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

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In the Matter of



**DECISION**  
Case #: CWA - 207563

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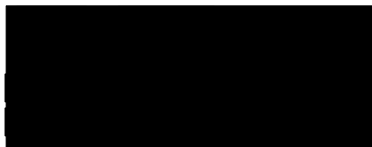
**PRELIMINARY RECITALS**

Pursuant to a petition filed February 1, 2023, under Wis. Admin. Code, §HA 3.03, to review a decision by the TMG regarding the Include, Respect I Self-Direct (IRIS) program, a hearing was held on March 29, 2023, by telephone.

The issue for determination is whether the program correctly denied a rate for an in-home care provider.

**PARTIES IN INTEREST:**

Petitioner:



Petitioner's Representative:

Atty. Mary Colleen Olson  
Disability Rights Wisconsin  
131 W Wilson St Suite 700  
Madison, WI 53703

Respondent:

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

By: 

TMG  
1 N. Pinckney St., Suite 320  
Madison, WI 53703

**ADMINISTRATIVE LAW JUDGE:**

Brian C. Schneider  
Division of Hearings and Appeals

## FINDINGS OF FACT

1. Petitioner resides in Green County but is a Dane County resident for Medicaid-related purposes.
2. Petitioner has Rett Syndrome. She requires assistance with all activities of daily living (ADLs) and five instrumental ADLs. She requires overnight supervision and has no effective communication. She is eligible for IRIS with TMG as her consulting agency.
3. Petitioner resides in an apartment complex in which the first-floor units are for disabled individuals. She has a roommate who also has Rett syndrome, and both require home health care.
4. Until January 27, 2023, petitioner's (and her roommate's) in-home supportive home care was handled by an agency called Best Life at a rate of \$352.80 per day. Best Life gave notice in December, 2022 that it was ending its contract as of January 27, primarily because its managers determined that the rate was unfeasible for the amount of care required by the roommates.
5. TMG, in tandem with petitioner's family and other family members of residents in similar situations (there is another apartment with siblings in the complex who also lost Best Life at the same time, so their family has been involved as well), began a search for a replacement home-health agency. The only agency they could find that would cover the types of services needed by the clients in the small town in which they live was For Pete's Sake (FPS), but FPS's quoted rate was \$489.14 per day per individual.
6. TMG put in a budget amendment request for petitioner (as well as the other three clients). By a letter dated February 21, 2023, the Bureau of Programs and Policies (BAPP) denied the request as being not cost effective, as being above the standard rate in the local area.
7. FPS has been providing the services at the lower rate to the satisfaction of all parties involved, but FPS has informed TMG that they cannot continue to do so at the lower rate and will cease coverage unless the rate is increased.

## DISCUSSION

The IRIS program was developed pursuant to a Medical Assistance waiver obtained by the State of Wisconsin, pursuant to section 6087 of the Deficit Reduction Act of 2005 (DRA), and 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. Those 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 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.

It is the petitioner's burden to prove the need for the higher rate. As I have complained in the past in cases such as this one, the BAPP decisionmakers do not attend the hearings, and thus I have only the BAPP's written reason for denial that was rebutted thoroughly by the petitioner's evidence. Testimony from both Ms. [REDACTED] of TMG and petitioner's father is that they have been able to find no other providers to handle the necessary cares, and that FPS has been providing excellent care. I acknowledge that the cost is extremely high, but I also am aware of the difficulties in finding qualified caregivers in the current market. I thus conclude that the requested Budget Amendment should be approved, retroactive to the original requested start date.

### CONCLUSIONS OF LAW

The requested rate for supportive home care for the agency FPS is medically necessary and cost effective as no other alternatives have been found, and the BAPP has not shown a more cost-effective alternative.

**THEREFORE, it is ORDERED**

That the matter be remanded to TMG with instructions to take the necessary action to request a new Budget Amendment to provide for supportive home care from For Pete's Sake at the requested rate of \$489.14, and the BAPP shall approve the request, retroactive to the original requested start date of January 28, 2023. The agency shall do so 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**

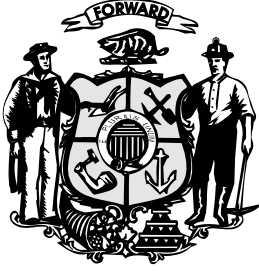
You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Health Services, 1 West Wilson Street, Room 651, **and** on those identified in this decision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

  
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Brian C. Schneider  
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 3, 2023.

Bureau of Long-Term Support  
Attorney Mary Colleen Olson