



FH
[REDACTED]

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]
[REDACTED]
c/o [REDACTED]
[REDACTED]
[REDACTED]

DECISION
Case #: CWA - 198542

PRELIMINARY RECITALS

Pursuant to a petition filed on April 6, 2020, 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 June 10, 2020, by telephone.

The issue for determination is whether the respondent correctly denied petitioner's request for coverage of a home modification.

There appeared at that time the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
c/o [REDACTED]
[REDACTED]
[REDACTED]

Petitioner's Representative:

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

Respondent:

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

By: [REDACTED]
Bureau of Long-Term Support
PO Box 7851
Madison, WI 53707-7851

ADMINISTRATIVE LAW JUDGE:

Peter McCombs
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Brown County. Petitioner resides with his family in the community.
2. Petitioner is diagnosed with severe spastic quadriplegia, cerebral palsy, a seizure disorder, is ventilator dependent, and non-verbal.
3. An accessibility assessment was performed by Options for Independent Living, Inc. on November 1, 2019.
4. The accessibility assessment recommended, among other things, installing an accessible entrance to the backyard of the home from petitioner's bedroom to address his need for an emergency exit in case of fire, socialization, and to address his vitamin D deficiency.
5. Petitioner requested coverage of the accessible entrance home modification, which was denied by the respondent per written notice dated February 10, 2020.

DISCUSSION

The petitioner receives Medical Assistance-Waiver benefits through IRIS, an alternative to the Family Care and Partnership programs that allows persons to direct their own care. *IRIS Policy Manual*, §1.1, available online at <https://www.dhs.wisconsin.gov/publications/p0/p00708.pdf>. IRIS, which stands for "Include, Respect I Self-Direct," was developed pursuant to a medical assistance waiver Wisconsin obtained under section 6087 of the Deficit Reduction Act of 2005 (DRA), and section 1915(j) of the Social Security Act. The program pays for home modifications. *IRIS Policy Manual*, §5.8A. To be allowable, home modifications in the IRIS program must demonstrate that the modification addresses "disability related long-term care needs that increase self-reliance and independence, or ensure safe, accessible means of ingress/egress to a participant's living quarters, or otherwise provide safe access to rooms, facilities or equipment within the participant's living quarters, or adjacent buildings that are part of the residence." *Id.* The petitioner has requested a home modification in the form of an accessible entrance from his bedroom to the home's backyard to allow him egress to the backyard.

Petitioner's only access from his home is presently provided through his home's door to the attached garage, which entrance has been modified with a vertical platform lift. According to the Accessibility Assessment, the garage is used as additional living space by petitioner's family, and has a pellet stove. Petitioner's mother has expressed concern that petitioner has no other accessible access from the home, and were a fire to start in the garage, his only means of egress would be blocked. She further noted that she is not physically capable of maneuvering petitioner's wheelchair to the backyard lawn, due to several back surgeries. Finally, petitioner provided a letter from his healthcare provider noting that petitioner,

"...is both tracheostomy and wheelchair dependent. He relies on his G-tube for feedings. [Petitioner] would benefit from natural sunlight in addition to his Vitamin D supplement. Having access to being outside would also provide him with the ability to socialize with his family.

Exhibit P-1, p. 41.

IRIS is meant to ensure that a participant has privacy, a choice regarding living environment, and a choice regarding daily activities; is safe; and lives life with self-determination. *IRIS Policy Manual*, §5.2A. As with any medical assistance service, when determining whether it is necessary, the department must review, among other things, the medical necessity of the service, the appropriateness of the service, the cost of the service, the extent to which less expensive alternative services are available, and whether the

service is an effective and appropriate use of available services. Wis. Admin. Code §DHS 107.02(3)(e)1.,2.,3.,6. and 7. “Medically necessary” means a medical assistance service under ch. DHS 107 that is:

- (a) Required to prevent, identify or treat a recipient's illness, injury or disability; and
- (b) Meets the following standards:
 1. Is consistent with the recipient's symptoms or with prevention, diagnosis or treatment of the recipient's illness, injury or disability;
 2. Is provided consistent with standards of acceptable quality of care applicable to the type of service, the type of provider, and the setting in which the service is provided;
 3. Is appropriate with regard to generally accepted standards of medical practice;
 4. Is not medically contraindicated with regard to the recipient's diagnoses, the recipient's symptoms or other medically necessary services being provided to the recipient;
 5. Is of proven medical value or usefulness and, consistent with s. HFS 107.035, is not experimental in nature;
 6. Is not duplicative with respect to other services being provided to the recipient;
 7. Is not solely for the convenience of the recipient, the recipient's family, or a provider;
 8. With respect to prior authorization of a service and to other prospective coverage determinations made by the department, is cost-effective compared to an alternative medically necessary service which is reasonably accessible to the recipient; and
 9. Is the most appropriate supply or level of service that can safely and effectively be provided to the recipient.

