



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

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In the Matter of

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

**DECISION**  
Case #: CWA - 214423

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**PRELIMINARY RECITALS**

Pursuant to a petition filed on July 26, 2024, under Wis. Admin. Code § HA 3.03, to review a decision by the Bureau of Long-Term Support regarding Medical Assistance (MA), specifically the IRIS program, a hearing was held on October 15, 2024, by telephone.

The issue for determination is whether the IRIS agency correctly denied petitioner's request for IRIS funds to cover travel expenses for his Participant Hired Worker.

There appeared at that time the following persons:

**PARTIES IN INTEREST:**

**Petitioner:**

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

**Petitioner's Representative:**

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

**ADMINISTRATIVE LAW JUDGE:**

Kelly Cochrane  
Division of Hearings and Appeals

**FINDINGS OF FACT**

1. Petitioner is a resident of Kenosha County and is enrolled in the IRIS program.
2. Petitioner is 75 years old and his diagnoses include Type 2 diabetes, hypomagnesemia, chronic constipation, diverticulosis, dysphagia, GERD, GI bleeding, hyperlipidemia, anemia, myocardial infarction, abdominal aortic aneurysm, atherosclerosis of coronary artery, stenosis of coronary artery, hypertension, pain in toes of both feet, diabetic polyneuropathy, gait disorder, vascular dementia, cognitive communication deficit, CVA, thalamic stroke (onset after age 22), COPD, obstructive sleep apnea, chronic kidney disease (stage 3), urinary incontinence, benign prostatic hyperplasia, major depression – chronic, anxiety, prostate cancer (6/13/2020), onychomycosis, history of lung cancer (more than 5 years ago).
3. Petitioner requires cares for 6 Activities of Daily Living (ADLs) including bathing, dressing, eating, mobility in home, toileting, and transferring as well as cares for 5 Instrumental Activities of Daily Living (iADLs) including meal preparation, medication administration/management, money management, laundry/chores, and transportation. He also requires assistance with overnight cares and supervision. He is unable to recognize an emergency and would require cues/direction to exit the home.
4. Petitioner’s current Individual Support and Services Plan (ISSP), for plan year 05/01/2024-04/30/2025 has an annual budget of \$105,341.16, which is divided among Companion Supportive Home Care, Massage Therapy, and Routine Supportive Home Care. The total amount includes a Budget Amendment (BA) of \$48,312.72 for Routine Supportive Home Care and a BA of \$20,479.20 for Companion Supportive Home Care. He also receives 46.25 hours per week of personal cares paid through a separate SDPC budget that is billed to Medicaid. His ISSP outcome is “I want to continue living in my home with my family
5. On May 17, 2024, petitioner made a one-time expense (OTE) request for IRIS funds to cover the expenses related to airfare and hotel for his Participant Hired Worker (PHW).
6. On August 27, 2024, the IRIS agency issued a Notice of Action to the petitioner stating his request was denied stating that while “the PHW is able to bill for necessary support hours while you are traveling, travel expenses are not covered as an IRIS expense. Per the IRIS Policy Manual 5.4B Non-Allowable Services, Goods, supports, and services not directly related to IRIS participant goals or needs or that primarily benefit someone else. This request is not related to a long-term care goal. This trip is more for entertainment purposes rather than meeting a long-term need. Community integration events can be done locally and some are already funded by sources other than IRIS waiver dollars. Therefore, the request for reimbursement for expenses related to airfare and hotel for vacation is being denied.”

## DISCUSSION

The IRIS program was developed pursuant to an MA waiver obtained by the State of Wisconsin, pursuant to section 1915(c) of the Social Security Act. It is a self-directed personal care program. The federal government has promulgated 42 C.F.R. § 441.300 - .310 to provide general guidance for this program. The 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.*, § 441.301(c)(2). The Department's agent must also develop a service plan based on the assessed needs. The broad purpose of 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 online at <https://www.dhs.wisconsin.gov/publications/p0/p00708.pdf>.

The IRIS waiver application (*Waiver*) most recently approved by the Centers for Medicare and Medicaid Services (CMS) is available online at <https://www.dhs.wisconsin.gov/iris/hcbw.pdf>. State policies governing administration of the IRIS program are included in the *IRIS Policy Manual*, *IRIS Work Instructions* (available at <http://www.dhs.wisconsin.gov/publications/P0/P00708a.pdf>), and *IRIS Service Definition Manual* (available at <https://www.dhs.wisconsin.gov/publications/p00708b.pdf>).

