



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

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

DECISION
Case #: CWA - 207083

PRELIMINARY RECITALS

Pursuant to a petition filed on December 8, 2022, 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 March 16, 2023, by telephone.

The issue for determination is whether the respondent correctly reduced petitioner's supportive home care hours.

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:

Bureau of Long-Term Support
PO Box 7851
Madison, WI 53707-7851

ADMINISTRATIVE LAW JUDGE:

Jason M. Grace
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES #) is a resident of Dane County. He is enrolled in IRIS, with TMG his IRIS Consultant agency. He lives with his adult daughter and her family.
2. Petitioner has medical diagnoses that include diabetes type 2, congestive heart failure, lymphedema, hypertension, cardiomyopathy, chronic kidney disease, bipolar, schizoaffective disorder, unspecified cognitive impairment, altered mental status, obesity, and vascular dementia.
3. The petitioner enrolled in the IRIS program in March, 2022. The initial Long-Term Care Functional Screen (LTCFS) was completed by the ADRC. At that time, the LTCFS noted that petitioner required a Hoyer lift to assist with bathing and had wounds that required specified DME and wound care. All of petitioner's activities of daily living (ADLs) were rated at the highest level of 2, requiring the helper to be present during the activity. He was also found to require assistance with 6 instrumental activities of daily living (IADLs). He was screened as needing a level 3 for meal preparation and a 2 for medication management and administration, money management, laundry/chores, transportation, and access to a telephone.
4. Following the initial LTCFS, petitioner was found eligible for 39 hours/week of supportive home care (SHC).
5. On October 14, 2022, a new LTCFS was completed. The screener found that petitioner's care needs decreased due to an improvement in his medical condition. The LTCFS found that petitioner no longer required the use of a mechanical lift and that he went for a level 2 of care (requiring full assist) to a 1 (requiring partial assist) in bathing, dressing, mobility, and toileting. He further went from a 2 to 0 in transferring as he and his care team reported to the screener that he could perform transfers on his own. The screener observed petitioner transfer in and out of a bed and couch during the screen. It was noted that wound care ended in March, 2022, and that petitioner was not receiving wound treatment at the time. His IADL care level remained the same from the prior screening. The screener found petitioner could be left alone during the day but not overnight.
6. The LTCFS indicates petitioner meets the target groups of frail elder, Alzheimer's disease or other irreversible dementia, and severe and persistent mental illness.
7. SHC is the only service/support funded by petitioner's IRIS budget. Following the October, 2022, LTCFS, the petitioner's IRIS budget was reduced. The reduction in his budget resulted in a reduction in SHC hours to 19.5 hours/week. By notice dated December 6, 2022, petitioner was informed of the reduction in his IRIS budget and SHC time.
8. On or about December 8, 2022, the petitioner filed an appeal.

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 <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 calculation for IRIS is based upon characteristics, and long-term support needs as collected on the Long-term care Functional Screen (LTC FS). A profile of the individual is developed based upon this information and that profile will be used to determine the projected cost of services and supports for that individual if he or she were enrolled in Family Care. Only services that are included in the IRIS Waiver are included in this calculation. The prospective participant will know this budget amount when deciding whether to participate in IRIS or another Long-term care Program.

IRIS Policy Manual, Sec. 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.

The sole service/support funded by petitioner's IRIS budget is SHC services. The IRIS defines SHC services to include:

... [SHC] is the direct and indirect assistance with daily functions and individualized needs, to promote improved functioning and safety in a participant's home and community. SHC services are comprised of supports or tasks such as:

- Companion or attendant supports necessary for participant safety at home and in the community. This may include observation or indirect assistance with the following: assure appropriate self-administration of medications, meal preparation, bill payment, communication, schedule and/or attend appointments, completion of activities detailed in occupational or physical therapy treatment plans, arrangement and/or usage of transportation, and personal assistance in non-employment related community activities.
- Chore services that assist the participant to maintain their home environment in a clean, sanitary, and safe manner. Intermittent major household tasks that must be performed seasonally or in response to some natural or other periodic event are also covered.

The scope of SHC may include performing incidental personal care, including activities of daily living or instrumental activities of daily living. However, such activities may not comprise the entirety of the service.

When personal care is available to the participant through the Medicaid State Plan, it must be utilized prior to the use of any incidental personal care under this service category.

This service also covers the cost of community involvement supports. Community involvement supports assist the participant with engagement in community-integrated events and activities, through the coverage of associated expenses for support staff to accompany a participant, specifically when a participant's attendance is dependent on staff accompaniment. This is limited to the worker's expense only; the participant portion of the expense is the responsibility of the participant.

...

Application for 1915(c) HCBS Waiver: WI.0484.R03.00 - Jan 01, 2021, pg. 148 of 274.

The IRIS SHC Assessment Tool introduced into the record seems to indicate that petitioner is in need of 5.5 hours/day (38.5 hours/week) of personal care and 3.75 hours/day (26.25 hours/week) of care that would fall under SHC. The LTCFS is what drives the IRIS budget calculation. The most recent LTCFS reflected an improved health condition, resulting in the need for lesser care. This in turn reduced the petitioner's IRIS budget to an amount that is only able to fund 19.5 hours of SHC/week. As such, notice of a reduction in SHC was issued to petitioner approving that amount of time.

The improved health condition reflected in the most recent LTCFS was that petitioner no longer needed wound care assistance and a Hoyer lift for transfers. The LTCFS also changed the level of care for bathing, dressing, mobility, and toileting from requiring full assistance to partial assistance. The petitioner and his witnesses agreed that he no longer needed a Hoyer lift but disputed wound care assistance was no longer needed. It was further argued that his overall care needs have increased, not decreased. Neither party presented medical documentation in support of petitioner's current physical condition. The screener who completed the most recent LTCFS did not testify.

Ultimately, the burden was on the respondent to submit evidence sufficient to demonstrate the reduction in SHC time was appropriate. Based on the record, I find that the LTCFS screener was a necessary witness. The LTCFS is what is behind the SHC reduction. While some of the information that screen is based on was not contested, much was. I find that the respondent failed to meet its burden to demonstrate the SHC reduction was appropriate. As such, I am remanding the matter to the respondent to reinstate the 39 hours/week of SHC.

CONCLUSIONS OF LAW

The respondent did not meet its burden to support the reduction in SHC hours to Petitioner.

THEREFORE, it is

ORDERED

The matter is remanded to the respondent to, within 10 days of the date of this decision, rescind the notice reducing petitioner's SHC hours; to take all administrative steps necessary to authorize Petitioner to receive 39 hours of SHC per week

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).

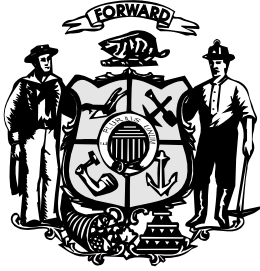
The process for Circuit Court Appeals may be found at Wis. Stat. §§ 227.52 and 227.53. A copy of the statutes may be found online or at your local library or courthouse.

Given under my hand at the City of Madison,
Wisconsin, this 5th day of April, 2023



\s _____

Jason M. Grace
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 April 5, 2023.

Bureau of Long-Term Support

