



FH

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

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

DECISION
Case #: CWA - 208719

PRELIMINARY RECITALS

Pursuant to a petition filed on May 16, 2023, 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 October 18, 2023, by telephone.

The issue for determination is whether the Department correctly disenrolled petitioner from the IRIS Self-Directed Personal Care (SDPC) program.

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: Chris Gosnell
Bureau of Long-Term Support
PO Box 7851
Madison, WI 53707-7851

ADMINISTRATIVE LAW JUDGE:

Beth Whitaker
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES #) is a resident of Barron County who has been enrolled in the IRIS Medicaid Community Waivers program, receiving SDPC services since January 7, 2022.
2. Petitioner's primary diagnosis is Crohn's disease.
3. On October 6, 2022, registered nurse [REDACTED] completed a Personal Care Screening Tool (PCST) report regarding petitioner, documenting that she lived with others and required partial physical assistance with bathing, upper and lower body dressing, grooming, transferring and mobility, due to pain and discomfort associated with Crohn's disease.
4. Based on the October 6, 2022 PCST, petitioner was allocated 88 units of personal care per week for assistance with activities of daily living (ADLs) and medically oriented tasks.
5. On January 12, 2023, registered nurse [REDACTED] conducted an oversight visit with petitioner and noted improvements in petitioner's mobility and gait.
6. At the January 12, 2023 oversight visit, petitioner stated to [REDACTED] that her physical symptoms had improved after a recent "living setting change."
7. On February 3, 2023, [REDACTED] reviewed petitioner's personal care needs with [REDACTED] [REDACTED], Long-Term Care Functional Screen screener, and was in agreement with [REDACTED] assessment based on [REDACTED]'s meeting with petitioner in January 2023.
8. The IRIS oversight agency's notes assert that on February 28, 2023, petitioner became ineligible for IRIS based on a Long-Term Care Functional Screen (LTCFS). (Exhibits G2 and G3.)
9. On March 20, 2023, petitioner had a CT scan of her abdomen and pelvis related to Crohn's disease.
10. On April 27, 2023, registered nurse [REDACTED] conducted an oversight visit with petitioner at which time petitioner reported that she was performing all personal cares independently.
11. On April 27, 2023, based on petitioner's report of independence in personal cares, [REDACTED] conducted a change of condition person care assessment using the Personal Care Screening Tool (PCST).
12. The April 27, 2023 PCST indicated that petitioner lived alone and was independent in bathing, dressing, grooming, mobility and transferring.
13. Based on the April 27, 2023 PCST, petitioner was allocated 0 units of personal care worker services.
14. On April 30, 2023 petitioner received hospital emergency medical treatment including a CT scan of her abdomen and pelvis which noted symptoms consistent with Crohn's disease.
15. SDPC Oversight agency notes state that on May 4, 2023, [REDACTED] completed a review of petitioner's LTCFS to ensure alignment with the PCST.
16. On May 12, 2023, petitioner was seen for a consultation to discuss possible surgical intervention for a Crohn's-related stricture.
17. On May 12, 2023, the medical treatment provider advised petitioner to return in one month for further consultation. He advised stopping tobacco use, being compliant with longstanding biologic agents, a liquid diet, establishment of a rapport with counseling and consultation with a dietician. The provider noted that petitioner appeared generally uncomfortable and ill but that she was engaged with conversation and ambulated independently.
18. On May 12, 2023, the Department of Health Services ("agency") issued to petitioner a notice informing her that her enrollment in the IRIS SDPC program was being terminated effective May 27, 2023.
19. On May 12, 2023, petitioner had a colonoscopy.
20. On May 18, 2023, the Division received petitioner's request for hearing by U.S. Mail, postmarked May 16, 2023.
21. On May 23, 2023, the SDPC home office received email notification of appeal and emailed notification of retraction of disenrollment to TMG ICA (IRIS consultant agency) and iLife FEA. (Fiscal Employer Agent)

22. On July 7, 2023, PA-C [REDACTED] wrote a description of petitioner's medical history regarding Crohn's disease.
23. On August 1, 2023, SDPC oversight agency RN [REDACTED] [REDACTED] conducted an SDPC oversight visit.
24. On August 7, 2023, petitioner was seen by [REDACTED] by video consultation regarding Crohn's disease.

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. 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 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.

"Participants who are eligible for personal care may obtain their personal care assistance from either a certified Medicaid Personal Care Agency (MAPC), or through the IRIS-SDPC option. The Department contracts with an agency to administer the program. Agency nurses perform clinical assessments and obtain the needed authorizations that enable the participant to employ his or her own workers. The wages of participant employed-personal care workers are paid through the IRIS fiscal employer agent." IRIS Policy Manual, 1.2G. The representatives at hearing were associated with the SDPC oversight agency.

The appealed action is the agency's disenrollment of petitioner from the SDPC program effective May 27, 2023 based on loss of functional eligibility. The agency presented evidence regarding oversight visits and an April 27, 2023 PCST documenting that petitioner did not have a need for the hands-on personal care that is provided through SDPC.

Petitioner disputed that she does not need that personal care, claiming that her Crohn's disease symptoms wax and wane and that she has an ongoing need for SDPC services to assist her with activities of daily living. She presented documentary evidence regarding her medical condition. It is not disputed that she has a serious medical condition, however, her medical treatment records and provider letters did not address her the need for personal care assistance for ADLs. She presented the testimony of a caregiver who has not regularly cared for her recently, to support her position that her symptoms change over time and that when they are improved, the worker performs other household tasks instead of hands-on personal care.