As part of an individual's enrollment in IRIS, an ISSP is developed to have a plan for using waiver services to meet individual outcomes, assessed needs and health and safety needs. See *Waiver* at p.5; see also 42 CFR §§ 441.301(b)(1) and (2). IRIS funds can only be used within an approved plan – the ISSP – and budget, and only for services, supports or goods that meet the definitions of those services within the waiver application. See *Waiver*, p. 5 and 8. IRIS budgets are established through a model based on historic cost data. See *Waiver*, p. 175. The agency's contracted actuaries develop target group specific regression models to determine which attributes from the LTCFS are most predictive of a participant's costs, as well as the amount of funding predicted by each attribute. *Id.* The budget is calculated by seeing which attributes the member has on the LTCFS, and adding up the funding the regression model has associated with those attributes. *Id.* The budget is based off the LTCFS which “provides an automated and objective way to identify the long-term care needs of ... people with physical or intellectual/developmental disabilities and determine the degree of assistance required to address those needs.” See *Waiver* p. 205. Prospective participants will know this budget amount when deciding whether to participate in IRIS or another Long-term care Program. *IRIS Policy Manual*, § 5.3.

The *Waiver* states that if a participant disagrees with a budget amount, the participant may seek additional funding through two methods: a budget amendment request or a OTE request. If either of those are denied or modified, the participant can appeal that determination. See *Waiver* p. 207. The *IRIS Policy Manual* declares that one-time expenditures may include “home modifications, adaptive aids, vehicle modifications, and other such services for which an IRIS participant may require a budget amendment to pay for a one-time cost.” *IRIS Policy Manual* § 5.8. When a participant's long-term support needs exceed the available individual budget the participant's IC is to assist with submitting the OTE, which is then reviewed for allowability, appropriateness, and cost efficiency. See *Waiver*, p. 205 and *IRIS Policy Manual* § 5.8. This occurred for the petitioner.

The agency explained that it denied petitioner's OTE request to fund petitioner's PHW while petitioner was traveling because it was not related to an identified need or outcome. The agency cited the *IRIS Policy Manual* § 5.4B, which states that non-allowable services include *those not directly related to IRIS participant goals or needs* or that primarily benefit someone else. It also argues that his budget allows for the services provided by the PHW, however there is no need identified for the travel expense to provide those services. The agency also argued that community integration events can be done locally and some are funded by sources other than IRIS. The agency concedes it was an oversight that this expense had been approved in the past.

Petitioner's representatives testified to the trip as one for a family wedding and a reunion of sorts, and that this trip was necessary and helpful to his emotional and mental health. Petitioner also argues that services are allowable when they meet a functional or social need under the *IRIS Policy Manual* § 5.4. Indeed, that section provides that:

Each service, support, or good selected must address a long-term support need and must meet all of the following criteria:

- The item or service is designed to meet an assessed long-term support need related specifically to the participant's functional, vocational, medical, or social needs and also advances the desired outcomes in his/her Individual Support and Service Plan;
- The service, support or good is documented on the Individual Support and Service Plan

*IRIS Policy Manual* § 5.4.

I understand that his representatives believe that the trip was beneficial for him, and I do not doubt their testimony. However, the IRIS program has determined that this program considers a service/good allowable when it is designed to meet an assessed long-term support need related specifically to the participant's functional, vocational, medical, or social needs, and advances the desired outcome in his ISSP. In sum, I agree that the travel expenses requested do not relate to his outcome of wanting to "continue living in my home with my family" nor address any related long term care need. This is not to say that a PHW's out of state travel or lodging costs could not be covered by IRIS, but under these facts, they are not. IRIS has a duty to create a cost-effective long-term care system for the future and therefore not every service that might benefit a participant will be considered an allowable service.

I add, assuming petitioner finds this decision unfair, that it is the long-standing position of the Division of Hearings & Appeals that the Division's hearing examiners lack the authority to render a decision on equitable arguments. See, Wisconsin Socialist Workers 1976 Campaign Committee v. McCann, 433 F.Supp. 540, 545 (E.D. Wis.1977). This office must limit its review to the law as set forth in statutes, federal regulations, and administrative code provisions. Equitable arguments can be heard in circuit courts.

### CONCLUSIONS OF LAW

The IRIS agency correctly denied petitioner's request for IRIS funds to cover travel expenses for his PHW.

**THEREFORE, it is**

**ORDERED**

The petition for review herein 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, 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.

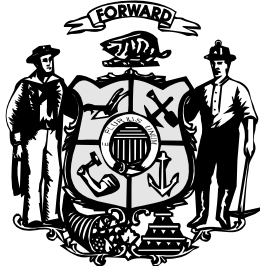
## **APPEAL TO COURT**

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 Milwaukee,  
Wisconsin, this 6th day of November, 2024

\s \_\_\_\_\_  
Kelly Cochrane  
Administrative Law Judge  
Division of Hearings and Appeals



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

Brian Hayes, Administrator  
Suite 201  
5005 University Avenue  
Madison, WI 53705-5400

Telephone: (608) 266-3096  
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 November 6, 2024.

Bureau of Long-Term Support  
[kaylaj.smith@wisconsin.gov](mailto:kaylaj.smith@wisconsin.gov)