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

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In the Matter of

██████████  
██████████████████  
██████████████████

**DECISION**  
Case #: CWA - 205245

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**PRELIMINARY RECITALS**

Pursuant to a petition filed May 16, 2022, under Wis. Admin. Code, §HA 3.03, to review a decision by TMG regarding the Include, Respect, I Self-Direct (IRIS) program, a hearing was held on September 7, 2022, by telephone. Hearings set for July 6 and August 3, 2022 were rescheduled at the petitioner's request.

The issue for determination is whether the agency correctly denied a requested increase in petitioner's supportive home care (SHC) wages.

**PARTIES IN INTEREST:**

**Petitioner:**

██████████  
██████████████████  
██████████████████

**Petitioner's Representative:**

██████████████████  
BOALTC  
1402 Pankratz St Suite 111  
Madison, WI 53704

**Respondent:**

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

By: Lyndsay Saatkamp  
TMG  
1 S. Pinckney St., Ste. 320  
Madison, WI 53703

**ADMINISTRATIVE LAW JUDGE:**

Brian C. Schneider  
Division of Hearings and Appeals

## FINDINGS OF FACT

1. Petitioner is a resident of Dane County.
2. Petitioner has a number of diagnoses including cerebral palsy. She has been eligible for IRIS since 2018 with TMG as the contracting agency.
3. Since starting in 2018 petitioner has had one consistent SHC worker, [REDACTED], who provides care 35 hours per week. When [REDACTED] is unavailable petitioner gets care from an agency. The agency charges \$32 per hour. Until the recent changes, [REDACTED] was paid \$15 per hour.
4. Although petitioner has discussed raising [REDACTED] wage in the past, in early 2022 she put in a formal request for the wage to increase to \$18 per hour. At approximately the same time, a system-wide increase of \$0.75 per hour took effect January 1, 2022. TMG then, on petitioner's behalf, made a Budget Amendment Request to the Department's Bureau of Adult Programs and Policies (BAPP) for \$18 per hour (which at that point would be an increase of \$2.25 over the new \$15.75 per hour rate).
5. The BAPP approved an increase to \$17 per hour. TMG submitted a revised Budget Amendment for that amount, which was approved. Petitioner again requested an increase to \$18 per hour, but the request was denied by a notice dated April 18, 2022 because there was no justification for a third increase in four months.

## 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.

SHC is "the direct and indirect assistance with daily functions and individual needs, to promote improved functioning and safety in a participant's home and community." IRIS Service Definition Manual, page 10. "The participant is afforded the option of exercising employer authority under this service category. This means that the participant may function as the common law employer or co-employer of individual employees called participant-hired workers." *Id.*, p. 11. The participant is responsible for negotiating reasonable and customary rates with providers. IRIS Policy Manual, §6.1A.

Other than the broad authority found in the manuals, there are no specifics on how "reasonable and customary" rates paid to caregivers are determined. In this case both sides cite differing customary local rates.

As a first point, I want to make clear that, despite the agency's assertion that petitioner is seeking a third rate increase in four months, the actual issue is the denial of her requested rate. From the start petitioner has been requesting an increase for her primary SHC provider from \$15 hourly to \$18 hourly. The initial increase to \$15.75 was a fortuitous and coincidental \$0.75 hourly increase stemming from American Rescue Plan funding. Petitioner continued her request for \$18 hourly, and TMG actually submitted a Budget Amendment Request for \$18 hourly. However, an unknown reviewer within the BAPP set the rate at \$17 hourly. There is no evidence in the record whatsoever why \$17 was chosen over \$18. When

petitioner received the notice that the rate was set at \$17, she immediately reiterated her request for \$18. Thus this is not a situation where petitioner is requesting a third rate increase within four months; petitioner is requesting the same increase she has consistently sought.

The provider, [REDACTED], testified that she is having financial difficulties because of the \$17 hourly rate. She has received offers from agencies at higher rates, but prefers to stay with petitioner because of their long-term relationship. The key, in my estimation, is that if [REDACTED] leaves, petitioner will have to hire an agency, if she can find one, to provide the care, and agencies' rates are substantially higher than \$18 per hour.

In sum, the situation here is that an unknown BAPP representative changed the Budget Amendment Request from \$18 hourly to \$17 hourly, with no explanation, putting petitioner in the situation where she could lose her primary SHC provider and leaving her with even higher care costs. The result makes no legal or practical sense.

### CONCLUSIONS OF LAW

The agency failed to provide sufficient reason for approving an SHC wage increase to \$17 hourly instead of the requested \$18, when the \$18 rate allows petitioner to keep her favored caregiver and is more cost effective than the alternative of hiring a home health agency to provide the care.

**THEREFORE, it is**

**ORDERED**

That the matter be remanded to TMG with instructions to take the necessary action to grant request a new Budget Amendment to increase petitioner's SHC rate to \$18 hourly, and the BAPP shall approve the \$18 hourly rate, retroactive to the requested start date. The agency shall do so within 10 days of this decision.

### **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

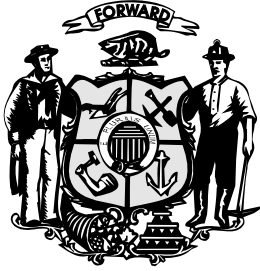
You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Health Services, 1 West Wilson Street, Room 651, **and** on those identified in this decision 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 12th day of September, 2022

  
vs \_\_\_\_\_

Brian C. Schneider  
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 September 12, 2022.

Bureau of Long-Term Support

