



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

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In the Matter of

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

**DECISION**  
Case #: CWA - 212613

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**PRELIMINARY RECITALS**

Pursuant to a petition filed on March 13, 2024, under Wis. Admin. Code § HA 3.03, to review a decision by TMG, in its capacity as an IRIS Consultant Agency contracted by the Department of Health Services, regarding IRIS, a Medical Assistance (MA) long term care waiver program, a hearing was held on April 11, 2024, by telephone.

The issues for determination are TMG properly declined to increase the hourly rate for Petitioner's supported employment provider.

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: Angela Sutherland  
Bureau of Long-Term Support  
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 resident of Dane County who participates in the IRIS program. TMG is his IRIS Consultant Agency.
2. Petitioner's diagnoses include autism, scoliosis, and obsessive-compulsive disorder. His symptoms include offensive and violent behaviors that require interventions a few times a month at home, at work and in the community.
3. As a result of Petitioner's diagnoses, he requires assistance with bathing, dressing, mobility in his home, toileting, meal preparation medication administration, money management, laundry/chores, transportation, and employment-related activities. He also requires overnight supervision.
4. Petitioner's Individual Support and Services Plan for May 1, 2023 through April 30, 2024 July 1, sets forth a total annual budget of \$90,308.64 which funds community transportation, supportive home care, and supported employment through [REDACTED].
5. Petitioner is authorized to receive 1,200 hours per year of supported employment and [REDACTED] is paid an hourly rate of \$54.08 which amounts to \$64,896 per year.
6. Petitioner has requested additional IRIS funding sufficient to increase the rate paid to his supported employment provider from \$54.08 to \$58.50.
7. Petitioner's supported employment provider submitted a written statement to TMG explaining the rationale for the requested rate increase. The reasons listed included "area employers raising base wages higher than we can pay direct support staff" and a need to increase wages to retain and recruit staff, a 12% increase in health insurance costs, increasing mileage reimbursement costs, and a 5%-10% increase in administrative costs." Ex. A1-A2.
8. By written notice dated March 6, 2024, TMG informed Petitioner that his request to increase the rate for his supported employment service from \$54.08 to \$58.50 was denied, that his budget could not accommodate the rate increase, "that there is no justification for [the rate] increase based on DHS's review of the current rates and a comparison of rates paid by other long-term care providers showing that the increase is not competitive", and that "the rates for [his current supported employment provider is] already at the upper threshold for supported employment rates." Ex. B.
9. Petitioner timely appealed.

## DISCUSSION

The IRIS program is a Medical Assistance (MA) home and community-based long term care waiver program authorized under §1915(c) of the Social Security Act. IRIS is an alternative to Family Care, Partnership, and PACE—all of which are managed care 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 IRIS waiver application 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>. 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 <http://www.dhs.wisconsin.gov/publications/P0/P00708.pdf>), IRIS Work Instructions (available at CWA-201234 3 <http://www.dhs.wisconsin.gov/publications/P0/P00708a.pdf>), and IRIS Service Definition Manual (available at <https://www.dhs.wisconsin.gov/publications/p00708b.pdf>).

Consistent with the terms of the approved waiver, every IRIS participant is assigned a budget which is generated based on information obtained during a screening of the participant's long-term care functional needs. Relevant program policy provides: "The individual budget is an estimate of the participant's expected needs and is based on information documented in the participant's Long-Term Care Functional Screen (LTC FS)." *IRIS Policy Manual*, §5.3.

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.* at 5.7.

IRIS participants are given the choice to hire their own providers or use an agency to provide services. See, *Id.* at 6.1A and 6.2. IRIS participants are responsible for negotiating "reasonable and customary rates" of pay with all providers, be it participant-hired workers or an agency. *Id.* While the IRIS consultants are not responsible to hire, recruit, or negotiate rates of pay with providers, it is their responsibility to ensure the IRIS participant has the tools, resources, and information to hire, train, and manage providers. *Id.* The IRIS consultants must also ensure that the participant compensate providers at "a usual and customary rate." *Id.*

In the present matter, Petitioner requested funding to increase the hourly rate that he pays the supported employment provider with which he has worked since at least 2021. TMG denied the request based on a contention that the requested rate is not "competitive". At hearing, TMG's representative explained that the requested rate is not "usual and customary" and that DHS would therefore likely deny a budget amendment request to fund the increased rate.

