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STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

██████████
██████████
██████████

DECISION
Case #: CWA - 208070

PRELIMINARY RECITALS

Pursuant to a petition filed on March 21, 2023, under Wis. Admin. Code § HA 3.03, to review a decision issued by the Department of Health Services, Bureau of Adult Programs and Policies through its agent, TMG, regarding IRIS, a Medical Assistance (MA) long-term care waiver program, a hearing was held on May 18, 2023, by telephone.

The issue for determination is whether the TMG properly terminated payment for Petitioner's monthly Internet cost.

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: Angela Sutherland, TMG
Bureau of Adult Programs and Policies
PO Box 7851
Madison, WI 53707-7851

ADMINISTRATIVE LAW JUDGE:

Teresa A. Perez
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner is a 22-year old resident of Sauk County and is a participant in the IRIS program. Petitioner resides in a home by herself with 24 hour support.

2. Petitioner's diagnoses include but are not limited to: epilepsy, lissencephaly, global developmental delay, scoliosis, spinal fusion, and arthrogryposis. Petitioner is a non-verbal but able to communicate with others.
3. As a result of Petitioner's medical conditions, she requires assistance with all of her activities of daily living and instrumental activities of daily living.
4. Petitioner's individual support and services plan (ISSP) includes the following long term care outcomes: (1) I want to live in my own place, (2) I want to be able to get out and do activities in my community, and (3) I want to be able to work in my community.
5. Petitioner receives private duty nursing services paid for by Medical Assistance.
6. Petitioner's IRIS benefit has authorized the following services for the 2023 plan year: community transportation, "routine" and "chore service" supportive home care, support broker services, and monthly Internet service (under the benefit category "Individual Directed Goods and Services").
7. Petitioner is able to operate a computer tablet using two fingers. The tablet in combination with Internet service allow her to control technology in her home including her thermostat, lights, and a doorbell camera. She also uses her iPad and Internet service to communicate with family members, friends, and providers and would be able to use it to contact Emergency Medical Services.
8. The IRIS program has authorized payment for Petitioner's monthly Internet service since 2019.
9. On February 27, 2023, TMG issued a Notice of Action to Petitioner advising her that the IRIS program would no longer fund her monthly Internet service costs because it does not meet an IRIS Medicaid Waiver Service definition, it was previously approved in error, and it is not an allowable service per the approved HCBS waiver. The notice stated that Internet service is a utility and that utilities are a non-allowable service and that information related to defraying Internet service costs were provided to her.
10. Petitioner filed an appeal of the authorization termination on March 21, 2023

DISCUSSION

The Include, Respect, I Self-Direct (IRIS) program is a Medical Assistance home and community based 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* (available at <https://www.dhs.wisconsin.gov/publications/p0/p00708.pdf>).

The federal regulations that govern the design, evaluation, and approval of home and community based waiver programs are set forth in 42 C.F.R. Subpart G. 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>).

42 C.F.R. §440.180 provides that the following services may be covered by home and community based waiver programs:

- (1) Case management services.
- (2) Homemaker services.
- (3) Home health aide services.
- (4) Personal care services.
- (5) Adult day health services.
- (6) Habilitation services.
- (7) Respite care services.
- (8) Day treatment or other partial hospitalization services, psychosocial rehabilitation services and clinic services (whether or not furnished in a facility) for individuals with chronic mental illness, subject to the conditions specified in paragraph (d) of this section.
- (9) *Other services requested by the agency and approved by CMS as cost effective and necessary to avoid institutionalization.*

[Emphasis added.] 42 CFR §440.180(b).

The IRIS waiver includes Individual Directed Goods and Services as an approved “other service” and provides the following definition and coverage requirements:

Individual Directed Goods and Services refers to services, equipment, or supplies that addresses or enhances the participant’s opportunity to achieve their long-term support need, but is not already coverable under another service category. **The service, equipment, or supply must not be captured under an exclusion of another service category.**

Each service, equipment, or supply selected must clearly address a long-term support need documented in the ISSP and meet the additional following requirements:

- * The participant is reasonably unable to obtain the good or service from another source; and
- * At least one of the following:
 - o The item or service must decrease the need for other Medicaid services (Medicaid State Plan or waiver services); or
 - o Promote or maintain inclusion in the community; or
 - o Increase or maintain the participant’s safety in the home environment.

