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

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In the Matter of

██████████  
██████████  
██████████

**DECISION**  
Case #: CWA - 208405

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**PRELIMINARY RECITALS**

Pursuant to a petition filed on April 24, 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 21, 2023, by telephone. Hearings scheduled for June 13, 2023, July 12, 2023, August 9, 2023, and August 30, 2023, were rescheduled at petitioner's request.

The issue for determination is whether the respondent correctly removed IRIS funding for community transportation.

There appeared at that time the following persons:

**PARTIES IN INTEREST:**

**Petitioner:**

██████████  
██████████  
██████████

**Petitioner's Representative:**

Attorney Mary Beth Gardner  
Gardner Law Office  
2411 N. Hillcrest Parkway  
Suite 9  
Altoona, WI 54720

**Respondent:**

Department of Health Services  
1 West Wilson Street, Room 651  
Madison, WI 53703  
By: Pamela Schriber  
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 Buffalo County. He lives with his wife. He is enrolled in the IRIS program, with TMG his IRIS Consultant agency. Respondent's Exhibit A.
2. The Long Term Care Functional Screen (LTCFS) dated May 31, 2023, notes that the petitioner's medical diagnoses include dyslipidemia, pre-diabetes, obesity, heart attack, hypertension, chronic pain, Bell's Palsy, cognitive disorder NOS due to head injury, obstructive sleep apnea, nephrolithiasis, bipolar disorder, and chronic memory problems. He needs assistance with the activities of daily living of bathing, toileting, dressing, and transfers. He also needs assistance with the instrumental activities of daily living of meal preparation, medication administration and management, and laundry/chores. Respondent's Exhibit C.
3. The LTCFS indicates that the petitioner reported that he drives a vehicle but his wife normally is with him due to his memory loss. The screener indicated that the petitioner's driving is a safety concern. Respondent's Exhibit C.
4. The petitioner is prescribed several medications that impact his ability to safely drive a motor vehicle. Testimony of the petitioner and Petitioner's Exhibit A.
5. The petitioner's current Individual Support and Services Plan (ISSP) involves 11.25 weekly hours of supportive home care and 21 weekly hours of respite. Community transportation of 800 monthly miles provided by the petitioner's wife is also listed in the ISSP to address community integration. Respondent's Exhibit D.
6. The petitioner also is approved for 28.75 weekly hours of self-directed personal care. Respondent's Exhibit D.
7. The Case Notes maintained by TMG provide the following information regarding the petitioner's driving:
  - 11/28/2022: IRIS consultant (IC) [REDACTED] had seen the petitioner driving over the past 2-3 months at Woodmans, McDonalds in [REDACTED] Family Dollar, and Fleet Farm.
  - 1/18/2023: In response to a question if he drives most places that he and his wife go, the petitioner told IC [REDACTED], "ya, pretty much all the time, I'm a better driver."
  - 2/15/2023: The petitioner confirmed to IC [REDACTED] that he was the person doing the driving, that he had access to two vehicles, and has a driver's license. In reference to the possibility of community transportation being removed from his IRIS budget, the petitioner indicated, "I'm not going to lose that income to my home, we count on that."
  - 6/27/2023: In reference to taking narcotic drugs, the petitioner told IC [REDACTED] that he still drives but avoids his narcotic pain medication if he knows he must drive. In reference to the community transportation, the petitioner indicated "that money is supposed to be to maintain my vehicle and pay for new tires and stuff like that."

Respondent's Exhibit F.

8. On February 21, 2023, the Department issued notice that it was terminating petitioner's 800 monthly miles of Community Transportation services as of March 8, 2023. The basis for the termination was that the request contradicts IRIS policy. The notice further indicated that he had reported that he had a valid license, access to a car, and that he was the primary driver. It was indicated that the IRIS program is designed to help participants meet their long term care outcomes and such outcome for accessing your community is met as you drive. The notice also indicated that he had previously submitted mileage reimbursement under his participant-hired worker's name but he was the person who was driving. It was further indicated that he had reported to the IC that he relied on mileage reimbursement through the Community Transportation service as income. Finally, the notice indicated he reported during the LTCFS that his preference was to drive and to have his PHW as a passenger to provide directional guidance as a safety measure. The notice indicated such could be captured as a natural support or through current SHC services. Respondent's Exhibit B.
9. On April 24, 2023, 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 <https://www.dhs.wisconsin.gov/publications/p0/p00708.pdf>) and IRIS Service Definition Manual (<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.

