



State of Wisconsin DIVISION OF HEARINGS AND APPEALS

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January 4, 2024



Angela Sutherland-TMG IRIS Consultant Agency
Department of Health Services
1 West Wilson St. Room 651
Madison, WI 53703

Adam Voss
Rock Cty Human Services
1900 Center Avenue
Janesville, WI 53546

RE: 
Case No. CWA - 209367

Dear Parties:

Enclosed is a copy of the Final Decision in the above-referenced matter.

Sincerely,

Shannon Buboltz
Legal Associate Supervisor

c: Southern Consortium - email
Bureau of Long-Term Support - email
TMG - email



FH



STATE OF WISCONSIN
Department of Health Services

In the Matter of



DECISION
Case #: CWA - 209367

The attached proposed decision of the hearing examiner dated October 24, 2023, is modified as follows and, as such, is hereby adopted as the final order of the Department.

PRELIMINARY RECITALS

Pursuant to a petition filed on July 17, 2023, under Wis. Admin. Code § HA 3.03, to review a decision by the Department of Health Services regarding Medical Assistance (MA), a hearing was convened on September 18, 2023. The hearing was first scheduled to occur on August 8, 2023 but was rescheduled to accommodate the work schedule of Petitioner's parents who represented Petitioner in this matter.

On September 18, 2023, the Rock County Income Maintenance agency appeared for the Department. The hearing was continued on October 5, 2023 so that the administrative law judge could gather additional relevant evidence from TMG, the IRIS Consultant Agency that serves Petitioner, and the Rock County Aging and Disability Resource Center. TMG appeared on that date. No staff member from the ADRC appeared as either a party or witness.

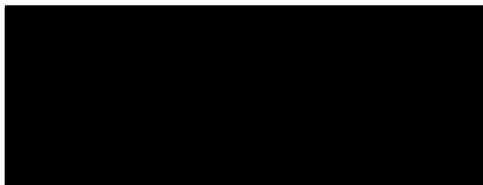
Both the Rock County IM agency and TMG submitted exhibits. The record was held open following the conclusion of the hearing on October 5, 2023 to allow TMG to submit documentation of an expedited enrollment process relevant to the issue in dispute. That document was received on October 6, 2023, marked as TMG Exhibit 3, and incorporated into the hearing record.

The issue for determination is whether Petitioner's IRIS enrollment was properly terminated as of July 1, 2023.

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: Angela Sutherland, TMG IRIS Consultant Agency
Adam Voss, Rock County Human Services

ADMINISTRATIVE LAW JUDGE:
Teresa A. Perez
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a 21-year old resident of Rock County who has been enrolled in the IRIS Program since October 7, 2020 with the exception of the five-day time period beginning July 1, 2023 and ending July 5, 2023.
2. When Petitioner was first enrolled in IRIS, his mother, [REDACTED] applied for Medicaid on his behalf and was the primary person on the resulting case. (She did not request or receive health care benefits for herself).
3. Following Petitioner's initial IRIS enrollment in 2020, Petitioner was not required to complete a renewal to continue his Medicaid eligibility (or IRIS enrollment) until 2023 because the requirement for Medicaid renewals was suspended during the Covid-19 related public health emergency.
4. The Department of Health Services updated their centralized data system to automatically disenroll individuals from IRIS who did not renew their Medicaid or otherwise lost Medicaid eligibility following the end of the public health emergency. (Testimony of TMG Financial Specialist Jennifer Madera)
5. On May 15, 2023, the Southern Income Maintenance Consortium ("the IM agency") sent [REDACTED] a letter advising her that she must complete a renewal by June 16, 2023 to continue receiving Medicaid without interruption and that if she failed to do so, benefits could end on June 30, 2023. (Rock County Ex. 5)
6. On May 16, 2023, [REDACTED] met with Petitioner's IRIS consultant, showed him the May 15, 2023 renewal paperwork that she had received and asked whether Petitioner should complete his own form to request continuing Medicaid given his age. The IRIS consultant indicated that he was unsure but that he would look into it. [REDACTED] contacted Petitioner's IRIS consultant on multiple occasions after that date in an effort to get an answer to that same question. (Testimony of [REDACTED])
7. [REDACTED] did not receive a response from the IRIS consultant despite her initial inquiry on May 16, 2023 and her follow-up inquiries.
8. [REDACTED] completed the renewal paperwork sent to her by the IM agency and both faxed and mailed it to the IM agency prior to the June 16, 2023 deadline. (Testimony of [REDACTED] and Rock County Ex. 4, case note dated 06/15/2023 10:33AM)