Individual Directed Goods and Services are purchased from the participant-directed budget. Any service, equipment or supply included under this service definition is subject to review by the [State Medicaid Agency], prior to service authorization and utilization.

This service may not duplicate services otherwise provided through the Medicaid State Plan or under another waiver service category.

[Emphasis added.] See *Application for 1915(c) HCBS Waiver: WI.0484.R02.00 - May 01, 2021*, Appendix C1/C3, p. 119; see also, *IRIS Service Definition Manual (“Waiver Application”)*, p. 40.

It is a well-established principle that a moving party generally has the burden of proof, especially in administrative proceedings. *State v. Hanson*, 295 N.W.2d 209, 98 Wis. 2d 80 (Wis. App. 1980). In a case involving the termination of services, it is therefore the agency that bears the burden of proof. To prevail here, TMG must establish through a preponderance of the credible evidence in the record that its decision to terminate IRIS authorization for Petitioner's monthly Internet service was appropriate. For the following reasons, I find that TMG has met its burden.

Petitioner's mother, who appeared for Petitioner at hearing, offered sincere, credible, and compelling testimony regarding Petitioner's need for Internet service to ensure her safety, to allow her to maintain connections with her family and friends, and perhaps most importantly, to allow her to maximize her independence. TMG did not dispute those points; rather, TMG made the following three arguments at hearing: (1) Internet service is a utility, utilities are excluded under other service categories included in the approved waiver, and Internet service can therefore not be authorized as an individual directed good or service; (2) There is another source that may be offer to provide at least partial funding of Internet service; and (3) Petitioner has 24 / 7 support in her home from private duty nurses, supportive home care workers, and family and those individuals can complete tasks like adjusting the thermostat and turning lights on and off.

The first argument set forth by TMG was convincing. The terms of the waiver specify that a good or service excluded under any other benefit category cannot be covered as an individual directed good and service. Room and board, which includes "regular utility charges", is excluded under at least one other benefit category; namely, relocation and community transition services. See *Waiver Application*, Appendix C1/C3, p. 128. Although utility charge is not further defined, the agency's interpretation of utility to include Internet service is reasonable. I am therefore upholding the termination. I was not persuaded by TMG's second or third argument but the agency need only prove the appropriateness of one basis to prevail here.

As an aside, the Affordable Connectivity Program, a government-sponsored program that pays \$30 per month towards eligible individuals' Internet costs, was discussed. An Internet search that I conducted took me to <https://www.affordableconnectivity.gov/>. That site indicates that individuals who are eligible for Medicaid are eligible for the \$30 subsidy program. The site also indicates that certain Internet providers offer free service to individuals who are eligible for the Affordable Connectivity Program. Whether that would be helpful to Petitioner would depend of course on whether those Internet providers are available where she lives. Petitioner's mother testified that she had begun to complete the paperwork but found it burdensome and set it aside. I note that there is an option to apply on-line. In addition, Petitioner's mother may seek assistance at the Aging and Disability Resource Center in her community.

CONCLUSIONS OF LAW

The agency's termination of the authorization for Petitioner's monthly Internet service was proper because utility charges are an excludable service under the terms of the Medicaid waiver that that governs the IRIS program.

THEREFORE, it is

ORDERED

That the petition is dismissed.

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

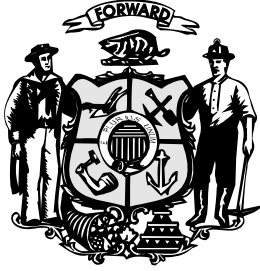
You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Health Services, 1 West Wilson Street, Room 651, **and** on those identified in this decision 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 6th day of June, 2023



\s _____
Teresa A. Perez
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 June 6, 2023.

Bureau of Long-Term Support