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[REDACTED]

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]

DECISION

Case #: [REDACTED]

PRELIMINARY RECITALS

Pursuant to a petition filed August 14, 2018, under Wis. Admin. Code, §HA 3.03, to review a decision by the [REDACTED] to discontinue the Include, Respect, I Self-Direct (IRIS) program, a hearing was held on January 3, 2019, by telephone. Hearings set for October 3, October 31, and November 28, 2018 were rescheduled at the petitioner's request.

The issue for determination is whether petitioner continues to meet the level of care for IRIS eligibility.

PARTIES IN INTEREST:

Petitioner:

[REDACTED]

Petitioner's Representative:

[REDACTED]

Respondent:

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

By: [REDACTED]

[REDACTED]

ADMINISTRATIVE LAW JUDGE:

Brian C. Schneider
Division of Hearings and Appeals

FINDINGS OF FACT

- 1. Petitioner (CARES # [REDACTED]) is a resident of Sauk County.
2. Petitioner has been eligible for IRIS since August, 2017, with [REDACTED] as her consulting agency. In July, 2018, [REDACTED] did an annual reassessment, completing a functional screen on July 10, 2018. The results of the screen were that petitioner no longer met the nursing home level of care

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necessary for IRIS eligibility. By a notice dated July 31, 2018 the agency informed petitioner that IRIS would end August 15, 2018. Benefits were continued pending this decision.

3. While the appeal was pending ██████ conducted a second functional screen on October 25, 2018. The screen was not computed until December 9, 2018, with the result being that petitioner did not meet the nursing home level of care.
4. The July screener found that petitioner needed no assistance with activities of daily living (ADLs), although it was noted that she uses a shower chair for bathing. The screener found that she needed assistance with one instrumental activity of daily living (IADL).
5. The October screener found that petitioner needs assistance with bathing but no other ADLs, although it was noted that petitioner uses a grab bar for transferring. The October screener again found the need for assistance with one IADL.
6. The October screener noted the use of a grab bar because petitioner reported that she uses her bed rail to get out of bed. Petitioner's doctor noted that petitioner did not need adaptive equipment to ambulate or transfer onto an examination table, and that any difficulties petitioner was having related to a recent fall and were likely short-term.

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(j) of the Social Security Act. It is a self-directed personal care program.

The federal government has promulgated 42 C.F.R. §441.450 - .484 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.*, §441.466. The Department's agent must also develop a service plan based on the assessed needs. Further, "all of the State's applicable policies and procedures associated with service plan development must be carried out" *Id.* §441.468.

An IRIS participant must be elderly, or an adult with physical or developmental disabilities, with "developmental disability" being defined by the federal, not the state, definition. See §1.1A of the IRIS Policy Manual at www.dhs.wisconsin.gov/publications/p0/p00708.pdf. The physical disabilities must be such that the person requires a level of care equal to the level of a nursing home. Manual, §1.2B.2. To qualify for a nursing home level of care a person must have a long-term care condition expected to last at least one year. See Overview of the Long Term Care Functional Screen, §1.2, found at www.dhs.wisconsin.gov/lcicare/FunctionalScreen/WebCT/instructions1.htm.

IRIS plans of care are updated when a participant requests a change in the plan. See Manual, §5.6. The plans also are updated at least on a yearly basis. Id.

The Department has developed a computerized functional assessment screening system. The system relies upon a face-to-face interview with a quality assurance screener who has at least a bachelor of science degree in a health or human services related field, with at least one year of experience working with the target populations (or, if not, an individual otherwise specifically approved by the Department based upon like combination of education and experience). The screener asks the applicant, or a recipient at a periodic review, questions about his or her medical conditions, needs, cares, skills, activities of daily living, and utilization of professional medical providers to meet these needs. The assessor then submits the Functional Screen Report for the person to the Department's Division of Disability and Elder Services. The Department enters the Long Term Functional Screen data into a computer program to see if the person meets any of the required levels of care.

