



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

In the Matter of

[REDACTED]  
[REDACTED]  
[REDACTED]

**DECISION**

Case #: CWA - 208861

**PRELIMINARY RECITALS**

Pursuant to a petition filed on June 2, 2023, under Wis. Admin. Code § HA 3.03, to review a decision by the Wisconsin Department of Health Services (DHS), Bureau of Long-Term Support, regarding Medical Assistance (MA), a hearing was held on October 18, 2023, by telephone. Hearings previously scheduled in July, 2023, August, 2023 and September, 2023, were rescheduled at petitioner’s request.

The issue for determination is whether the respondent correctly denied petitioner’s request for a budget amendment (BA) for residential services.

There appeared at that time the following persons:

**PARTIES IN INTEREST:**

Petitioner:

[REDACTED]  
[REDACTED]  
[REDACTED]

Petitioner's Representative:

Mary Colleen Bradley  
Disability Rights Wisconsin  
[REDACTED]

Respondent:

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

By: Angela Sutherland, Quality Services Specialist, TMG  
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 44 year old resident of Milwaukee County who enrolled in the IRIS program on August 1, 2020.

2. A Long Term Care Functional Screen (LTCFS) dated December 5, 2022, indicates that petitioner meets the criteria for two target groups: physical disability and severe and persistent mental illness.
3. Petitioner resides in an Adult Family Home (AFH) where he receives assistance with bathing, dressing and toileting. He also requires assistance with meal preparation, medication management, money management, laundry/shoes, and transportation.
4. Petitioner requires overnight supervision, and his caregivers are unable to get six hours of uninterrupted sleep.
5. Petitioner suffers from hallucination that are not controlled by medication, and result in unpredictable behavior. These behaviors require intervention between five and nine times each day. Petitioner cannot be left alone; AFH employees check on petitioner every 15-30 minutes. Petitioner has eloped from the home requiring police intervention; he has a history of unstable housing and evictions.
6. In 2021, a budget amendment was requested and approved for petitioner's daily rate of \$194.37 at the AFH. In 2022, TMG erroneously approved a daily rate of \$309.20 for plan year August 15, 2022 through July 31, 2023. Upon discovering its error, TMG restarted the budget amendment process, and a Notice of Action denying the budget amendment was issued on May 19, 2023 with an effective date of June 3, 2023.
7. Petitioner filed a timely appeal of the budget amendment denial, and requested the continuation of services pending appeal. Petitioner's representative testified that payment to the AFH at the \$309.20 rate continued through the end of the plan year (July 31, 2023). Payment to the AFH at the \$309.20 rate resumed on an unknown date in September, 2023.
8. On September 20, 2023, a new budget amendment request for an AFH daily rate of \$309.20 for plan year August 1, 2023 through July 31, 2023, was denied by the respondent.

## DISCUSSION

The Include, Respect, I Self-Direct (IRIS) program is a Medical Assistance long term care waiver program that serves elderly individuals and adults with physical and developmental disabilities. IRIS is an alternative to Family Care, Partnership, and PACE—all of which are *managed* long term care waiver programs. The IRIS program, in contrast, is designed to allow participants to direct their own care and to hire and direct their own workers. The broad purpose of all of these programs, including IRIS, is to help participants design and implement home and community based services as an alternative to institutional care. See *IRIS Policy Manual §1.1B* (available at <https://www.dhs.wisconsin.gov/publications/p0/p00708.pdf>).

The IRIS waiver application most recently approved by the Centers for Medicare and Medicaid Services (CMS) is available on-line at <https://www.dhs.wisconsin.gov/iris/hcbw.pdf>. See *Application for 1915(c) HCBS Waiver*. State policies governing administration of the IRIS program are included in the *IRIS Policy Manual* (available at <http://www.dhs.wisconsin.gov/publications/P0/P00708.pdf>), *IRIS Work Instructions* (available at <http://www.dhs.wisconsin.gov/publications/P0/P00708a.pdf>), and *IRIS Service Definition Manual* (available at <https://www.dhs.wisconsin.gov/publications/p00708b.pdf>).

