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STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

██████████
██████████
██████████

DECISION
Case #: CWA - 211701

PRELIMINARY RECITALS

Pursuant to a petition filed on January 10, 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 February 21, 2024, by telephone.

The issue for determination is whether the agency correctly reduced petitioner's lawn mowing service to 24 per year.

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: Rebecca Glamm
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 resident of La Crosse County.
2. On December 26, 2013, petitioner enrolled in the IRIS program and received services through the IRIS Consulting Agency Advocates 4U.

3. On May 9, 2023, petitioner was diagnosed with dyspnea on exertion, hypermobile Ehlers-Danlos Syndrome, chronic pain syndrome, edema, impaired glucose tolerance, vitamin B12 deficiency and mixed hyperlipidemia.
4. On June 8, 2023, petitioner was the subject of a Long Term Care Functional Screen (LTCFS) which identified her primary diagnoses as contractures/connective tissue disorders and her secondary diagnoses as other chronic pain or fatigue.
5. The June 8, 2023 LTCFS found that petitioner required assistance with six activities of daily living (ADLs) and three instrumental activities of daily living (IADLs).
6. For the 2022 plan year, petitioner's ISSP included 30 annual lawn mowings performed by Benjamin JP Fredricks and 28 annual mowings performed by [REDACTED], totaling 58, at a cost of \$42 each and a total cost of \$2,436.
7. For the 2023 plan year, petitioner's ISSP included 42 units of lawn mowing performed by Premier Financial Management Services and GT Independence, at a cost of \$42 each, with 48 mowings billed and paid for by IRIS, for a total cost was \$2,024.
8. For the current plan year, petitioner requested 58 lawn mowings.
9. Petitioner's Individual Support and Services Plan for plan year December 1, 2023 through November 30, 2024 documents approved lawn mowing service described as 24 mowings provided by Benjamin JP Fredricks for a total cost of \$1,008.
10. On October 29, 2023, petitioner changed her ICA to Connections.
11. On December 22, 2023, the agency issued to petitioner a Notice of Action informing her that her request for mowing twice per week (46 annually) was reduced to once per week (24 annually) because the request was not considered the most cost-effective way to support her outcome.

DISCUSSION

The Include, Respect, I Self-Direct (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. This Section 1915(c) waiver document is available at <http://www.cms.gov/MedicaidStWaivProgDemoPGI/MWDL/list.asp>. IRIS is a fee-for-service, 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, and then develop a service plan based on the assessed needs. *Id.*, §441.466. The service plan may include personal care and homemaker services. *Id.*, §440.180(b). Further, "all of the State's applicable policies and procedures associated with service plan development must be carried out ..." *Id.* §441.468.

With the assistance of an IRIS Consultant Agency (ICA), participants identify waiver allowable services that they need to meet their long term care outcomes. The cost of those services must typically fall within the budget estimate. *Id.* at 5.3A. Participants may, however, submit a budget amendment to the Department of Health Services with the assistance of their ICA. A budget amendment is "...a request made by the IRIS participant to increase the participant's budget to pay for an ongoing need not met within the current budget. Typical supports, services or goods requested through the BA process include additional Supportive Home Care, Respite, Daily Living Skills, Supported Employment, and other such services needed by an IRIS participant on an ongoing basis." *Id.*

This decision is regarding the agency's denial of twice weekly lawn mowing service. In its December 23, 2023 Notice, the agency explained that it denied the twice weekly lawn mowing because it was excessive and did not constitute basic lawn care. The agency was not persuaded by petitioner's claims to the IRIS consultant she had to keep her grass short so that she did not trip and fall on the grass while picking up

after her dogs defecated on the lawn. The agency stated that any lawn maintenance expense beyond “basic lawn care” is a home maintenance service that is the responsibility of the owner. It cited IRIS Policy Manual 5.4B, Non-Allowable Services which identifies “items typically the responsibility of a home or apartment owner, including but not limited to roofing, siding, sidewalks, garages, water heaters, furnaces and other such home maintenance tasks.” It agreed that some lawn mowing could be considered basic lawn care and could be paid for with IRIS funds and approved weekly mowing. It approved weekly mowing on that basis.

