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STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

DECISION

Case #: CWA - 212756

PRELIMINARY RECITALS

Pursuant to a petition filed on March 25, 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 August 14, 2024, by telephone.

The issue for determination is whether the agency correctly denied Petitioner's one-time expense (OTE) request for a bathroom modification.

There appeared at that time the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

Petitioner's Representative:

Kayla J. Smith
Board on Aging And 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
Bureau of Long-Term Support
PO Box 7851
Madison, WI 53707-7851

ADMINISTRATIVE LAW JUDGE:

Nicole Bjork
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner is a resident of Racine County and is enrolled in the IRIS program. Petitioner's diagnoses include hyperlipidemia, anorexia, leukocytosis, hip replacement-bilateral, tendonitis, osteopenia, neck pain, lesion of sciatic nerve, cervicgia, bilateral hand pain, dorsalgia, pelvic and perineal pain, muscle weakness, sacrococcygeal disorder, rheumatoid arthritis, chronic pain disorder, rotator cuff rupture, degeneration of intervertebral disc, osteoarthritis bilateral knees, pain due to right hip disorder.
2. Petitioner has a history of multiple orthopedic injuries which cause chronic pain and limitations in her functional abilities. Petitioner has had both rotator cuffs replaced as well as multiple casts and/or splints due to various hand traumas. Petitioner had her left hip replaced within the past year. Subsequently, Petitioner fell, which resulted in injury to both her wrists/hands and shoulders.
3. On March 28, 2023, Independence First completed an accessibility assessment (AA) of Petitioner's bathroom. The AA notes that Petitioner has only one bathroom and it presents considerable barriers for showering. The previous owner had installed a tall, soaking-tub style shower/tub combo, with a sill height of 18 inches. The back portion of the tub has a considerable slope, and the control wall is adjacent to the toilet. The AA noted the primary barrier limiting Petitioner's safety and independence is the tub height and difficulty safely transferring in/out.
4. The March 28, 2023, AA noted that a tub transfer bench would not be a feasible option due to the slope of the back of the tub. Further, an over the toilet sliding tub transfer bench also would not be feasible because the bench would need to clear the 18 inch tub with an overall seat height of at least 4 inches higher than that to account for the distance occupied by the track and seat material. Petitioner is only 4'11 and at that height could not maneuver such a device safely. Further, additional grab bars would not be feasible based on Petitioner's extensive history of hand, wrist, and shoulder issues. Exhibit 3.
5. The March 28, 2023, AA recommended that Petitioner's bathtub be removed and replaced with a walk-in shower. A walk-in shower would have a sill height of no more than 4 inches.
6. Petitioner is only accessing her shower for hygiene needs about once a week because of difficulties entering/exiting the tub. She cleanses with wet wipes/washcloths throughout the week as needed to maintain some level of persona hygiene through this does not provide the same level of cleanliness that a shower would.
7. On January 3, 2024, Petitioner submitted a OTE and quotes to the agency for a bathroom modification, seeking a walk-in shower.
8. On February 8, 2024, an agency nurse consultant reviewed the case. The nurse consultant believed that a toilet to tub sliding shower bench could be a safe and effective option with the assistance of a personal care worker.
9. On February 21, 2024, Petitioner explained to an agency worker that the nurse consultant's suggestion would not work because the slant throughout the tail of the tub would prevent any bench from attaching. Further, Petitioner noted that her personal care worker (PCW) lives an hour away and cannot always get to Petitioner when she needs to shower.

10. On March 15, 2024, the agency sent Petitioner a notice informing her that her OTE request for a bathroom modification was denied. Again, the agency suggested using durable medical equipment coupled with a PCW in order for Petitioner to shower.
11. On July 2, 2024, Petitioner’s provider, John C. Wu, MD, recommended a walk-in shower for Petitioner stating that it was necessary for her safety. Exhibit 3.
12. On May 8, 2024, Petitioner provider, Bridget M. Costigan, APNP, FNP-BC, sent a letter stating that Petitioner requires a walk-in shower. Exhibit 3.

DISCUSSION

The Include, Respect, I Self-Direct (IRIS) program is a Medical Assistance long term care waiver program that serves elderly individuals and adults with physical and developmental disabilities. IRIS is an alternative to Family Care, Partnership, and PACE—all of which are managed long term care waiver 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 broad purpose of all of these programs, including 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 at <https://www.dhs.wisconsin.gov/publications/p0/p00708.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. See IRIS Policy Manual, Sec. 5.3. With the assistance of an IRIS Consulting 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. However, a participant may submit a one-time expense (OTE) request with the assistance of their ICA to pay for goods or services not included in the original budget, including but not limited to home modifications. Id. at 5.8.

Home modifications fall under the umbrella of “allowable services” that may be covered under the IRIS program if certain criteria are met. See, IRIS Policy Manual, § 5.4A. The IRIS Policy Manual provides the following regarding home modifications:

Home modifications may improve a participant’s home for health, safety, or accessibility, and IRIS participants may use home modifications to increase independence. Home modifications include adding specific equipment or changing features within homes. The definition of “Home Modification” is located in Appendix C of the approved 1915 (c) HCBS waiver and provides the following information regarding limitations:

- Modifications which increase the square footage or that enhance the general livability and value of a privately owned residence are excluded.
- Modifications not recommended in the accessibility assessment are excluded.
- Modifications that are not the most cost effective approach to meeting the participant’s long-term care related outcomes are excluded.
- Modifications proposed to modify a rental unit are generally excluded.

Home modifications must demonstrate that the modification addresses disability related long-term care needs that increase self-reliance and independence, or ensure safe, accessible means of ingress/egress to a participant's living quarters, **or**

otherwise provide safe access to rooms, facilities or equipment within the participant's living quarters, or adjacent buildings that are part of the residence. Modifications which increase the square footage or that enhance the general livability and value of a privately owned residence are excluded. (Emphasis added.)

Id at 5.8A.

The agency denied Petitioner's OTE request because they determined that using durable medical equipment coupled with a PCW would be a more cost-effective option. However, as detailed in the AA and through Petitioner's own testimony, that option is not feasible. A sliding bench will not work with the tub and also due to Petitioner's petite stature.

The evidence overwhelmingly establishes that Petitioner's current shower is not safe for Petitioner. All parties agree on that. Furthermore, the AA as well as the design of the shower itself establish that the agency's DME suggestion is not possible. Therefore, Petitioner has established that her request for a OTE for a walk-in shower meets the criteria.

CONCLUSIONS OF LAW

The agency incorrectly denied Petitioner's OTE request for a bathroom modification.

THEREFORE, it is ORDERED

That within 10 days of the date of this decision, the agency issue a notice granting Petitioner's OTE request for a bathroom modification.

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.

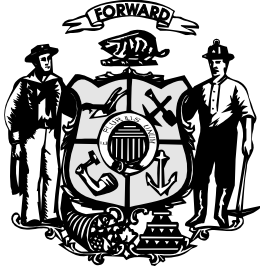
APPEAL TO COURT

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 Milwaukee,
Wisconsin, this 19th day of August, 2024

\s _____
Nicole Bjork
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 August 19, 2024.

Bureau of Long-Term Support
kaylaj.smith@wisconsin.gov