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STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

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

DECISION
Case #: CWA - 207243

PRELIMINARY RECITALS

Pursuant to a petition filed on December 29, 2022, 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 May 11, 2023, by telephone.

The issue for determination is whether the IRIS agency correctly seeks to disenroll the Petitioner from the IRIS program.

There appeared at that time the following persons:

PARTIES IN INTEREST:

Petitioner:

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

Respondent:

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

By: Pamela Schreiber
Bureau of Long-Term Support
PO Box 7851
Madison, WI 53707-7851

ADMINISTRATIVE LAW JUDGE:

Debra Bursinger
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner is a resident of Waukesha County. His diagnoses include autism, Down's syndrome, ventricular septal defect, bronchiectasis, asthma, esotropia, hypotonia, reactive airway disease, psoriasis, and eczema. Per his most recent Long Term Care Functional Screen, the Petitioner meets the physical disability and developmental disability target groups. He requires assistance with four activities of daily living (ADLs) and 5 Instrumental ADLs. He requires overnight care.
2. The Petitioner's Individual Support and Services Plan (ISSP) for the plan year 11/1/22 – 10/31/23 shows a total budget of \$65,357.52 for supportive home care and specialized medical supplies. He also receives 37.25 hours/week of personal cares. Petitioner's mother/guardian is also his sole caregiver.
3. On September 14, 2022, the Petitioner's mother informed the IRIS agency that she broke her hip and required assistance providing cares to the Petitioner. On October 6, 2023, she reported to the agency that she had hired an RN for occasional assistance that she was paying out of pocket. She reported she (Petitioner's mother) was able to provide cares again. On October 25, 2022, the Petitioner submitted a note to the agency from her physician indicating that her only restrictions related to running or hiking. On or about November 22, 2022, the Petitioner's mother reported to the agency that she was in physical therapy and in too much pain to complete the Petitioner's cares. She stated that she needed assistance.
4. On December 20, 2022, the agency issued a Notice of Action to the Petitioner informing him that his participation in the IRIS program would be terminated effective January 4, 2023 due to mismanagement of budget authority, mismanagement of employer authority, and failure to comply with IRIS program requirements.
5. On December 29, 2022, an appeal was filed on behalf of the Petitioner with the Division of Hearings and Appeals.
6. On January 5, 2023, the agency discussed a Risk Agreement with the Petitioner's mother. She reported she would hire her daughter as a paid worker to assist with Petitioner's cares. She also identified three individuals to add to the Petitioner's back-up plan. In addition, she reported that she hired an RN to assist with cares occasionally.
7. On January 9, 2023, the Petitioner's mother signed a Risk Agreement. She agreed to hire an additional worker by January 29, 2023. She further agreed to contact agencies about providing respite care. The IRIS agency provided a list of personal care and respite care agencies for her to contact. She agreed to contact the personal care/respite care agencies by February 1, 2023.
8. On January 23, 2023, the Petitioner's sister was approved as a paid worker. On February 1, 2023, the Petitioner's mother reported that her daughter had not been able to start work yet. On February 16, 2023, she reported that her daughter was unable and unwilling to commit to hours. The Petitioner's mother stated that she had not contacted any agencies for personal care or respite care.
9. On May 8, 2023, a personal care worker was hired to assist with Petitioner's cares.

DISCUSSION

The IRIS program was developed pursuant to a Medical Assistance waiver obtained by the State of Wisconsin, pursuant to section 1915(c) of the Social Security Act. It is a self-directed personal care program.

The federal government has promulgated 42 C.F.R. §441.300 - .310 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., §441.301(c)(2). The Department's agent must also develop a service plan based on the assessed needs.

Ensuring the health and safety of IRIS (Include, Respect, I Self-Direct) program participants is one of the six assurance areas in the approved 1915(c) Home and Community-Based Services waiver. The Centers for Medicare and Medicaid Services (CMS) requires states to document in the waiver application how the state will ensure the health and safety of program participants, including performance measures that measure compliance with the approved 1915(c) Home and Community-Based Services waiver.

