



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

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In the Matter of

██████████  
██████████  
██████████

**DECISION**  
Case #: CWA - 215956

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**PRELIMINARY RECITALS**

Pursuant to a petition filed on November 18, 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 December 18, 2024, by telephone.

The issue for determination is whether the agency erred in its denial of the budget amendment with regard to 10 hours per week of supportive Home Care ("SHC")-companion care at a rate of \$30 per hour.

There appeared at that time the following persons:

**PARTIES IN INTEREST:**

Petitioner:

██████████  
██████████  
Milwaukee, WI 53219-3117

Petitioner's Representative:

M. Bradley  
Disability Rights Wisconsin  
6737 West Washington St Suite 3230  
Milwaukee, WI 53214

Respondent:

Department of Health Services  
1 West Wilson Street, Room 651  
Madison, WI 53703

By: R. Glamm - Connections  
Bureau of Long-Term Support  
PO Box 7851  
Madison, WI 53707-7851

**ADMINISTRATIVE LAW JUDGE:**

John Tedesco  
Division of Hearings and Appeals

**FINDINGS OF FACT**

1. Petitioner is a resident of Milwaukee County.

2. Petitioner is enrolled in the IRIS Program. Petitioner is [REDACTED] years old. His most recent LTCFS calculated June 26, 2024, establishes petitioner meets the criteria for the physical disability, developmental disability-per Federal definition, and Severe and Persistent Mental Illness target groups. His IQ is 64. His diagnoses include schizophrenia, bipolar disorder, intellectual disability, obesity, vitamin D deficiency and GERD. He needs the presence of another person for assistance with bathing, dressing and eating. He needs assistance with mobility, toileting and transferring. He needs assistance with all IADLs and lacks the cognitive ability to use a phone.
3. Petitioner’s IRIS agency is Connections (“the agency”).
4. Petitioner sought a budget amendment dated June 26, 2024 for 10 hours of supportive home care-companion care at a rate of \$30 per hour; and 59 hours per week of supportive home care at a rate of \$35 per hour.
5. The relevant long-term care functional screen determined that petitioner needs 24-hours care due to his cognitive impairment. Petitioner’s medical providers agree.
6. Petitioner lives in his own apartment in Milwaukee and currently receives some personal cares provided by individual workers, [REDACTED], [REDACTED] and [REDACTED], [REDACTED]. He also receives some supportive home care (SHC) per week provided by [REDACTED]. [REDACTED] is the proprietor.
7. The agency denied the BA requests as it determined they were not cost-effective.

## 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.*

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 <http://www.dhs.wisconsin.gov/publications/P0/P00708a.pdf>), and *IRIS Service Definition Manual* (available at <https://www.dhs.wisconsin.gov/publications/p00708b.pdf>).

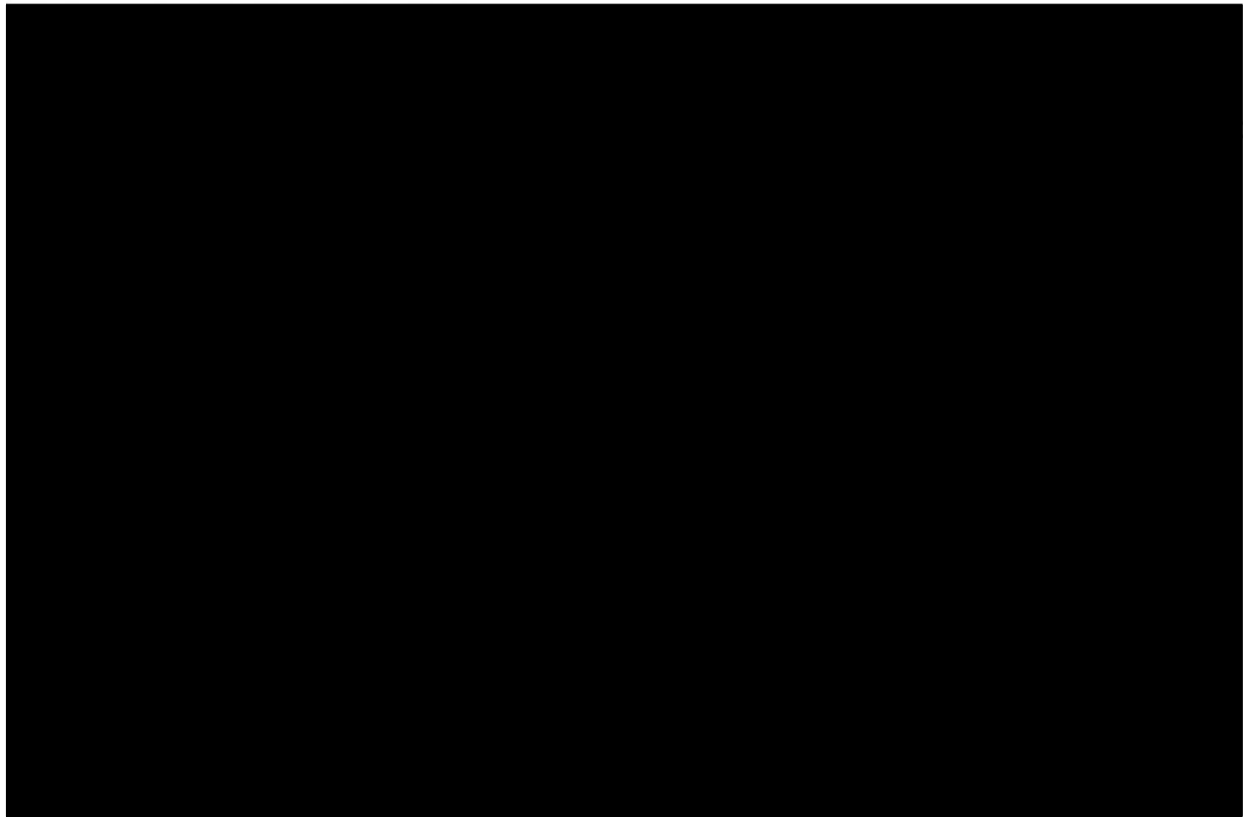
IRIS Consultant Agencies (ICAs), like First Person Care Consultants, are contracted by the Department of Health Services to help IRIS participants, as needed, identify paid and unpaid services that will meet their long term care needs and to then develop an “individual services and supports plan” (ISSP) that reflects those services and needs. In addition, ICAs are responsible for ensuring that the cost of paid services authorized by IRIS for a participant remain within that participant’s budget amount. *IRIS Policy Manual*, §5.2B. An IRIS participant’s budget is generated based on information obtained during a screening of the participant’s long-term care functional needs.

