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STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of



DECISION
Case #: CWA - 206353

PRELIMINARY RECITALS

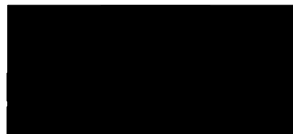
Pursuant to a petition filed on September 22, 2022, under Wis. Admin. Code § HA 3.03, to review a decision by the Bureau of Long-Term Support regarding Medical Assistance (MA), a hearing was held on December 6, 2022, by telephone. The hearing was rescheduled two times at the request of the petitioner's representative.

The issue for determination is whether the respondent correctly denied petitioner's request for a budget amended to fund a price increase imposed by his [REDACTED] provider.

There appeared at that time the following persons:

PARTIES IN INTEREST:

Petitioner:



Respondent:

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

By: [REDACTED], TMG
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 23-year-old resident of Jefferson County. The petitioner is a participant in the IRIS program, with TMG his IRIS Consultant Agency (ICA). He lives with his two parents, who provide both paid and unpaid support.
2. Petitioner has a diagnosis of cerebral palsy which results in cognitive and physical impairments. He also has a diagnosis of anxiety disorder. Exhibit 1.
3. On or about January 21, 2022, a Long-Term Care Functional Screen (LTCFS) was completed for the petitioner. Petitioner meets the physical disability target group as well as the developmental disability target group under the Federal definition. He needs assistance with the activities of daily living (ADLs) of bathing, eating, dressing, and toileting. He further requires assistance with the instrumental activities of daily living (IADLs) of meal preparation, medication administration and management, money management, transportation, and laundry/chores. Exhibit 1, C.
4. Petitioner's Individual Support and Services Plan (ISSP) for July 1, 2022 – June 30, 2022 sets forth a total annual IRIS budget of \$62,343.68, which is divided between transportation, supportive home care, in home respite, and community-based prevocational services. Independent from the IRIS budget, he also receives self-directed personal care services. Exhibit 1, D.
5. Petitioner's ISSP includes a Domain of Employment. The service type to assist with achieving this domain is a community-based prevocational service to be provided by [REDACTED] ([REDACTED]). The frequency is listed as 4 days weekly. Exhibit 1, D-5.
6. Petitioner attends community-based prevocational programming four days per week with [REDACTED] [REDACTED] which is based in Dodge County. [REDACTED] to and from the program is provided by [REDACTED]. Petitioner has been attending programming with [REDACTED] since 2019. The IRIS program funds the cost of the transportation and program. Exhibit 1.
7. At some undisclosed point in 2022, [REDACTED] increased the per day rate of transporting petitioner to [REDACTED] from \$214.92/day to \$225.67/day.
8. The petitioner submitted a budget amendment (BA) to the Department of \$3,084.10 to fund the price hike implemented by [REDACTED] to cover the cost of transportation to [REDACTED]. Included with the BA was a Quote Comparison. The rate provided for [REDACTED] was \$225.67/day, which was indicated to be the petitioner's preferred provider. The quoted rate from an alternative provider ([REDACTED]) was \$340.00/day. Exhibit 1.
9. On September 13, 2022, the Department denied the BA. The denial notice provided the following justification:

...The participant is requesting [REDACTED] at a rate of \$225 per day round trip, \$112.5 each way to be transported to the Prevocational provider [REDACTED] in another county. The distance from the participants residence to the day program is 26.9 miles one way and comes out to \$4.18 per mile. The cost of transportation to attend the prevocational provider is 3.07 times the cost of attending the day program [\$73.50].... DHS has located 6 other providers closer to the participant[']s residence and are located within the participants county of residence which would reduce the cost of transportation to usual and customary rates. ...

Exhibit 1, B-1.
10. 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>) and IRIS Work Instructions (available at CWA- 201234 3 <http://www.dhs.wisconsin.gov/publications/P0/P00708a.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, 5.3. With the assistance of an 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 BA to the Department with the assistance of their ICA. Id. at 5.7. A BA 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. When the Department denies a BA request, the participant may file an appeal using the Medicaid fair hearing process. Id. There was no dispute that specialized transportation is an allowable service and may be covered under the IRIS program. See, IRIS Policy Manual, 5.4.A (allowable services).

