



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

██████████
██████████
██████████

DECISION
Case #: CWA - 209455

PRELIMINARY RECITALS

Pursuant to a petition filed on July 19, 2023, under Wis. Admin. Code § HA 3.03, to review a decision by the For the: Bureau of Long-Term Support regarding Medical Assistance (MA), a hearing was held on September 6, 2023, by telephone.

The issue for determination is whether the Respondent correctly disenrolled Petitioner from the IRIS program effective June 28, 2023, due to no longer meeting functional eligibility requirements.

There appeared at that time the following persons:

PARTIES IN INTEREST:

Petitioner:

██████████
██████████
██████████

Respondent:

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

By: Matt Field

For the: 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 is a resident of Polk County. He resides with his wife, ██████████. His diagnoses include hypertension, joint pain, anxiety, depression, and seizure disorder.
2. Petitioner was enrolled in the Wisconsin IRIS program between 2021 and June of 2023.

3. On October 4, 2022, a Long-Term Care Functional Screen (LTCFS) was completed for the petitioner. The screener determined the petitioner required assistance with no activities of daily living (ADLs) and required assistance with 2 instrumental activities of daily living: laundry/chores and transportation.
4. On June 13, 2023, the respondent issued a Notice of Action letter to the petitioner. The notice indicated that the LTCFS of October 4, 2022, found that petitioner no longer met a nursing home level of care, and that his IRIS enrollment would end on June 28, 2023.
5. On July 19, 2023, petitioner filed a Request for a State Fair Hearing, contesting his June 2023 disenrollment from IRIS.
6. The agency conducted a new LTCFS on August 25, 2023, following the appeal filing. The new LTCFS found no change in diagnosis, and concurred with the October 2022 LTCFS finding that petitioner was no longer functionally eligible to participate in the IRIS program.

DISCUSSION

Medical Assistance funded adult long term care waiver programs, such as Family Care and IRIS, are intended to meet the long term care and health care needs of the following “target groups”: frail elders; individuals aged 18 and older who have physical disabilities, as defined in Wis. Stat. §15.197 (4) (a) 2.; and individuals aged 18 and older who have developmental disabilities. See, Wis. Stat. §46.286(1) and IRIS Policy Manual Sec. 2.1. To be eligible for such programs, an individual must fall within one of these target groups AND need a “nursing home” (referred to as comprehensive) or “non-nursing home” (referred to as intermediate) level of care. See, Wis. Stats. §46.286(1)(a) and IRIS Policy Manual Sec. 2.1. In this case, petitioner was initially found to meet the nursing home level of care, but two recent LTCFSs have concluded that petitioner no longer meets the required level of care to remain eligible for IRIS enrollment.

To assess an individual’s functional eligibility, an extensive interview regarding his functional abilities and limitations is conducted. The assessment also entails a review of relevant collateral material, such as the applicant’s medical records. The information gathered from the assessment is then input into a computer program which ultimately determines the person’s functional eligibility and level of care. As noted previously by the Division of Hearings and Appeals (DHA), there are times when the logic or algorithm used by the computer program produces results that are at odds with the state regulations that govern the Family Care and IRIS programs. When such conflict is present, the regulations, not the computer program, control the outcome. See, DHA Case No. FCP-192455 (Wis. Div. Hearing and Appeals April 10, 2019)(DHS); DHA Case No. FCP-188090 (Wis. Div. Hearing and Appeals September 17, 2018)(DHS); DHA Case No. CWA-183951 (Wis. Div. Hearing and Appeals February 16, 2018)(DHS); and DHA Case No. FCP-176611 (Wis. Div. Hearing and Appeals October 18, 2016) (DHS).

