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STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

██████████
██████████
██████████

DECISION
Case #: CWA - 208350

PRELIMINARY RECITALS

Pursuant to a petition filed on April 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 September 6, 2023, by telephone.

The issue for determination is whether the IRIS Program correctly acted to terminate the Individual Directed Goods and Service provision of community meals (restaurant takeout) for petitioner.

There appeared at that time the following persons:

PARTIES IN INTEREST:

Petitioner:

██████████
██████████
██████████

Petitioner's Representative:

Kayla J. Smith
Board on Aging And Long-Term Care
1402 Pankratz Street
Suite 111
Madison, WI 53704

Respondent:

Department of Health Services
1 West Wilson Street, Room 651
Madison, WI 53703
By: A. Sutherland - TMG
Bureau of Long-Term Support
PO Box 7851
Madison, WI 53707-7851

ADMINISTRATIVE LAW JUDGE:

John P. Tedesco
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner is a resident of ██████████.

2. Petitioner is enrolled in the IRIS Program.
3. Over time since more than 6 years ago petitioner has sought reimbursement for restaurant takeout. This was approved by IRIS over the years to now encompass a list of her preferred restaurants and stores.
4. Petitioner has food sensitivities including to preservatives.
5. Petitioner needs full assistance with meal preparation.
6. Petitioner currently has allowance for funding of home-delivered meals from approved vendors including [REDACTED]
7. Petitioner currently has allowance for funding of supportive home care.
8. On 3/22/23 the IRIS agency sent notice to petitioner informing her that it would be terminating her allowance for restaurant takeout which is provided under a provision for Individual Directed Goods and Services in the IRIS policies.
9. Petitioner appealed.

DISCUSSION

The Include, Respect, I Self-Direct (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.*

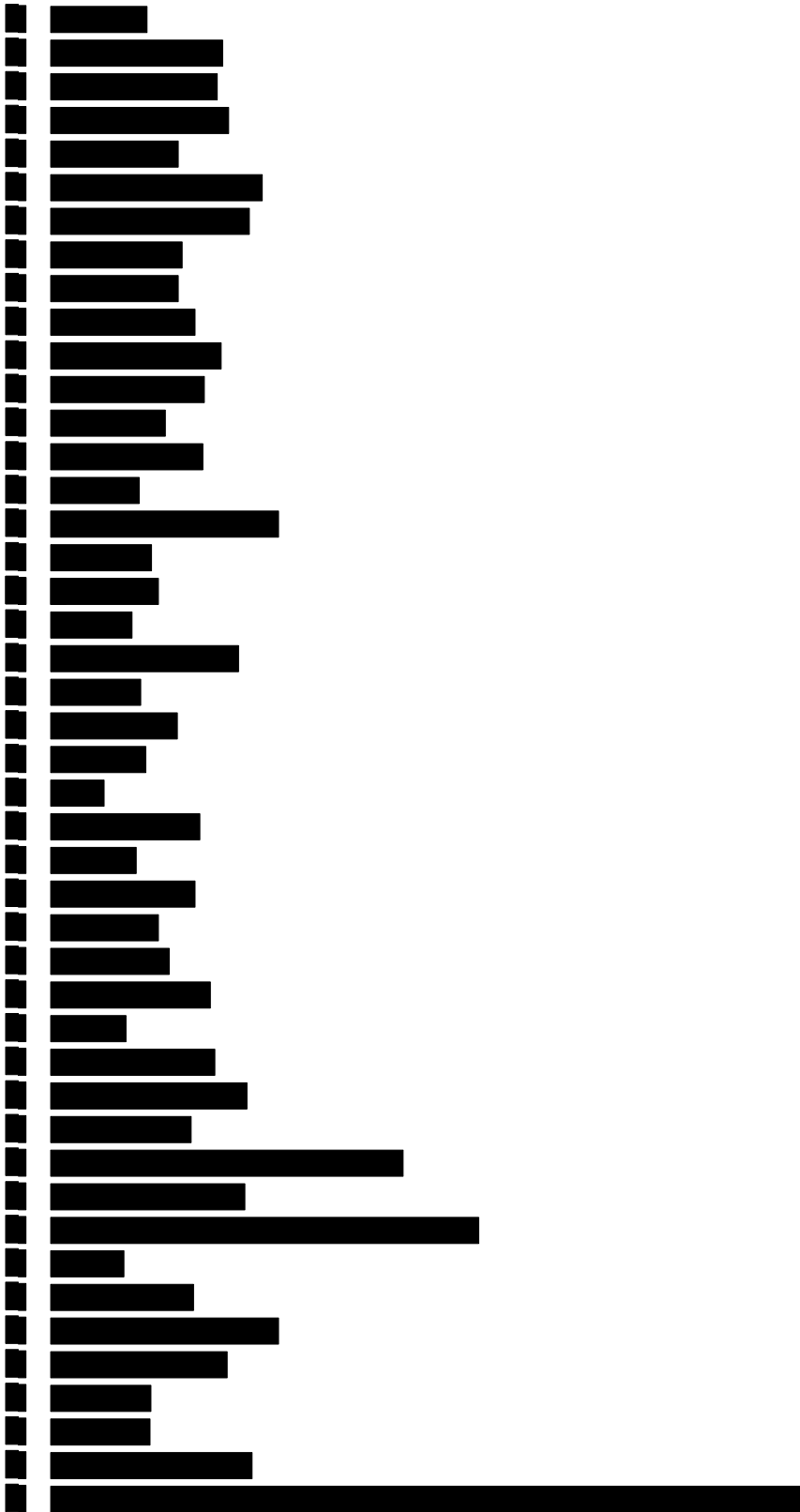
The IRIS waiver application most recently approved by the Centers for Medicare and Medicaid Services (CMS) is available on-line at <https://www.dhs.wisconsin.gov/iris/hcbw.pdf>. See *Application for 1915(c) HCBS Waiver: WI.0484.R03.00 - Jan 01, 2021*. State policies governing administration of the IRIS 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>).