The IRIS program provides funding of last resort. IRIS Policy Manual 5.6A.4. The Department has a responsibility to implement the IRIS program in a fiscally sound manner. 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 issue at hearing was whether the respondent correctly removed IRIS funding for community transportation.

The waiver provides the following with regards to community transportation services:

Community Transportation is the transport of a participant to and from a waiver service, place of employment, or community service, activity, or resource. The cost of community transportation is covered in accordance with Internal Revenue Service policy as outlined in the participant's Individualized Services and Support Plan (ISSP). Community Transportation is offered in addition to medical transportation required under 42 CFR 431.53 and transportation services under the State Plan, defined in 42 CFR 440.170(a) (if applicable) and does not replace them. Transportation service may only be funded through the waiver when the services are not provided by a legally responsible third-party, such as school, private insurance, or a public entity. Whenever possible, family, neighbors, friends, community agencies, or local government programs that can provide this service without charge will be prioritized and utilized.

Community transportation may only be funded through the waiver when otherwise not available through the State Plan, Medicare, EPSDT (for participants ages 18-21), or a responsible private or public entity. This service may not duplicate any service that is provided under another waiver service category.

IRIS Waiver, Appendix C, pages 96-97.

There are four different types of providers that may be used for community transportation: mass transit provider under Wis. Stats §85.20 and 85.23, taxi or common motor carrier under §194, specialized transportation provider under §85.21 and 85.22, and a participant-hired worker. IRIS Definitions Manual (07/2022), pages 20-21. A participant-hired worker must have a valid driver's license for the type of transportation provided and adequate insurance coverage, including liability auto insurance. IRIS Waiver, Appendix C, pages 97 – 99; and IRIS Definition Manual (07/2022), pages 20-21. Based on the foregoing policy provisions, community transportation services under the IRIS program envisions the driver to be someone other than the IRIS participant. This was not disputed at hearing. In this case, the petitioner was approved to use a participant-hired worker. That individual was to be his wife.

The respondent seeks to remove petitioner's community transportation miles effective March 8, 2023, on grounds of. Specifically, that he had a valid driver's license, access to a vehicle, and, notably, that he was driving himself instead of using his participant-hired worker to fill that role. The respondent's position is that the wife was merely a passenger in the vehicle. The respondent noted that SHC services could potentially be used to provide him assistance when he drives to community outings. However, I understood the respondent's position regarding SHC as to only apply if the petitioner was otherwise capable of safely driving himself and merely needed minor assistance, such as with directional guidance or transfers in and out of the vehicle.

The focus of the evidence and argument at hearing was whether the petitioner was driving himself or using his wife for the community transportation service. The petitioner indicated that he had last driven approximately a year prior. He also denied making statements to IC [REDACTED] and the LTCFS screener as to driving himself. My understanding of the wife's testimony was that she had been solely responsible for driving the petitioner in the last year. IC [REDACTED] testimony as to the petitioner's driving was persuasive and found to provide the most credible account. She testified as to the petitioner's admissions to her of recent driving and her own observations of that act in the community. See Finding of Fact 7 (case notes of IC [REDACTED] documenting statements and observations).

No evidence at hearing was introduced that indicated the petitioner was capable of safely driving a motor vehicle. This decision is not based on any such finding. The problem is that the credible evidence indicates that he is still nevertheless driving and the use of community transportation services under IRIS requires that he be driven by someone else. As such, I find the respondent's position supported by the credible evidence in the record and the policy applicable to the IRIS program. Accordingly, I am required to uphold the respondent's removal of IRIS funding for community transportation under the facts of this case.

I would note that this decision does not preclude the petitioner from seeking IRIS funding for community transportation using a different type of provider, such as mass transit, a taxi, or specialized transportation. Likewise, he would be able to explore such funding with the respondent using a participant-hired worker if he is able to demonstrate that he is no longer driving himself. A first step toward that end could involve the voluntary relinquishment of his driver's license.

### CONCLUSIONS OF LAW

The respondent demonstrated by a preponderance of the credible evidence that it appropriately removed IRIS funding for community transportation.

**THEREFORE, it is**

**ORDERED**

That petitioner's 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, 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

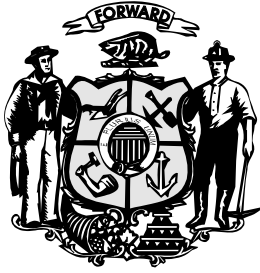
You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Health Services, 1 West Wilson Street, Room 651, **and** on those identified in this decision 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 16th day of October, 2023

  
vs \_\_\_\_\_

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 October 16, 2023.

Bureau of Long-Term Support  
Attorney Mary Beth Gardner