“Once an IRIS participant decides upon needed services, the process for obtaining approvals for service authorizations begins. All [service plans] require [IRIS Consultant] and/or ICA approval. The participant’s IC and/or ICA cannot ‘approve’ the ISSP when the total cost of the plan exceeds the approved budget amount.” *IRIS Policy Manual*, §5.2B. 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.” *IRIS Policy Manual*, Sec. 5.7. When the Department of Health Services denies a BA request, the participant may appeal the budget amount using the Medicaid fair hearing process. *Id.*

The facts in this case are largely undisputed. The respondent agency stated in its exhibits for hearing that the number of hours requested was denied, but the denial related to the rates sought by the respective caregivers. Thus, the only issue I consider is whether DHS was correct in determining that the \$30 hourly rate for SHC-Companion Care, and \$35 per hour for SHC, were not cost effective under the circumstances and facts of this case.

In this case, following the request for the BA at the rates at issue, the agency investigated providers other than the ones sought by petitioner in the BA. The agency set the findings of the inquiry out in the denial:



The agency concluded that “five agencies can provide services at a more cost-effective rate than the current rate being requested.” The agency explained that it tried to reach a compromise but the petitioner was unwilling to do so. The above quote information was also offered in respondent’s exhibits.

At hearing, the petitioner offered testimony by [REDACTED], ombudsman with Disability Rights Wisconsin. [REDACTED] credibly testified, with reference to supporting documents, that the various care agencies used as comparisons by the department were either not willing to work with petitioner or were otherwise not responsive or available. In fact, the agency sought by petitioner in this case, [REDACTED], was the lowest cost provider that was willing and able to provide the sought cares.

In response to this information, the agency offered an argument that was not persuasive to rebut petitioner's position. The agency submitted a written argument after hearing that explained that Brightstar, at a rate one dollar higher than ██████████ was a better choice because they are more established as a business. But, this argument did not suggest that the \$36 rate of Brightstar would be approved. The bulk of the agency presentation at hearing suggested that the owner of ██████████ was manipulating petitioner and is considering its own profits over the interests of petitioner. I found these arguments misplaced in this hearing as they questioned the motives of the caregiver and business owner. That was not the issue at hearing. This argument was so puzzling that it caused me to question the objectiveness of the agency's consideration as the agency representative appeared biased against the provider for reasons aside from the cost-effectiveness question. There was no substantial or persuasive evidence that ██████████ would not provide quality care. On this record, ██████████ is the most cost-effective and available option.

The agency did raise a question as to whether caregivers at home are the most appropriate solution for petitioner at this point. The agency suggested that an adult family home may be a better choice based on petitioner's great needs. While this may be a valid consideration in the future, and perhaps the agency would like to explore that option in the future, on the record made at this hearing I cannot possibly consider that with any thoroughness.

### CONCLUSIONS OF LAW

The agency erred in its determination that the sought budget amendments for 10 hours of SHC-Companion Care at \$30 per hour weekly, and 59 hours of SHC at \$35 per hour weekly were not cost effective.

**THEREFORE, it is**

**ORDERED**

That this matter is remanded to the department and the agency with direction to approve the sought budget amendments for 10 weekly hours of SHC-Companion Care at \$30 per hour, and 59 weekly hours of SHC at \$35 per hour. These actions must be completed within 10 days 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**

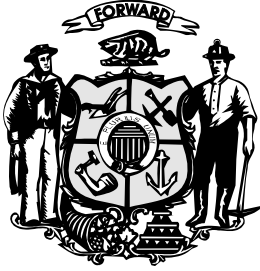
You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Health Services, 1 West Wilson Street, Room 651, **and** on those identified in this decision 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 28th day of February, 2025

\s \_\_\_\_\_  
John Tedesco  
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 28, 2025.

Bureau of Long-Term Support