The Department has a responsibility to implement the IRIS program in a fiscally sound manner; wisely and responsibly respecting the use of public dollars. See, IRIS Policy Manual 1.1D and 5.6A.4. This is balanced with the program's design to provide IRIS participant's choice, control, and freedom to design supports and service plan to meet their functional, vocational, medical, and social needs. IRIS Policy Manual, 1.1A. To be clear, IRIS participants do not have carte blanche control.

The Department's representative at hearing was an employee of the ICA. It is the Department and not the ICA that makes decisions regarding BA requests but the ICA is charged with the responsibility of representing the Department at hearings.

The BA request involved here is not to expand or increase the programming or supports that petitioner receives under the IRIS program. Instead, it is solely to fund the price hike that his specialized transportation company imposed. That provider is used to transport petitioner to his prevocational service provider [REDACTED]. While it is not entirely clear from the record the basis for the price hike, it is likely, at least in part, related to more recent increases in costs of goods and services that is being seen across the board. There was no dispute that funding for a prevocational program was appropriate and necessary for petitioner. As noted above, a prevocational program is specifically referenced in petitioner's ISSP.

The Department did not propose an alternative transportation provider that would be more cost-effective than the current provider. A second quote from an alternative transportation provider was included with the BA request, which reflected a rate significantly higher than the current provider. Instead, the Department indicated there were other prevocational service providers that were closer to petitioner's residence which would in turn reduce the cost of transportation to the usual and customary rate. The Department did not indicate what the usual and customary rate for transportation was. At hearing, it was indicated that the other proposed prevocational providers were [REDACTED]
[REDACTED]
[REDACTED]

Testimony and evidence from the ICA indicated that [REDACTED] was not a viable option due to safety concerns stemming from the fact the program is held at a residence wherein one of individuals living there is barred from working in the program. [REDACTED] and [REDACTED] are only 3-4 miles closer and the cost-savings from the reduced travel would be offset by the increase in cost of the programs above what [REDACTED] charges. [REDACTED] and [REDACTED] also are not an option as they do not offer prevocational programming in the area where petitioner lives. It was indicated that [REDACTED] does not even provide programming in Wisconsin.

This leaves [REDACTED] Using Google Maps, [REDACTED] is approximately 7 miles closer than petitioner's current prevocational provider, [REDACTED]. What is not known, however, is the cost to attend the program in comparison to [REDACTED]. As such, it is unknown if it would provide any meaningful cost-savings when considering the total costs of attending the program (transportation and the cost of the program itself).

Based on the record, which includes a letter from [REDACTED], exhibits introduced on petitioner's behalf, and testimony from the mother, [REDACTED] has been a good fit for petitioner's specific needs which has in turn resulted in meaningful growth. As far as I can determine from the record, the petitioner's mother was the only one who had first-hand knowledge of both the [REDACTED] and [REDACTED] prevocational programs. She testified there were notable differences, with the program offerings of [REDACTED] more closely in tune with petitioner's specific needs.

In this case, it was not shown that the [REDACTED] program provides a meaningful cost-saving from petitioner's current program (when considering both the transportation and the program itself) or provides a meaningful equivalent level of services that have been shown to be needed and of benefit to petitioner. Also, no viable alternative transportation provider was set forth. As such, based on the record before me, I find that the respondent has failed to establish that it correctly denied petitioner's BA request of \$3,084.10 to fund the price increase imposed by his specialized transportation provider for transportation to [REDACTED].

CONCLUSIONS OF LAW

The respondent failed to establish that it correctly denied petitioner’s budget amendment request of \$3,084.10 to fund a price increase imposed by his specialized transportation provider for transportation to [REDACTED].

THEREFORE, it is

ORDERED

That this matter is remanded to the respondent to take all administrative steps necessary to rescind the September 13, 2022, denial of petitioner’s request for a budget amendment of \$3,084.10 for specialized transportation services and to approve the 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, 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

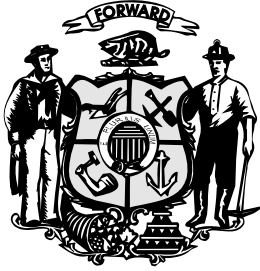
You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Health Services, 1 West Wilson Street, Room 651, **and** on those identified in this decision 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 17th day of January, 2023



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 January 17, 2023.

Bureau of Long-Term Support