Wis. Admin. Code, § DHS 101.03(96m).

The respondent’s denial is predicated on IRIS policy which direct that modifications to create more than one accessible entrance/exit to a home are not allowed. See, *IRIS Policy Manual* §5.8A.2. The February 10, 2020 Notice of Action denying the petitioner’s request specifically stated:

You have requested a secondary emergency exit to your home from your bedroom. The exit would also allow you direct access to your backyard. You currently have an accessible entrance and exit to your home allowing you to access your backyard and community safely. Per IRIS policy 5.8a.2 “Non-Allowable (Home) Modifications: As stated in Appendix C of the approved 1915(c) HCBS waiver, “Modifications that are not allowable include, but are not limited to...Modifications to create more than one accessible entrance/exit to a home.”

Exhibit R-B.

Petitioner’s attorney responded that the quoted language of the 1915(c) waiver simply does not exist. I reviewed the waiver excerpts provided by petitioner’s attorney, and further researched the waiver (via a link from the Department of Health Services website: <https://www.dhs.wisconsin.gov/iris/hcbw.pdf>). I have found no such language regarding a prohibition on coverage of “more than one accessible entrance” as was cited by the respondent in its Notice of Action. I have also reviewed the IRIS Policy Manual, and can confirm that the quotation identified in the Notice of Action is the same quotation used in the Manual. Neither the record before me, nor my research into the 1915(c) waiver language at Appendix C, has revealed the etiology of this quote. At this time I am unable to conclude that reliance on this policy language establishes a basis for the denial at issue here.

The Notice of Action also identifies duplication as a basis for the denial. It is unrefuted that petitioner has accessible access/egress from his home through his garage. However, that access/egress does not

address his inability to practically access his backyard, and nothing in the record explains how petitioner could exit his home in the event of a fire in the garage. Petitioner's mother noted that petitioner has not been in his backyard for three years, and testified that she is physically unable to get him and his wheelchair into the backyard. Petitioner's nurse, who has worked with petitioner for almost 8 years, corroborated his mother testimony, noting that petitioner has not been in his backyard for years. I find no basis for the conclusion reached in the Notice of Action indicating that, "[y]ou currently have an accessible entrance and exit to your home allowing you to access your backyard... See, Exhibit R-B. Based on the record before me, I do not find that the request for egress from petitioner's bedroom to his backyard is duplicative, as he cannot otherwise access the backyard through the garage egress.

Medical assistance also requires one to balance a recipient's needs against the cost of providing for them because the program must give basic services to a large number of people at a reasonable cost. But decisions must be based on evidence and not conjecture. Cost-effectiveness was not indicated as a reason for denial in the Notice of Action, though this issue was raised by the respondent in testimony at hearing. The respondent's representative commented that a sidewalk could be installed to access the backyard from the front of the garage at the homeowner's expense. For IRIS to establish that something else will meet petitioner's needs at less cost, it must present evidence of the proposal's and counterproposal's cost. It has not done so, other than to indicate that IRIS would not cover the installation of the sidewalk. Would it be cheaper to simply install a new rear service door from the garage to the backyard? Again, one could only speculate on the cost effectiveness based on this record. Without such basic information, any argument that any alternative would save money is conjecture.

The petitioner has established the medical necessity of the request for home modification by successfully rebutting the respondent's bases for denial, i.e., duplication and non-allowable good, service, or support. Petitioner's request does not duplicate his current egress access, as his current egress access does not permit access to his backyard. The respondent's reliance on quoted policy allegedly contained in the 1915(c) waiver regarding non-allowable home modifications fails, as the respondent has not established the actual existence of said restriction on home modifications, and I have been unable to find the quoted language in my research of the 1915(c) waiver.

CONCLUSIONS OF LAW

The requested bedroom egress home modification is medically necessary.

THEREFORE, it is

ORDERED

That this matter is remanded to the IRIS program and the Bureau of Adult Programs and Policies with instructions that, within 10 days of the date of this decision, it rescind its denial of the petitioner's requested bedroom egress home modification and issue written notice to petitioner approving the request.

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.

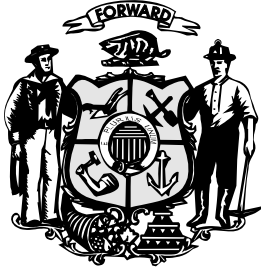
APPEAL TO COURT

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 21st day of July, 2020

\s _____
Peter McCombs
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 July 21, 2020.

Bureau of Long-Term Support

[REDACTED]