IRIS Consultant Agencies (ICAs), like First Person Care Consultants, are contracted by the Department of Health Services to help IRIS participants, as needed, identify paid and unpaid services that will meet their long-term care needs and to then develop an “individual services and supports plan” (ISSP) that reflects those services and needs. In addition, ICAs are responsible for ensuring that the cost of paid services authorized by IRIS for a participant remains within that participant’s budget amount. *IRIS Policy Manual*, §5.2B. An IRIS participant’s budget is generated based on information obtained during a screening of the participant’s long-term care functional needs.

The program has been reimbursing petitioner for restaurant pickups for years. It is unclear how this allowance was initially approved as this is not an allowable service under the IRIS program rules. For various reasons, the program’s action to terminate the restaurant takeout is proper.

The current providers of her restaurant takeout food are included in her ISSP:

[REDACTED]



The issue in this case is whether it is necessary, appropriate, and cost-effective for petitioner to have funding on her plan for restaurant takeout food to be paid for by IRIS, and whether the restaurant takeout

is an allowable service in the first place. Petitioner's restaurant takeout is currently funded as an individual directed goods and service.

Petitioner already has an allowance on her ISSP for supportive home care which, under program rules, may include both grocery shopping and meal preparation by a supportive home care worker in a member's home. Petitioner also has available on her plan home-delivered meals from providers [REDACTED] and [REDACTED]. Home-delivered meals are an allowable service under IRIS policy. *See IRIS Policy Manual* (10/22) at Section 5.4A. The IRIS Service Definition Manual further clarifies the service allowed:

Home Delivered Meals Definition and Purpose:

Home delivered meals are meals provided to participants who are unable to prepare or obtain nourishing meals without assistance, including those who may be unable to manage a special diet recommended by their physician. Home delivered meal costs may include the costs associated with the purchase and planning of food, nutrition services, supplies, equipment, labor and transportation to deliver one or two meals a day. Home delivered meals may not constitute a "full nutritional regimen" (3 meals per day).

Petitioner testified that the meals provided by the two home-delivered meals providers do not meet her standards and dietary requirements. She explained that she must eat preservative-free, low-sugar, low-sodium, gluten-free, and lactose-free meals. This contention is supported by her physician, Dr. Ilgen. Petitioner testified that she initially tried one of the home-delivered meals but later learned that the meal she ate contained preservatives and caused her acute breathing difficulty. Petitioner attributes this to the inclusion of preservatives.

I understand the dietary needs of petitioner being very serious. [REDACTED] letter makes this clear. Also, [REDACTED] letter explains that petitioner has difficulty preparing her own meals. Given the seriousness of petitioner's food sensitivities it seems unwise to leave your meal preparation to providers such as the local Mobil Gas Station, Subway, and Taco Bell. While I realize that the list includes other providers as well, the wiser choice for a person with these sensitivities is to control preparation and ingredients by preparation of one's food in one's own home. With such grave sensitivities I find it inappropriate and, quite frankly dangerous, to have the IRIS Program funding food from KFC, Wendy's or Pizza Hut where some preservatives could possibly sneak through without notice to petitioner.