IRIS participants may elect to exercise employer authority over their caregivers or workers (1915(c) Appendix E-1: 2 of 13). Under employer authority, the participant hires, schedules, and manages his or her own caregivers who are known as participant-hired workers (PHWs). DHS policy prevents a single PHW from providing more than 40 hours per week of paid caregiving to an individual participant, regardless of their employer. These hours may be any combination of supportive home care, IRIS self-directed personal care (SDPC), respite, daily living skills training, or other services paid at an hourly rate. The goal of this policy is to mitigate safety risks to both the participant and the PHW, while still allowing participants to exercise their employer and budget authority. This policy does not limit the total number of hours in a participant's care plan; it merely limits the number of hours that a single PHW can provide. Any exceptions to this policy are noted in the IRIS Work Instructions in Section 4.0A.

IRIS Policy Manual 4.0, page 24.

The IRIS agency is required to assess, monitor, and mitigate risk. The waiver states as follows regarding assessment of risk:

“Participation in a self-directed waiver provides participants with new opportunities, responsibilities, and risks. Finding the right balance between the participants’ right to make choices with OIM’s (Office of IRIS Management) obligation to ensure participant safety requires special consideration and careful planning.

ICAs are required to collaborate with participants to identify potential risks and to help identify and implement strategies to mitigate identified risks. ICAs [IRIS consultant agencies] are able to define their own practices for assessing risks to participants during the ISSP [Individual Support and Service Plan] development process.

OIM monitors the health and safety of participants through the record review process, which has indicators in place that ensure the ICA addressed all health and safety risks. Health and safety issues must be addressed in the ISSP based on the participant’s needs and preferences.

As part of risk mitigation, participants are required to have comprehensive emergency backup plans in the event that needed services are for any reason not accessible. Emergency backup plans must contain the following components:

- Medical needs
- Behavior needs
- Medication and medical equipment needs
- General overview of the participant’s daily schedule
- Contact information for emergency backup providers
- Contact information for service providers including medical providers and the IRIS consultant
- Other pertinent participant-specific information

ICAs may implement their own emergency backup plan format approved by OIM. All formats must provide sufficient information to ensure a backup caregiver can provide the

participant with needed care to ensure the participant's health and safety in the absence of the participant's primary caregiver.

The participant and IRIS consultant collaborate to develop the emergency backup plan as part of the ISSP development process. The participant and the IRIS consultant review the accuracy and effectiveness of the emergency backup plan during every face-to-face visit and every phone contact. The participant is responsible for notifying the IRIS Consultant of any changes to their emergency backup plan.”

IRIS Policy Manual 4.1, pages 24-25.

An IRIS participant may be disenrolled from the program based on non-compliance in the following areas: health and safety risks that participants are unable or unwilling to resolve; mismanagement of budget authority; mismanagement of hiring authority; refusal to comply with IRIS program requirements.

“Health and safety risks that participants are unable or unwilling to resolve” refers to issues wherein the ICA is unable to ensure the health and safety of the participants as required by the 1915(c) Home and Community-Based Services (HCBS) waiver. The ICA must provide documentation of efforts to assist the participant in resolving the health and safety issue.

“Mismanagement of budget authority” refers to persistent overspending of the approved budget.

“Mismanagement of employer authority” refers to situations wherein the IRIS participant (or guardian) is abusive towards their employees and is not responsive to instruction provided by the IC relative to building appropriate employer skills.

“Refusal to comply with IRIS program requirements” is defined as refusing to complete tasks that are required for IRIS program participation, including following IRIS policies and work instructions. . . Examples include, but are not limited to . . . refusing to develop an emergency backup plan . . . The ICA must provide documentation of the IC's efforts to inform the participant of the program requirement and to assist the participant in correcting the situation. . .

IRIS Policy Manual, Work Instructions, Section 7.1A.1, pages 87-88.

In this case, the IRIS agency representatives testified that there are health and safety risks associated with the Petitioner's mother being the sole caregiver for the Petitioner and that the agency worked with her unsuccessfully to resolve those risks. The agency noted that when the Petitioner's mother broke her hip in September 2022, she informed the agency that she could not provide cares to the Petitioner. However, she did not want another worker hired because she stated that the income, she receives from the IRIS program for providing care to the Petitioner is the household's only income and she could not afford to hire another worker with those funds. The agency asserted that the Petitioner's mother billed the program for full-time caregiving for September even though she had indicated she was unable to provide cares. She also reported that she had hired an RN which she paid out of her own funds to provide occasional help. The agency testified that the Petitioner's mother initially refused to sign the Risk Agreement and to discuss the back-up plan. In January, 2023, the Petitioner's mother signed the Risk Agreement and provided three individuals to add to the back-up plan. As part of the risk agreement, the Petitioner's mother agreed to hire a worker (her daughter) by January 29, 2023 and contact personal care and respite

agencies to provide assistance. The Petitioner's daughter was approved but never hired to provide care and the individuals on the back-up plan were not able to provide care.