Consistent with the terms of the approved waiver, every IRIS participant is assigned a budget which is generated based on information obtained during a screening of the participant's long-term care functional needs. Relevant program policy provides:

The individual budget calculation for IRIS is based upon characteristics, and long-term support needs as collected on the Long-term care Functional Screen (LTC FS). A profile of the individual is developed based upon this information and that profile will be used to determine the projected cost of services and supports for that individual if he or she were enrolled in Family Care. Only services that are included in the IRIS Waiver are included in this calculation. The prospective participant will know this budget amount when deciding whether to participate in IRIS or another Long-term care Program.

*IRIS Policy Manual*, Sec. 5.3. With the assistance of an IRIS Consultant Agency (ICA), participants identify waiver allowable services that they need to meet their long term care outcomes. The cost of those services must typically fall within the budget estimate. *Id.* at 5.3A. Participants may, however, submit a budget amendment to the Department of Health Services with the assistance of their ICA. A budget amendment is "...a request made by the IRIS participant to increase the participant's budget to pay for an ongoing need not met within the current budget. Typical supports, services or goods requested through the BA process include additional Supportive Home Care, Respite, Daily Living Skills, Supported Employment, and other such services needed by an IRIS participant on an ongoing basis." *Id.* When the Department of Health Services denies a BA request, the participant may appeal the budget amount using the Medicaid fair hearing process. *Id.*

In the present matter, petitioner began residing at [REDACTED] AFH, and requested a Budget Amendment to cover his daily rate. This was approved by the respondent, but for the following plan year, TMG erroneously approved a budget amendment, as opposed to competing a Budget Amendment Annual Verification. As a result, petitioner's AFH continued to bill at the approved daily rate of \$309.20; by the time that TMG discovered the error and restarted the budget amendment process, the end of that plan year was near. A denial of the budget amendment was subsequently issued, with a specified effective date of June 3, 2023. Petitioner appealed the denial of the budget amendment for plan year 2022-2023, and subsequently submitted a new budget amendment request for plan year 2023-2024. The respondent denied the latest budget amendment request, as well, and cited the same rationale as in its denial of the 2022-2023 budget amendment request:

...This decision was based on the information provided within the Budget Amendment request form (F-01210) and the Denial letter dated 04/23/2023. The participant is requesting an increased Adult Family Home daily rate of \$309.20. On February 23, 2023, the department has already denied this increase with the following information, "The participant is seeking an increased rate through AFH rate continuation services. The participant is seeking an increase from the current daily rate of \$194.37 per day to \$309.20 per day. This is an increase of \$114.83 per day or 59% per day. The Department offered a 10% increase bringing the rate to \$213.81 per day which was refused by the provider. The provider is requesting a significant increase in the rate without any meaningful justification provided. The requested increase was for an increase in mortgage, participant behaviors and in increase in the providers operation cost. ... This request would amount to an additional \$42,771.60 in public dollars per year. Since the requested rate is not considered cost effective and the increased rate is not related to the participant's increased needs; for these reasons the Budget Amendment Request is denied. ...

Exhibit R-L.

It is a well-established principle that a moving party generally has the burden of proof, especially in administrative proceedings. In a case involving a request for services, the participant bears the burden to prove the requested services meet approval criteria. The evidentiary standard that must be met to meet this burden is a preponderance of the evidence. Thus, Petitioner here has the burden to establish by a preponderance of the evidence in the record that he is entitled to the requested budget amendment.

Residential services including 1-2 bed adult family homes, 3-4 bed adult family homes, and residential apartment complexes are all allowable IRIS services. *IRIS Service Definition Manual*, pp. 6-8. Residential services, including licensed adult family homes, are described in the *IRIS Service Definition Manual* as follows:

Residential services are a combination of individually tailored supports, services, treatment, and care provided within a community-integrated residential setting above the level of room and board. Residential services also include collaboration with health care, vocational, or day service providers. The scope of residential services may include performing personal care or supportive home care; however, such activities may not comprise the entirety of the service.

The residential service provider and participant must maintain an agreement which specifies the nature and scope of the services provided. Unless the residential setting is required to provide a service, the participants may purchase individual services from separate providers. In these cases, residential service providers must also coordinate with those external service providers. Supportive home care may only be provided by an external party when the care takes place outside of the residential setting.