IRIS has funded lawn mowing for petitioner since at least 2016. Glamm testified for the agency that in 2016, 2017 and 2018, it paid for 28 mowings per year, then the number went up to 31 and then to 52 per year. Most recently petitioner requested 58 mowings.

Petitioner argued that the frequent mowings are required because her grass grows fast due to the fertile soil in her neighborhood, to which she moved in 2021. She made the argument that 1) she needs to perform weight-bearing exercise; 2) the only place she can do that is her yard; 3) that in order to do so safely her lawn must be so soft that she will not be injured when she falls; 5) that lawn grass must be even enough that she is not at risk of tripping on it; 6) that the only way she can make her lawn soft and even enough to provide the cushioning she requires is to a) water it and not allow it to go dormant because live grass is softer than dormant grass and also b) to mow twice per week, every week. Petitioner has constructed a house of cards to support her ultimate conclusions about what level of lawn care, in this case mowing, is required by her medical condition. She did not present reliable evidence or a cogent argument for any step in this reasoning process. She failed to show that having a soft and green lawn is in any way necessary for her safety or ability to live independently in her home. I have seen no convincing evidence that allowing lawn grass on a flat, level lawn to grow longer presents a tripping hazard. I have no evidence that a certain arbitrary level of softness is justified due to health, safety or her ability to remain in the home. Because this was not shown, petitioner clearly failed to show that any of the excessive services she requests are necessary. I did not find petitioner’s testimony credible that all her neighbors mow twice a week and the grass stays green year-round because of especially fertile soil. Even if these things were true, IRIS should not pay for twice a week lawn mowing with taxpayer funds. She testified that she cannot control how fast the grass grows, however, she has continued to water it to prevent dormancy. She testified that the watering does not affect the growth rate, however, this defies reason. Dormant grass requires less mowing than green, growing grass.

The agency argued persuasively that petitioner’s request is far out of line with community norms for lawn care. IRIS is willing to pay for basic lawn service. The approved 24 mowings per year is more than adequate. The rest of the mowing petitioner believes she needs is a home maintenance service, typically paid for by the homeowner, and cannot be paid for with IRIS funds.

The requested service is absolutely not cost-effective. The agency is required to review questionable items that exceed the cost of average products necessary to meet an outcome. The agency must provide an item that is the most cost effective possible. See IRIS Program Operations Infrequent Expense Policy at www.dhs.wisconsin.gov/bdds/IRIS/BudgRevw.pdf. See also 42 C.F.R. §440.180(b)(9). It is not clear why the previous ICA approved this excessive service. The current ICA is simply performing its duty to deny requests that are not cost-effective, which this one certainly is not. No residential lawn requires mowing twice per week. Petitioner did not show a medical reason for this excess. The agency correctly denied the request for twice weekly mowing because it is not the most cost-effective way to achieve petitioner’s outcomes.

CONCLUSIONS OF LAW

The agency correctly denied petitioner’s request for twice-weekly lawn mowing amounting to 58 mowings for the year because the requested service is in excess of basic lawn care and is therefore a home maintenance task that IRIS is not permitted to pay for. Further, the request is not the most cost-effective to meet petitioner’s outcomes. The agency correctly approved 24 mowings per year, the most that could reasonably be considered basic lawn care and therefore an appropriate IRIS expenditure.

THEREFORE, it is **ORDERED**

That the petition for review 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

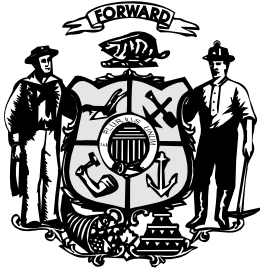
You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Health Services, 1 West Wilson Street, Room 651, **and** on those identified in this decision 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 5th day of March, 2024



\s _____
Beth Whitaker
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 March 5, 2024.

Bureau of Long-Term Support