If the screener enters information into the functional screen correctly, then it is assumed that the computer will accurately determine the level of care. However, it has been noted in many instances that the computer's results in level of care determinations conflict with the code definitions, and thus this office regularly handles appeals in which the issue is that the person's level of care meets the nursing home code definition but the computer resulted in a non-nursing home level.

To meet a nursing home level of care, the person must require

... ongoing care, assistance or supervision from another person, as is evidenced by any of the following findings from application of the functional screening:

1. The person cannot safely or appropriately perform 3 or more activities of daily living.
2. The person cannot safely or appropriately perform 2 or more ADLs and one or more instrumental activities of daily living.
3. The person cannot safely or appropriately perform 5 or more IADLs.
4. The person cannot safely or appropriately perform one or more ADL and 3 or more IADLs and has cognitive impairment.
5. The person cannot safely or appropriately perform 4 or more IADLs and has cognitive impairment....

Wis. Admin. Code, §DHS 10.33(2)(c). A sixth irrelevant criterion concerning an individual with a developmental disability is not included in the above list. ADLs include bathing, dressing, eating, mobility, and transferring. Admin. Code, §DHS 10.13(1m). IADLs include meal preparation, medication management, money management, laundry and chores, telephone, and transportation, and the ability to function at a job site. Admin. Code, §DHS 10.13(32).

Petitioner notes correctly that the Department has accepted that the need to use adaptive aids to complete tasks amounts to needing assistance to complete the task. She thus argues that she meets criterion 2 above due to needing assistance with two ADLs and IADL, noting the screener's notation that she uses a grab bar for transferring.

The problem is that petitioner does not use a grab bar for transferring. As explained by the screener during the hearing, she found that petitioner is independent in transferring but noted the use of a grab bar because petitioner told her that she holds onto the bed rail when getting into and out of bed. A bed rail is not the equivalent of a grab bar, and additionally petitioner's need to use the bed rail is not related in any medical record. In fact, petitioner's own doctor offered that petitioner did not require adaptive aids to transfer. Further, petitioner's reporting is of suspect credibility. She initially told that screener that she requires a gait belt to transfer, but her doctor had no knowledge of a gait belt and did not prescribe one; petitioner later admitted that she borrowed a gait belt from an acquaintance.

The code provision provides that the person cannot safely or appropriately perform an ADL or IADL without assistance. Petitioner appears to create the need for assistance by claiming to use an adaptive aid, but the evidence does not support her claim that she needs an adaptive aid for transferring. At best, therefore, it can be found that petitioner needs assistance with one ADL and one IADL. She thus does not meet the nursing home level of care.

Petitioner's representative also intimated that petitioner's condition had not changed since she was found to meet the level of care in 2017. However, a review of the 2017 screen shows substantial differences from the 2018 screen. The 2017 screen shows the need for hands-on assistance with bathing as well as assistance with dressing, mobility, and transferring, and also assistance with three IADLs. It is not

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unusual for a person to improve the ability to handle her own cares with time, practice, and improved health.

CONCLUSIONS OF LAW

The agency correctly determined that petitioner no longer meets the nursing home level of care for IRIS eligibility.

THEREFORE, it is **ORDERED**

That the petition for review is hereby 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

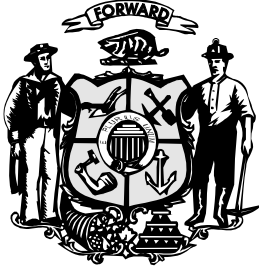
You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Health Services, 1 West Wilson Street, Room 651, **and** on those identified in this decision 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 8th day of January, 2019

\s _____
Brian C. Schneider
Administrative Law Judge
Division of Hearings and Appeals

[REDACTED]



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The preceding decision was sent to the following parties on January 8, 2019.

Bureau of Long-Term Support

[REDACTED]