All services performed by the provider are included in the residential provider's rate. The residential provider must immediately report to the local Adult Protective Services unit and/or local law enforcement regarding any incident, situation, or condition that endangers the health or safety of the participant living in the residential setting. All providers of residential services must also communicate with the certifying or licensing agency, the participant's ICA, and applicable providers, within confidentiality laws, about any critical incidents that occur in the residential setting, as soon as practicable.

At hearing, petitioner and his caregivers argued that petitioner's undisputed significant chronic and complex medical conditions and his related long term care needs as well as his historically unstable housing situation demonstrate his need for the BA request in dispute. Petitioner testified that he does not wish to move; the operator of petitioner's AFH reported that he has resided there for approximately three years, and that his elopement issues and police interventions have been significant. She noted that she has had to increase her staffing to address all of petitioner's needs. Notably, petitioner has not required any hospitalizations since arriving at his current AFM.

The Department cited no law or regulation in either the Budget Amendment denial letter or the Notice of Action. Petitioner's IRIS Consultant Agency, TMG, appeared on the Department's behalf at hearing and similarly offered no legal authority in support of the Department's decision. In reviewing the IRIS waiver application and the various IRIS policy manuals, I could find no specific guidance directing how requests for residential services are to be analyzed. For any service to be funded by the IRIS program however, it must be both allowable under the terms of the waiver and necessary to support an identified need. It is undisputed that adult family home services are an allowable waiver service and the Department acknowledged Petitioner's need for supportive and personal care but argued that the information gathered during the long term care functional screen process does not demonstrate a change in petitioner's needs

that would address an increase in his daily rate, nor has the petitioner or AFH provided any documentation showing an increased need for cares, assistance or supervision.

There is no dispute that petitioner has multiple, severe and chronic health conditions requiring significant long term support as detailed in the Findings of Fact. I found the testimony of petitioner and the AFH operator to be sincere, credible and corroborated by the petitioner's most recent LTCFS. I also note that Attorney Brady provided persuasive written and oral argument in petitioner's favor. The issues raised by the respondent's denial were successfully rebutted by petitioner. Moreover, I note that the respondent's September 20, 2023 Notice of Action specified that the budget amendment request is not cost effective, but the respondent offered no comparison quote for another adult family home or other placement option. Without a substantive rebuttal of the petitioner's arguments in favor of the budget amendment, and based upon the strong evidence and argument submitted by petitioner, I conclude that the petitioner has established by a preponderance of the evidence that the agency erred in denying his budget amendment requests.

### CONCLUSIONS OF LAW

1. A preponderance of the evidence in the record establishes that petitioner requires a daily rate authorization of \$309.20 in IRIS funding to reside at [REDACTED] AFH in order to effectively support his long term care needs.
2. The Department incorrectly denied petitioner's plan year 2022-2023 Budget Amendment request seeking a daily rate authorization of \$309.20 in IRIS funding to reside at [REDACTED] AFH.
3. The Department incorrectly denied petitioner's plan year 2023-2024 Budget Amendment request seeking a daily rate authorization of \$309.20 in IRIS funding to reside at [REDACTED] AFH.

**THEREFORE, it is**

**ORDERED**

That this matter is remanded to the respondent to rescind its denials of petitioner's two budget amendment requests seeking a daily rate authorization of \$309.20 in IRIS funding to reside at [REDACTED] AFH, pertaining to plan year 2022-2023 and plan year 2023-2024. The respondent shall approve the two budget amendment requests. All actions required by this Order shall be completed within 10 days following issuance of the 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).

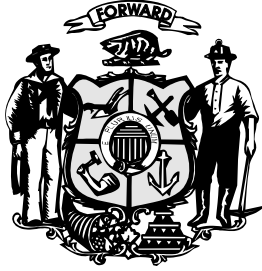
The process for Circuit Court Appeals may be found at Wis. Stat. §§ 227.52 and 227.53. A copy of the statutes may be found online or at your local library or courthouse.

Given under my hand at the City of Madison,  
Wisconsin, this 10th day of November, 2023



\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 November 10, 2023.

Bureau of Long-Term Support