As far as I can discern, the term usual and customary is not defined by the Department or by TMG; however, the Department was willing to approve an hourly rate of \$54.08 for Petitioner's supported employment provider in 2023. The Department thus presumably found that rate to be within a usual and customary range in 2023. As acknowledged by TMG, the provider identified specific factors leading it to seek an increased rate in 2024 (i.e., increased health insurance, need to offer increased wages to retain and recruit workers, increased administrative costs). See Finding of Fact No. 7. TMG asserted that there was "no justification" for the increased rate in the written notice of denial issued on March 6, 2024 but, at hearing, TMG did not dispute or refute that the provider is incurring the increased costs it identified.

When asked how the agency concluded that the rate requested by Petitioner was too high, TMG's representative testified that the plans of other IRIS members who receive the same types of services are reviewed to help make this type of determination but no documentation of such a review in this case was offered. Petitioner's IRIS Consultant testified that she believes she reached out to other agencies to see what they are charging but she had taken no specific notes of those communications. During an impromptu review of files conducted during the hearing, she noted that the highest rate paid by an IRIS participant to another supported employment agency, at least among the IRIS participants with whom she has worked, was \$56.64 per hour. Identifying the rate paid to one provider is not sufficient evidence to establish that the requested rate is not usual and customary.

In sum, TMG could not identify a range of what constitutes the usual and customary rate for supported employment providers in Dane County and did not provide any documentation to show how it concluded that the requested rate was generally too high despite basing the denial on a finding that the requested rate exceeded a usual and customary rate. Moreover, the Department found the previously requested rate of \$54.08 to be usual and customary in 2023 and the provider gave a detailed and, on its face, reasonable explanation for requesting an increase this year. The Department did not refute the information offered by the provider.

Based upon the above, as well as the entirety of the record before me, I find that the respondent has failed to establish that it correctly denied petitioner's request to increase the hourly rate paid to his supported employment provider. As such, this matter shall be remanded with the following instructions: (1) TMG must submit a budget amendment request to the Department to allow Petitioner to pay [REDACTED] an hourly rate of \$58.50 for 1200 hours per year, and (2) the Department must approve that request.

### CONCLUSIONS OF LAW

The respondent failed to establish that it correctly denied petitioner's request to increase the hourly rate he pays to his supported employment provider.

**THEREFORE, it is**

**ORDERED**

That this matter is remanded to TMG to submit a budget amendment request to the Department, as detailed in the last paragraph of the Discussion section above, and to the Department to approve that budget amendment 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.

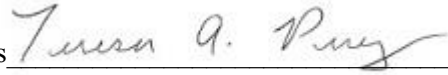
The process for requesting a rehearing may be found at Wis. Stat. § 227.49. A copy of the statutes may be found online or at your local library or courthouse.

### **APPEAL TO COURT**

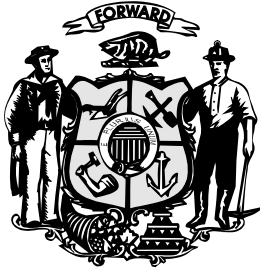
You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Health Services, 1 West Wilson Street, Room 651, **and** on those identified in this decision 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 30th day of May, 2024

 vs \_\_\_\_\_

Teresa A. Perez  
Administrative Law Judge  
Division of Hearings and Appeals



**State of Wisconsin \DIVISION OF HEARINGS AND APPEALS**

Brian Hayes, Administrator  
5<sup>th</sup> Floor North  
4822 Madison Yards Way  
Madison, WI 53705-5400

Telephone: (608) 266-7709  
FAX: (608) 264-9885  
email: [DHAmail@wisconsin.gov](mailto:DHAmail@wisconsin.gov)  
Internet: <http://dha.state.wi.us>

The preceding decision was sent to the following parties on May 30, 2024.

Bureau of Long-Term Support