Petitioner's BA request. These actions shall be completed within 10 days of the date of this decision.

### **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).

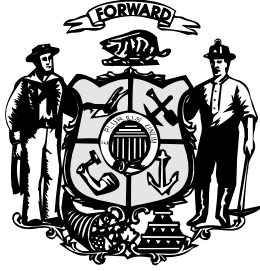
The process for Circuit Court Appeals may be found at Wis. Stat. §§ 227.52 and 227.53. A copy of the statutes may be found online or at your local library or courthouse.

Given under my hand at the City of Madison,  
Wisconsin, this 25th day of January, 2024



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Beth Whitaker  
Administrative Law Judge  
Division of Hearings and Appeals



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The preceding decision was sent to the following parties on January 25, 2024.

Bureau of Long-Term Support