I have reviewed the nutritional information of one of the approved home-delivered meal vendors for the IRIS Program. [REDACTED] was not the provider that petitioner identified as being a concern for her. This approved vendor, which is a currently allowed service to petitioner appears to have options available which would fit within petitioner's needs better than many of the restaurants on her own ISSP list. *See:* [https://www.\[REDACTED\].com/pages/nutritional-information](https://www.[REDACTED].com/pages/nutritional-information).

It seems to me that allowing funding for increased supportive home care or other services that allow for in-home meal preparation is one reasonable solution. Meals can be prepared a few times per week and frozen for heating up at a later time. Petitioner testified that usually a friend or family member picks up her restaurant takeout. It would be easy enough for that person to heat up a bowl of chili from the freezer instead, This would result in a much safer meal with known ingredients for petitioner as she could supervise the purchase of ingredients and preparation.

Finally, the restaurant takeout food currently at issue is funded by IRIS under the allowance for individual directed goods and services. That provision is an allowed service under the IRIS rules as set forth in the

Iris Policy Manual at Section 5.4A and in the IRIS Service Definition Manual. The allowed services and items under this provision are set forth as follows:

Individual Directed Goods and Services Definition and Purpose:

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:

1. *The participant is reasonably unable to obtain the good or service from another source; and*
2. *At least one of the following:*
 - a. *The item or service must decrease the need for other Medicaid services (Medicaid State Plan or waiver services); or*
 - b. *Promote or maintain inclusion in the community; or*
 - c. *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 DHS, prior to service authorization and utilization.

I find that the restaurant takeout meals do not appropriately fit within this provision. They possibly should not have been allowed in the first place. Or, as the IRIS agency explains, the rules have changed to now not allow for this type of funding. The IRIS representative explained that the program allowed these services to remain during the COVID pandemic but has conferred with petitioner over the past year to inform her that this allowance for restaurant takeout would no longer be allowed.

Restaurant takeout does not fit within the "Individual Directed Goods and Services" allowance for several reasons. First, the restaurant takeout cannot be legitimately found to be a service, equipment or supply. Furthermore, the petitioner's meals could potentially be covered under another service category: supportive home care or home-delivered meals. Finally, the meals can reasonably be obtained from another source: home-preparation or home-delivered meals. This service category simply is not a good fit with funding ordered takeout restaurant food that is picked up at the restaurant. It may be that some of the restaurant takeout could be funded under the home-delivered meal service of IRIS. But, such an allowance would need to be assessed and considered individually. On the whole, petitioner testified at hearing that the majority of the utilization of the restaurant takeout has involved having someone pick up the food at the restaurant. So, this may not qualify under that provision either. Takeout food from the restaurants of a member's choice may simply not be an allowable service under the IRIS Program.

For whatever reason, this restaurant takeout plan seems to have gotten out of control. It may have been well-intentioned at the beginning. And, perhaps it was not reined in during the COVID emergency. But, at this point it seems clear that this is not even an allowable service under the rules. That is, a person cannot just order food from restaurants and have IRIS pay for it. There is no such provision that allows for this. Furthermore, the majority of the food providers likely present health risks to petitioner. Given that petitioner has other options available for the provision of nutrition it is the correct action for the program to terminate the restaurant takeout funding.

CONCLUSIONS OF LAW

The IRIS Program did not err in its termination of the Individual Directed Goods and Services – Community Meals in the form of a restaurant takeout allowance.

THEREFORE, it is **ORDERED**

That this appeal 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

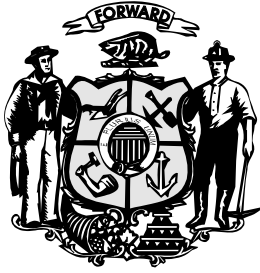
You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Health Services, 1 West Wilson Street, Room 651, **and** on those identified in this decision 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 19th day of September, 2023



\s _____
John P. Tedesco
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin \DIVISION OF HEARINGS AND APPEALS

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Madison, WI 53705-5400

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The preceding decision was sent to the following parties on September 19, 2023.

Bureau of Long-Term Support