The agency's evidence regarding petitioner's reduced need for care was convincing. Petitioner had a period of multiple months from January to April 2023 in which she had little or no personal care assistance, was observed to walk and transfer without assistance and herself stated that she was able to perform all ADLs without assistance.

The evidence presented at hearing seems to support a conclusion that petitioner is not functionally eligible for the IRIS program generally, however, the May 12, 2023 notice of action describes the agency action as disenrollment from SDPC only, not IRIS generally. The notice emphasizes that these are two different processes, stating: "NOTE: Involuntary disenrollment from IRIS SDPC does NOT mean disenrollment from the IRIS program. You remain enrolled in IRIS."

This appears inconsistent with evidence in the hearing packet indicating that petitioner was found ineligible for IRIS. Notes in the document entitled IRIS SDPC Record Notes 1/12/23 – 8/8/23 contains an April 28, 2023 note from ██████████ (Ex. G2) stating that petitioner was found ineligible for IRIS based on a February 2023 LTCFS and a May 4, 2023 note from ██████████ (Ex. G3) stating “please note that she was not found eligible for IRIS per the LTCFS in February 2023.” This is also inconsistent with another part of the Notice of Action where, on page one, the box is checked next to the statement “You are not functionally eligible to remain in the IRIS program.” It is unclear from this record how petitioner was eligible for IRIS SDPC through May 27, 2023 if she was found ineligible for IRIS in February, 2023. It is equally unclear why respondents would be pursuing SDPC disenrollment if petitioner was already disenrolled from IRIS or how petitioner could be functionally eligible for IRIS but not SDPC.

Petitioner’s IRIS status is unclear from this record. No Long-Term Functional Care Screen or notice of action regarding disenrollment from IRIS is included. The issue for hearing is whether the agency may involuntarily disenroll petitioner from the IRIS SDPC program based on loss of functional eligibility.

The criteria for doing so are provided in the IRIS Policy Manual:

The IRIS SDPC Oversight Agency may involuntarily disenroll an SDPC participant under certain conditions. The Department of Health Services and the IRIS SDPC Oversight Agency reserves the right to involuntarily disenroll IRIS SDPC participants when any of the following owing conditions are present:

1. The participant’s health and/or safety are jeopardized;
2. The participant mismanages his/her purchasing authority;
3. The participant refuses to report information necessary to adequately monitor the situation; or
4. The participant chooses to move to an ineligible living situation.

IRIS Policy Manual, Sec. 13.8B, Feb. 28, 2022.

At hearing, when asked to identify the legal criteria for the disenrollment action, the agency witnesses cited this language. Upon realizing that the action taken was not permitted under these criteria, the agency asserted instead that loss of functional eligibility was the basis for the action. I find that the disenrollment action was not done for any reason specified in IPM Sec. 13.B.

Chapter 7 of the IRIS Policy Manual lists loss of functional eligibility as a basis for disenrollment for IRIS, regardless of enrollment in SDPC, in its Work Instructions (IRIS Manual). Specifically, § 7.1A.1 sets forth the involuntary disenrollment guidelines:

The Department of Health Services (DHS), Office of IRIS Management (OIM), reserves the right to disenroll IRIS participants based on noncompliance with IRIS policy in the following areas:

- a. Failure to utilize IRIS funding (No Spend)
- b. No contact
- c. Residing in an ineligible living setting
- d. Health and safety risks that participants are unable or unwilling to resolve
- e. Substantiated fraud
- f. Mismanagement of budget authority
- g. Mismanagement of employer authority
- h. Refusal to comply with IRIS Program requirements
- i. Failure to pay cost share
- j. Loss of financial eligibility
- k. Loss of functional eligibility

The procedure for involuntarily disenrolling an IRIS participant for loss of functional eligibility is:

The ICA administers the LTCFS. IRIS participants who do not complete the annual LTCFS or who no longer meet the required nursing home or Intermediate Care Facility... level of care are disenrolled from the IRIS program.

Wis. Admin. Code, §DHS 10.33(2)(c), IPM Work Instructions, p. 91.

It is possible that there is a basis for involuntary disenrollment from IRIS, however, that would require submission of the LTCFS, which is not contained in this record. More important, that is not the action that the agency took or seeks to take in this matter. I find that the agency did not present evidence that its action in this case, disenrollment from SDPC, was correct. The question of whether petitioner could correctly be disenrolled in IRIS based on lack of functional eligibility is outside the scope of the hearing.

CONCLUSIONS OF LAW

The action to disenroll petitioner from the IRIS Self-Directed Cares Program was not permitted under the criteria for SDPC involuntary disenrollment contained in the IRIS Policy Manual, Sec. 13.8B. The agency presented no other authority for its action. The action was incorrect.

THEREFORE, it is

ORDERED

That the matter is remanded to the Department to rescind petitioner's involuntary disenrollment from the IRIS Self-Directed Cares Program. The Department must do so within ten days of the date 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, 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

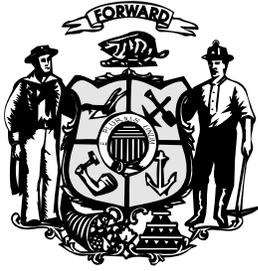
You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Health Services, 1 West Wilson Street, Room 651, **and** on those identified in this decision 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 23rd day of October, 2023

\s 

Beth Whitaker
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin \DIVISION OF HEARINGS AND APPEALS

Brian Hayes, Administrator
5th Floor North
4822 Madison Yards Way
Madison, WI 53705-5400

Telephone: (608) 266-7709
FAX: (608) 264-9885
email: DHAmail@wisconsin.gov
Internet: <http://dha.state.wi.us>

The preceding decision was sent to the following parties on October 23, 2023.

Bureau of Long-Term Support