The agency asserts that it has been working to reduce or mitigate the risks with the Petitioner's mother since September 2022. The Petitioner's mother has been resistive to mitigating risks and failed to meet agreed-upon deadlines. The agency noted that the Petitioner and his mother are moving to another area of the state in the near future which will increase risks because the back-up plan will need updating again and the Petitioner's mother will need to start over again with trying to find workers or agencies to assist with cares. The agency determined it cannot ensure the Petitioner's health and safety and asserts it has correctly taken action to disenroll the Petitioner from the program.

The Petitioner's mother testified at the hearing that she has always taken care of the Petitioner and will always do so. She noted that she has had many issues including breaking her hip and flooding her home. She concedes that she needed help when she broke her hip to care for the Petitioner. She testified that she needed help for approximately three weeks but was able to provide care after that. She stated that she did attempt to contact some personal care agencies, but many were closed or otherwise unable to help. She noted that the Petitioner goes to a transitional school from 9:15 a.m. – 2:20 p.m. during the school year and he will go to a summer camp for a week in the summer. She also has meetings scheduled with two day care centers for autistic children to see if he can spend time there during the summer. She stated that she has also met with [REDACTED] to explore a corporate guardianship for the Petitioner. Regarding the back-up plan, the Petitioner stated that her sons and ex-husband had agreed to be back-up providers, but employment and other life issues have prevented them from being able to help.

I conclude that the agency has met its burden to demonstrate that it correctly seeks to disenroll the Petitioner from the IRIS program based on the Petitioner's mother being unwilling or unable to resolve health and safety risks and her refusal to comply with IRIS program requirements. The Petitioner's mother has provided good care to her son under challenging circumstances, and she is to be commended for that. However, the evidence demonstrates that she has not been able or willing to recognize that the lack of additional workers and the lack of an adequate back-up plan present a health and safety risk to the Petitioner. This became clear when she broke her hip and was not able to provide care. Without other available workers and an inadequate back-up plan, the Petitioner was at risk of his care needs not being met. It appears that the Petitioner's mother was able to get the necessary care accomplished despite her health challenges but that may not be true when there are health or other challenges in the future that may prevent her from providing care. The agency demonstrated that it worked over many months to assist the Petitioner's mother with mitigating the risks beginning in September 2022. She made some attempts to hire additional workers and update the back-up plan but did not comply with agreed-upon timelines and follow through needed to accomplish those tasks. The fact that the Petitioner and his mother are moving presents additional challenges to having additional workers and an adequate back-up plan in place. The agency is right to insist that adequate safeguards be in place in order for the agency to meet their legal obligation to ensure the Petitioner's needs can be met.

The agency also asserted in the Notice of Action that the Petitioner's mother mismanaged budget and employer authority. Based on the evidence presented and the descriptions in the IRIS Policy Manual regarding mismanagement of those items, I conclude the agency did not meet its burden to demonstrate that there was mismanagement of budget or employer authority by the Petitioner's mother.

I note that there is no dispute that the Petitioner requires assistance with his care needs. I urge the Petitioner's mother to connect with other programs such as Family Care and other community and care resources and services to get the assistance that she and Petitioner need to ensure that both remain healthy and safe in their home.

CONCLUSIONS OF LAW

The agency correctly seeks to disenroll the Petitioner from the IRIS program due to health and safety risks that the Petitioner and his guardian are unable or unwilling to resolve and based on their failure to comply with IRIS program requirements.

THEREFORE, it is **ORDERED**

That the 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, 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.

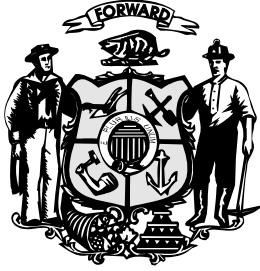
APPEAL TO COURT

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 Milwaukee,
Wisconsin, this 19th day of May, 2023

\s _____
Debra Bursinger
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 May 19, 2023.

Bureau of Long-Term Support