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STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of



DECISION
Case #: CWA - 207474

PRELIMINARY RECITALS

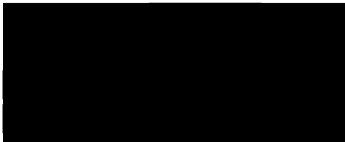
Pursuant to a petition filed on January 19, 2023, under Wis. Admin. Code § HA 3.03, to review a decision by the Bureau of Long-Term Support regarding Medical Assistance (MA), a hearing was held on March 22, 2023, by telephone.

The issue for determination is whether the respondent correctly denied petitioner's request for a supportive home care rate of pay of \$17.00/hour.

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 Richland County who participates in the IRIS program through his IRIS Consulting Agency.
2. Petitioner’s diagnoses include spastic quadriplegia, unspecified intracranial injury, diffuse traumatic brain injury, epilepsy, aphasia, aspiration pneumonia, respiratory failure, sleep apnea, anxiety/depression, diabetes mellitus type II, G-tube, GERD, morbid obesity with alveolar hypoventilation, anemia, DVT, and osteoporosis.
3. In 2012, the petitioner moved from a rehabilitation center into a home that was designed to meet his specific needs. He lives alone but is fully dependent on others to provide all his cares 24/7. He is non-verbal and communicates by way of an adaptive aid. Most of his nutritional intake is by g-tube. He is on supplemental oxygen and receives respiratory treatments. He uses a BI-PAP and oral suctioning is done to prevent him from silently aspirating. He is wheelchair bound and a mechanical lift is used for all transfers. He is fully incontinent of both bladder and bowel and needs full assistance to change incontinence products. He is 6’ 2” and weighs approximately 275 pounds.
4. On or about December 30, 2022, the agency completed a Long-Term Care Functional Screen (LTCFS) for the petitioner. The screener determined that the petitioner required hands on care with all six activities of daily living (ADL), as well as all six instrumental activities of daily living (IADLs).
5. Petitioner’s Individual Support and Services Plan for July 1, 2022 – June 30, 2023 sets forth an IRIS budget of \$110,696.64, with an approved Budget Amendment for specialized medical supplies, supportive home care, and overtime supportive home care. He has been approved for 24/7 care, comprised of 110 hours/week of SHC and 58 hours/week of self-directed personal care.
6. The petitioner requested a supportive home care budget amendment seeking approval for a pay rate increase from \$15.75/hour to \$17.00/hour (before taxes). The respondent denied the budget amendment on or about January 3, 2023, on grounds the \$17.00 per hour rate was outside of usual and customary in petitioner’s area. In support, the notice indicated that the average pay for a home health aide in Wisconsin was indicated to be \$14.23/hour by Careerexplorer.com, \$15.22/hour by Indeed.com, \$13.14/hour by Salary.com, and \$13.90 by Zippia.com. The notice indicated that since the \$17.00/hour was above the usual and customary rate for Wisconsin, the BA request was denied.
7. The 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>), IRIS Work Instructions (available at CWA-201234 3 <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. 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." *Id.* When the Department of Health Services denies a BA request, the participant may appeal the budget amount using the Medicaid fair hearing process. *Id.*

IRIS participants are given the choice to hire their own SHC workers or use an agency to provide those services. See, IRIS Policy Manual, Sec. 6.1A and 6.2. IRIS participants are responsible for negotiating "reasonable and customary rates" of pay with all providers, be it participant-hired workers or an agency. *Id.* While the IRIS consultants are not responsible to hire, recruit, or negotiate rates of pay with providers, it is their responsibility to ensure the IRIS participant has the tools, resources, and information to hire, train, and manage providers. *Id.* The IRIS consultants must also ensure that the participant compensate providers at "a usual and customary rate." *Id.*

In the present matter, petitioner pursued a BA to increase the hourly rate of pay for SHC workers from \$15.75 to \$17.00/hour.

The record indicates that petitioner's guardian has made a good faith effort to hire needed SHC workers to provide round the clock coverage, which he needs and has been approved. Despite those efforts, the guardian has not been able to staff all hours since at least 2021, placing the burden on the family to provide a stop gap. The IC agency has acknowledged those efforts, and indicated that petitioner's high care needs and location in a rural part of the state presents special circumstances that it make it more difficult to hire and retain SHC workers. The guardian credibly testified that her inability to employ appropriate SHC workers stems from the currently approved SHC wage being too low. She noted the most closely related competitor for hiring SHC workers offers new, unskilled workers \$16.69/hour. In addition, they receive weekend and shift premiums of \$1.50/hour, raising their wages above \$18.00/hour. On top of that, they receive a \$1,000 cash sign-on bonus and non-cash benefits that include health insurance, dental insurance, and retirement. The guardian noted that she is not able to offer a cash bonus or any of the non-cash benefits.

The respondent argued that the requested wage of \$17.00/hour was not usual and customary rate. In support, it provided the average hourly wage for home health aides as reported by CareerExplorer (\$14.23), Indeed.com (\$15.24), Salary.com (\$13.14), and Zippia (\$13.90).

Of note, it appears that those rates merely reflect a portion of a larger overall compensation package customarily provided to home health aides. For example, in reviewing the information from Indeed.com, it lists an average base salary for home health aides in Wisconsin of \$15.24/hour. See, https://www.indeed.com/career/home-health-aide/salaries/Richland-Center--WI?from=top_sb#common-benefits However, it also lists non-cash benefits that would be provided that are not reflected in the hourly wage, which would include such benefits as a 401(k), health insurance, and paid leave. Indeed.com does not list the overall value of the compensation package when non-cash benefits are factored in. However, Salary.com does. It indicates that that the \$13.14/hour rate of pay comprises only 65% of the entire compensation package. See, <https://www.salary.com/tools/salary-calculator/entry-home-care-aide-benefits>. With the inclusion of the additional non-cash benefits, the compensation rate would amount to \$20.64/hour (\$42,932 / 2,080 hours per year). Id.

I find that the petitioner has demonstrated that based on the facts of this case, including his special circumstances, the \$17.00/hour rate being requested in the BA is needed to hire and retain appropriate SHC workers. The respondent has not demonstrated this rate is inconsistent with the current market rates when factoring in all compensation benefits.

CONCLUSIONS OF LAW

The respondent failed to establish that it correctly denied petitioner's budget amendment for a \$17.00/hour rate of pay for supportive care hours.

THEREFORE, it is

ORDERED

That this matter is remanded to the respondent to take all administrative steps necessary to rescind the January 3, 2023, budget amendment denial of petitioner's request for an increase in hourly rate of pay for supportive home care hours from \$15.75 to \$17.00, and revise its records to reflect approval of that supportive home care wage rate 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

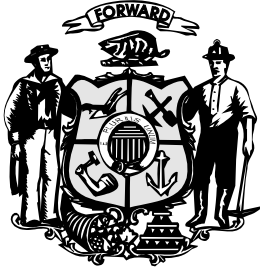
You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Health Services, 1 West Wilson Street, Room 651, **and** on those identified in this decision 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 3rd day of April, 2023

\s  _____

Jason M. Grace
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

Brian Hayes, Administrator
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Madison, WI 53705-5400

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The preceding decision was sent to the following parties on April 3, 2023.

Bureau of Long-Term Support