Wis. Admin. Code § DHS 10.33(2)(c) defines nursing home level of care as the following:

A person is functionally eligible at the comprehensive level if the person requires 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.
6. The person has a complicating condition that limits the person's ability to independently meet his or her needs as evidenced by meeting both of the following conditions:
 - a. The person requires frequent medical or social intervention to safely maintain an acceptable health or developmental status; or requires frequent changes in service due to intermittent or unpredictable changes in his or her condition; or requires a range of medical or social interventions due to a multiplicity of conditions.
 - b. The person has a developmental disability that requires specialized services; or has impaired cognition exhibited by memory deficits or disorientation to person, place or time; or has impaired decision making ability exhibited by wandering, physical abuse of self or others, self neglect or resistance to needed care.

Activities of daily living refer to “bathing, dressing, eating, mobility, transferring from one surface to another such as bed to chair and using the toilet.” Wis. Admin. Code, § DHS 10.13(1m). “Instrumental activities of daily living” are defined as “... management of medications and treatments, meal preparation and nutrition, money management, using the telephone, arranging and using transportation and the ability to function at a job site.” Wis. Admin. Code § DHS 10.313(32). The LTCFS report also includes as an IADL “Laundry and/or Chores.” This indicates that department policy is to include the performance of laundry and chores as a separate IADL. Moreover, Federal Medicaid regulations include the performance of essential household chores within the definition of IADLs. See, 42 C.F.R. § 441.505. The DHA has previously issued decisions recognizing that laundry and chores are an IADL for purposes of determining level of care. See, DHA Case No. FCP-192455 (Wis. Div. Hearing and Appeals April 10, 2019)(DHS); DHA Case No. FCP-188090 (Wis. Div. Hearing and Appeals September 17, 2018)(DHS); and DHA Case No. FCP-176611 (Wis. Div. Hearing and Appeals October 18, 2016) (DHS).

In this case, petitioner’s two most recent LTCFS indicate that he needs assistance with 0 ADLs and 2 IADLS (laundry and/or chores and transportation). No cognitive impairment is reported on the LTCFS. According to Wis. Admin. Code § DHS 10.33(2)(c)2, petitioner does not qualify for IRIS enrollment at a nursing home level of care. At hearing, the consultant who completed the August 2023 LTCFS testified that she observed the petitioner and found no permanent impairment regarding his cognition. She found that he was able to participate in conversation, provide historical information when asked, and noted that his medical records do not include a cognitive impairment diagnosis.

The petitioner and his wife testified at hearing. Petitioner asserted that, due to pride, he believes that he under-reported his need for daily assistance. He noted that he has degenerative arthritis in almost all of his joints, has been told that he has gout, and suffers from short-term memory loss. He no longer drives due to his seizure activity, suffers regular falls, and has migraines approximately every other month. Unfortunately, the testimony of petitioner and his wife is simply not corroborated by the medical documentation in the record. The petitioner’s testimony regarding his specific needs for assistance is rebutted by the LTCFS findings based upon observations of petitioner’s capabilities.

The two recent LTCFSs found that the petitioner requires assistance with two IADLs: laundry/chores, and transportation. He does not meet the criteria for the nursing home level of care which is required to demonstrate functional eligibility for the IRIS program. Based on the evidence presented, I conclude that

the IRIS agency correctly disenrolled the petitioner from the IRIS program due to no longer meeting functional eligibility requirements. I note to petitioner that this decision will not prevent him from applying for IRIS benefits at any time in the future; this decision is based solely upon the record presented at the hearing of September 6, 2023.

CONCLUSIONS OF LAW

The IRIS agency correctly seeks to disenroll the petitioner from the IRIS program due to no longer meeting functional eligibility 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

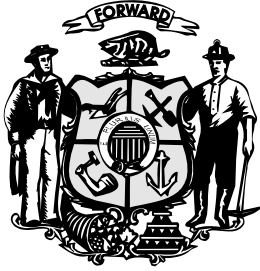
You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Health Services, 1 West Wilson Street, Room 651, **and** on those identified in this decision 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 Madison,
Wisconsin, this 2nd day of October, 2023

A handwritten signature in blue ink, appearing to read 'Peter McCombs', written over a horizontal line.

\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 October 2, 2023.

Bureau of Long-Term Support