



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

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

DECISION
Case #: CWA - 211033

PRELIMINARY RECITALS

Pursuant to a petition filed on November 16, 2023, under Wis. Admin. Code § HA 3.03, to review a decision to disenroll Petitioner from the IRIS program that was made by TMG as agent for the Department of Health Services, Office of IRIS Policy, a hearing was held on January 4, 2024, by telephone.

The issues for determination are: (1) whether the Department of Health Services properly determined that Petitioner is no longer functionally eligible for IRIS, and (2) whether the Department properly seeks to disenroll Petitioner from the IRIS Program.

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: Ivanna McDonald, TMG
Office of IRIS Policy
PO Box 7851
Madison, WI 53707-7851

ADMINISTRATIVE LAW JUDGE:

Teresa A. Perez
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner is a ██████████ old resident of Milwaukee County.

2. Petitioner has been enrolled in the IRIS program since approximately November 2022 which was shortly after he was involved in a motorcycle accident that resulted in a right leg amputation and fractures to his pelvis and back.
3. Petitioner underwent an initial long term care functional screen (“LTCFS”) in November 2022.
At that time, Petitioner required the assistance of another person to safely and appropriately complete the following activities of daily living (“ADLs”): bathing, dressing, mobility in the home, toileting, and transferring since at least 2017. In addition, he used a shower chair to bathe, a wheelchair for mobility, and a transfer board. He also required assistance to perform the following instrumental activities of daily living (“IADLs”): meal preparation, laundry and chores, transportation and, job-related activities.
4. On October 24, 2023, a TMG screening specialist met with Petitioner in his home and reviewed his functional eligibility. At that time, Petitioner reported that he has made a successful recovery, that he has only minimal pain from the fractures he sustained in the motorcycle accident, and that that he has obtained a prosthetic limb which enables him to complete all ADLs and all IADLs without the assistance of another person.
He continues to use a shower bench to bathe and to independently use a wheelchair to move throughout his home in the evenings because he can tolerate his prosthetic for only eight hours per day.
5. On November 9, 2023, TMG completed a LTCFS using the information gathered during the October 24, 2023 meeting with Petitioner and concluded that he no longer requires a nursing home level of care and is thus no longer eligible for IRIS.
6. By notice dated November 10, 2023, TMG informed Petitioner that he no longer met the functional eligibility requirements to remain enrolled in IRIS and that he would therefore be disenrolled on November 25, 2023. .
7. On November 16, 2023, the Division of Hearings and Appeals received an appeal request from Petitioner.

DISCUSSION

To be functionally eligible for IRIS program benefits, an individual must be a member of one of the following “target groups”: frail elderly; adult with a physical disability; or adult with a developmental disability, as that term is defined by 42 U.S.C. § 15002(8), and must also require a “nursing home” level of care. See *IRIS Policy Manual*, §2.1 at <https://www.dhs.wisconsin.gov/publications/p0/p00708.pdf> and DHA Case No. CWA-179794 (Div. of Hearings & Appeals April 5, 2017, adopted by Secretary on May 4, 2017) (DHS).

In this case, the agency contended that Petitioner no longer requires a nursing home level of care and is therefore not functionally eligible for IRIS.

Wis. Admin. Code §DHS 10.33(2)(c), set forth below, describes the nursing home level of care that is used in the Family Care Program. The same standard for determining nursing home level of care has been adopted in the IRIS Program as well. See DHA Decision Nos. CWA-165705, p. 3 (July 31, 2015) and CWA-198981, p. 3 (August 13, 2020).

A person is functionally eligible at the comprehensive level [i.e., nursing home level of care] if the person requires ongoing care, assistance or supervision from another person, as is evidenced by any of the following findings from application of the functional screening:

1. The person cannot safely or appropriately perform 3 or more activities of daily living.
2. The person cannot safely or appropriately perform 2 or more ADLs and one or more instrumental activities of daily living.
3. The person cannot safely or appropriately perform 5 or more IADLs.
4. The person cannot safely or appropriately perform one or more ADL and 3 or more IADLs and has cognitive impairment.
5. The person cannot safely or appropriately perform 4 or more IADLs and has cognitive impairment.
6. The person has a complicating condition that limits the person's ability to independently meet his or her needs as evidenced by meeting both of the following conditions:
 - a. The person requires frequent medical or social intervention to safely maintain an acceptable health or developmental status; or requires frequent changes in service due to intermittent or unpredictable changes in his or her condition; or requires a range of medical or social interventions due to a multiplicity of conditions.
 - b. The person has a developmental disability that requires specialized services; or has impaired cognition exhibited by memory deficits or disorientation to person, place or time; or has impaired decision making ability exhibited by wandering, physical abuse of self or others, self-neglect or resistance to needed care.