9. On June 16, 2023, the IM agency sent a notice to Petitioner's mother advising her that Petitioner would need to apply for health care benefits on his own case because he is over the age of 19. (TMG Ex. 2)
10. On June 19, 2023, the IM agency sent a notice to Petitioner's mother advising her that Petitioner was not eligible for Community Waivers Medicaid as of July 1, 2023. (Rock County Ex. 6 and TMG Ex. 2)
11. On June 22, 2023, Petitioner, with the assistance of his parents, filed an application for Medicaid in his own name with the IM agency. The IM agency requested verification of Petitioner's earnings to complete his application and timely received that verification on June 29, 2023. (Rock County Ex. 3, case note dated 07/05/2023 10:52AM, Testimony of Rock County IM Representative Adam Voss, [REDACTED], and [REDACTED])
12. The Department of Health Services automatically involuntarily disenrolled Petitioner from IRIS effective July 1, 2023 because his Medicaid eligibility had ended. (Testimony of TMG Financial Specialist Jennifer Madera).
13. On July 2, 2023, the Department of Health Services issued a "Wisconsin Long-Term Care Program Disenrollment Notice" to Petitioner advising him that his IRIS enrollment ended on June 30, 2023 and that he would be receiving a separate notice with information regarding his right to request a fair hearing. (Petitioner's Appeal).
14. On July 5, 2023, the IM agency finished processing Petitioner's application and TMG, Petitioner's IRIS Consultant Agency, subsequently re-enrolled Petitioner in IRIS as of July 5, 2023. (Rock County Ex. 3, case note dated 07/05/2023 10:52AM and Testimony of TMG Financial Specialist Jennifer Madera)
15. On July 6, 2023, the IM agency sent a notice to Petitioner advising him that he was eligible for Medicaid through the BadgerCare Plus Program as of July 1, 2023. (Rock County Ex. 7)
16. Providers who were authorized to provide Petitioner with IRIS approved services prior to July 1, 2023 continued providing those cares to him despite his temporary disenrollment but they have not been paid for those services. (Testimony of Testimony of [REDACTED] and [REDACTED]).
17. On July 17, 2023, the Division of Hearings and Appeals received a request for state fair hearing from Petitioner.

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, Medicaid Eligibility Handbook §28.1, et. seq. and 42 C.F.R. §441.300, et. seq.*

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/hebw.pdf>. See *Application for 1915(c) HCBS Waiver: WI.0484.R03.00 - Jan 01, 2021*. 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>).

The Department of Health Services is the state agency that oversees and administers the IRIS program and it contracts with and/or assigns specific operational duties to each of the following: Aging and Disability Resource Centers (“ADRCs”), IRIS consultant agencies (“ICAs”), IRIS fiscal employer agents (“FEAs”), and income maintenance agencies (“IM agencies”).

Petitioner filed an appeal because he was involuntarily disenrolled from the IRIS program from July 1, 2023 through July 4, 2023 and his providers are therefore unable to be paid for care they provided him during that time period. Respondent contended that Petitioner cannot receive coverage of long-term care services unless he is currently enrolled in the IRIS program and cited the following IRIS program policy in support of that position:

An IRIS participant’s enrollment date refers to the date of activation of the service authorization; therefore, the IRIS program prohibits the payment of providers and/or participant-hired workers prior to the enrollment date.

IRIS Policy Manual, §5.5B.

Respondent explained that Petitioner was involuntarily disenrolled from IRIS because the IM agency temporarily terminated his Medicaid eligibility from July 1, 2023 through July 4, 2023 while it was reviewing his request for continuing Medicaid benefits. As detailed in the Findings of Fact, upon the IM agency’s completion of that request on July 5, 2023, the IM agency found that Petitioner remained eligible for Medicaid albeit through a different subprogram than he had previously qualified (i.e., BadgerCare rather than Community Waivers) and the IM agency backdated his Medicaid eligibility to July 1, 2023.

Respondent further explained that TMG, Respondent’s ICA, expedited his re-enrollment into IRIS and, pursuant to instructions provided by the Department of Health Services, made his re-enrollment effective as of July 5, 2023 which was the date the IM agency completed its work. See TMG Ex. 3.

Respondent’s action in involuntarily enrolling Petitioner from July 1 through July 4, 2023 is consistent with the following recently published IRIS policy:

Once enrolled in BadgerCare Plus or Medicaid, a renewal must be completed at least once each year. The IM agency will mail a letter to the participant the month before the renewal is due. The renewal is conducted by the IM agency and can be done online at access.wi.gov, by phone, by mail, by fax, or in person. The renewal ensures the participant continues to meet all program rules and is receiving appropriate benefits. If continued financial eligibility for Medicaid is not confirmed, then the participant becomes ineligible for the program and will be disenrolled (see Enrollment – Disenrollment and Suspensions).

IRIS Policy and Procedure Publication P-03515 §B.1.ii.

Petitioner acknowledged that he temporarily lost Medicaid eligibility but argued that his IRIS consultant’s failure to timely and appropriately direct his parents when they asked for assistance directly caused the

termination of his Medicaid and in turn his disenrollment from IRIS on July 1, 2023. I concur. Petitioner's parents offered detailed, credible testimony regarding their prompt but ultimately fruitless efforts to obtain clarification as to whether Petitioner should apply for Medicaid "on his own case" since he was 21 years old or whether his mother should complete the renewal paperwork sent to her by the IM agency to maintain his Medicaid eligibility. Because Petitioner's parents did not receive any reply to their inquiries from the IRIS consultant by early June 2023 and because the renewal instructions identified June 16, 2023 as the deadline by which the renewal must be filed to avoid benefit interruption, Petitioner's mother decided that the best course of action would be to file the renewal by that date and to include all the information requested regarding both herself and Petitioner as she had done in the past.

Unfortunately, it was not until June 16, 2023 that the IM agency issued Petitioner a letter instructing him that he must apply for Medicaid in his own name based on his age. By that time, it was too late to avoid the interruption of his Medicaid benefits. Since Petitioner's mother had specifically asked the IRIS consultant whether Petitioner should apply in his own name when she met with him on May 16, 2023, this came as an unhappy surprise and caused understandable frustration.

IRIS policy specifies that it is an IRIS consultant agency's responsibility to "[provide] education to IRIS participants to try to prevent involuntary disenrollments and [to] ensure successful participation in the IRIS program." *IRIS Policy Manual: Work Instructions* §7.1A.1, p. 90. In addition, IRIS consultant agencies are required to "provide information and training to participants regarding . . . the participant's obligation for financial accountability and eligibility in the program." *IRIS Policy Manual* §1.2E.1. The IRIS consultant did not participate in the hearing and no case notes were offered by the ICA to refute the testimony offered by Petitioner's parents regarding the dates and the frequency of their attempts to obtain guidance from the IRIS consultant or their contention that they received no clear direction.

Based on the evidence in the record before me, I find that the IRIS consultant agency did not fulfill its responsibility to educate Petitioner on maintaining eligibility and avoiding disenrollment—a responsibility that was particularly important in this case given the complicating factors of Petitioner's age, which required him to file a new application rather than completing the renewal paperwork sent to his mother, and Petitioner's lack of familiarity with the annual eligibility review process since that requirement had been suspended since his initial enrollment date in October 2020.