“Activities of Daily Living” or “ADLs” are, in turn, defined as bathing, dressing, eating, mobility, transferring from one surface to another such as bed to chair and using the toilet. Wis. Adm. Code §DHS 10.13(1m).

"Instrumental activities of daily living" or "IADLs" are, in turn, defined as management of medications and treatments, meal preparation and nutrition, money management, using the telephone, arranging and using transportation, and the ability to function at a job site. Wis. Admin. Code §DHS 10.13 (32). In addition, the LTCFS tool lists “Laundry and/or Chores” as an IADL. It is thus clear that the Department considers the performance of laundry and chores to be an additional IADL. This is consistent with federal Medicaid regulations which indicate that IADLs include the performance of essential household chores. See 42 C.F.R. § 441.505.

To assess an enrollee’s functional eligibility, IRIS consultant agencies are required to interview the enrollee (and sometimes other individuals, if needed) regarding their functional abilities and limitations. The information gathered is, in turn, entered into a computerized LTCFS developed by the Department of Health Services (“the Department”). The programmed logic in the LTCFS is then applied to the information input by the screener which generates a finding as to an individual’s level of care and functional eligibility. When entering information into the LTCFS, screeners must follow the Department’s *Wisconsin Long Term Care Functional Screen Instructions*.

Maia Kou, the screening specialist who met with Petitioner in October 2023 to review his functional eligibility for IRIS, testified at hearing and confirmed the accuracy of the information she entered into the LTCFS. The written narrative that Screening Specialist Kou included in the LTCFS was detailed, precise, and based on personal observation. Ex. C1.

Petitioner did not dispute his ability to independently perform all ADLs and most IADLs. He testified that his mother cooks for him and washes his clothes but acknowledged that he could probably manage the laundry on his own. He explained that cooking would be more challenging because it would be hard for him to deal with common issues like moving quickly to get out of the way of a dropped knife or maneuvering on the floor if it gets greasy.

Screening Specialist Kou noted in the LTCFS that Petitioner reported to her that his mother cuts his food and prepares hot meals due to his preference but that he is able to prepare simple meals, to open food containers, the refrigerator, and the freezer, to safely use kitchen appliances, and to safely place food on a plate and carry it to a table close by. She further testified that Petitioner reported that he and his mother grocery shop together, that she picks out items from the shelf and place them into his scooter cart, and that both of them carry groceries into the house and put them away. Ex. C1. Petitioner did not dispute any of these details at hearing. Based on this information, Screening Specialist determined that Petitioner is independent with meal preparation and grocery shopping. That determination is consistent with the *Wisconsin Long Term Care Functional Screen Instructions* which indicate that an individual who is able to complete simple meals may be found to be independent with meal preparation and that an individual who needs assistance placing items in a cart may be found to be independent with grocery shopping. See *Instructions*, §5.13. I thus find that TMG properly found that Petitioner is independent with meal preparation and grocery shopping as well as all other IADLs.

I note that there is a historic dispute as to whether a person who uses an item of durable medical equipment (e.g., shower chair, wheelchair) to complete an ADL should be considered to “require assistance” with that ADL. Petitioner uses two items of DME; namely, a shower chair to allow him to bathe and a wheelchair to move around his home in the evenings. *See* Deborah Boehm vs. Wisconsin Department of Health Services, No. 14-CV-10612 (Wis. Cir. Ct. Milwaukee County, Sept. 17, 2015); Joyce Jones vs. Wisconsin Department of Health Services, No. 14-CV-10707 (Wis. Cir. Ct. Milwaukee County, September 25, 2015); Final Decision FCP-169534 (September 7, 2016). Even if I were to find that this Petitioner requires assistance with bathing and mobility because of his use of DME to perform those two ADLs, he would not meet the nursing home level of care because he does not require assistance with any IADLs. See Wis. Admin. Code §DHS 10.33(2)(c)1. and 2.

Based on the evidence in the record in front of me, I find that the agency has established that Petitioner is no longer functionally eligible for IRIS.

CONCLUSIONS OF LAW

- (1) TMG, agent for the Department of Health Services, properly determined that Petitioner does not require a nursing home level of care.
- (2) Petitioner is no longer functionally eligible for IRIS; the Department may therefore disenroll him from the IRIS program.

THEREFORE, it is

ORDERED

That 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, 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

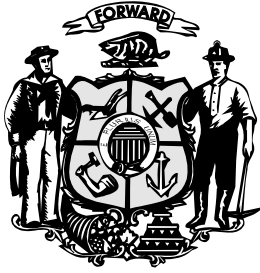
You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Health Services, 1 West Wilson Street, Room 651, **and** on those identified in this decision 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 Madison,
Wisconsin, this 6th day of February, 2024



\s _____
Teresa A. Perez
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 February 6, 2024.

Bureau of Long-Term Support