Upon further review by the Department, it was determined that, under the expedited re-enrollment process, Petitioner's enrollment date should have been manually adjusted to July 1, 2023 because of the agency error. This is a remedy only the Department may authorize. DHA does not have the authority to make a final decision to adjust the enrollment date in the IRIS program under the expedited re-enrollment process.

A matter is moot if the review sought cannot have a practical effect on the existing controversy. *See Racine v. J-T Enterp.*, 64 Wis. 2d 691, 702, 221 N.W. 2d 869, 875 (1974). Here, Petitioner was contesting his IRIS enrollment date and sought to have his enrollment date backdated to July 1, 2023. The issue is now moot as the Department has manually adjusted Petitioner's enrollment date to July 1, 2023.

CONCLUSIONS OF LAW

Because the Department has manually adjusted Petitioner's enrollment date for the IRIS program to July 1, 2023, Petitioner's appeal is moot.

THEREFORE, it is

ORDERED

That the appeal is dismissed as moot.

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, Madison, WI 53705-9100 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.

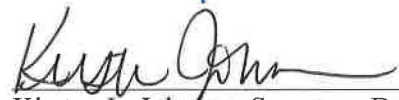
The process for requesting a rehearing may be found at Wis. Stat. § 227.49. A copy of the statutes may be found online or at your local library or courthouse.

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, Madison, WI, 53703, 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 request (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 4th day
of January, 2024.



Kirsten L. Johnson, Secretary-Designee
Department of Health Services



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of



PROPOSED DECISION
Case #: CWA - 209367

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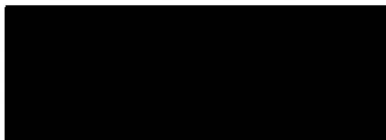
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By: Angela Sutherland, TMG IRIS Consultant Agency
Adam Voss, Rock County Human Services

ADMINISTRATIVE LAW JUDGE:
Teresa A. Perez
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a 21-year old resident of Rock County who has been enrolled in the IRIS Program since October 7, 2020 with the exception of the five-day time period beginning July 1, 2023 and ending July 5, 2023.
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7. [REDACTED] did not receive a response from the IRIS consultant despite her initial inquiry on May 16, 2023 and her follow-up inquiries.
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15. On July 6, 2023, the IM agency sent a notice to Petitioner advising him that he was eligible for Medicaid through the BadgerCare Plus Program as of July 1, 2023. (Rock County Ex. 7)
16. The Department of Health Services declined to backdate Petitioner's IRIS enrollment to July 1, 2023. (Testimony of TMG Financial Specialist Jennifer Madera)
17. Providers who were authorized to provide Petitioner with IRIS approved services prior to July 1, 2023 continued providing those cares to him despite his temporary disenrollment but they have not been paid for those services. (Testimony of [REDACTED] and [REDACTED]).
18. On July 17, 2023, the Division of Hearings and Appeals received a request for state fair hearing from Petitioner.

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*, *Medicaid Eligibility Handbook §28.1*, et. seq. and 42 C.F.R. §441.300, et. seq.

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: WI.0484.R03.00 - Jan 01, 2021*. 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>).

The Department of Health Services is the state agency that oversees and administers the IRIS program and it contracts with and/or assigns specific operational duties to each of the following: Aging and Disability Resource Centers (“ADRCs”), IRIS consultant agencies (“ICAs”), IRIS fiscal employer agents (“FEAs”), and income maintenance agencies (“IM agencies”).

Petitioner filed an appeal because he was involuntarily disenrolled from the IRIS program from July 1, 2023 through July 4, 2023 and his providers are therefore unable to be paid for care they provided him during that time period. Respondent contended that Petitioner cannot receive coverage of long-term care services unless he is currently enrolled in the IRIS program and cited the following IRIS program policy in support of that position:

An IRIS participant’s enrollment date refers to the date of activation of the service authorization; therefore, the IRIS program prohibits the payment of providers and/or participant-hired workers prior to the enrollment date.

IRIS Policy Manual, §5.5B.

Respondent explained that Petitioner was involuntarily disenrolled from IRIS because the IM agency temporarily terminated his Medicaid eligibility from July 1, 2023 through July 4, 2023 while it was reviewing his request for continuing Medicaid benefits. As detailed in the Findings of Fact, upon the IM agency’s completion of that request on July 5, 2023, the IM agency found that Petitioner remained eligible for Medicaid albeit through a different subprogram than he had previously qualified (i.e., BadgerCare rather than Community Waivers) and the IM agency backdated his Medicaid eligibility to July 1, 2023.

Respondent further explained that TMG, Respondent’s ICA, expedited his re-enrollment into IRIS and, pursuant to instructions provided by the Department of Health Services, made his re-enrollment effective as of July 5, 2023 which was the date the IM agency completed its work. See TMG Ex. 3. Respondent has however declined to backdate his enrollment to cover that gap.

Respondent's action in involuntarily enrolling Petitioner from July 1 through July 4, 2023 is consistent with the following recently published IRIS policy:

Once enrolled in EadgerCare Plus or Medicaid, a renewal must be completed at least once each year. The IM agency will mail a letter to the participant the month before the renewal is due. The renewal is conducted by the IM agency and can be done online at access.wi.gov, by phone, by mail, by fax, or in person. The renewal ensures the participant continues to meet all program rules and is receiving appropriate benefits. If continued financial eligibility for Medicaid is not confirmed, then the participant becomes ineligible for the program and will be disenrolled (see Enrollment – Disenrollment and Suspensions).

IRIS Policy and Procedure Publication P-03515 §B.1.ii.

Petitioner acknowledged that he temporarily lost Medicaid eligibility but argued that his IRIS consultant's failure to timely and appropriately direct his parents when they asked for assistance directly caused the termination of his Medicaid and in turn his disenrollment from IRIS on July 1, 2023. I concur. Petitioner's parents offered detailed, credible testimony regarding their prompt but ultimately fruitless efforts to obtain clarification as to whether Petitioner should apply for Medicaid "on his own case" since he was 21 years old or whether his mother should complete the renewal paperwork sent to her by the IM agency to maintain his Medicaid eligibility. Because Petitioner's parents did not receive any reply to their inquiries from the IRIS consultant by early June 2023 and because the renewal instructions identified June 16, 2023 as the deadline by which the renewal must be filed to avoid benefit interruption, Petitioner's mother decided that the best course of action would be to file the renewal by that date and to include all the information requested regarding both herself and Petitioner as she had done in the past.

Unfortunately, it was not until June 16, 2023 that the IM agency issued Petitioner a letter instructing him that he must apply for Medicaid in his own name based on his age. By that time, it was too late to avoid the interruption of his Medicaid benefits. Since Petitioner's mother had specifically asked the IRIS consultant whether Petitioner should apply in his own name when she met with him on May 16, 2023, this came as an unhappy surprise and caused understandable frustration.

IRIS policy specifies that it is an IRIS consultant agency's responsibility to "[provide] education to IRIS participants to try to prevent involuntary disenrollments and [to] ensure successful participation in the IRIS program." *IRIS Policy Manual: Work Instructions* §7.1A.1, p. 90. In addition, IRIS consultant agencies are required to "provide information and training to participants regarding . . . the participant's obligation for financial accountability and eligibility in the program." *IRIS Policy Manual* §1.2E.1. The IRIS consultant did not participate in the hearing and no case notes were offered by the ICA to refute the testimony offered by Petitioner's parents regarding the dates and the frequency of their attempts to obtain guidance from the IRIS consultant or their contention that they received no clear direction.

Based on the evidence in the record before me, I find that the IRIS consultant agency did not fulfill its responsibility to educate Petitioner on maintaining eligibility and avoiding disenrollment—a responsibility that was particularly important in this case given the complicating factors of Petitioner's age, which required him to file a new application rather than completing the renewal paperwork sent to his mother, and Petitioner's lack of familiarity with the annual eligibility review process since that requirement had been suspended since his initial enrollment date in October 2020. I therefore conclude that Petitioner's enrollment date should be adjusted to July 1, 2023.

The Department has been willing to adjust the start date for enrollment of Family Care participants if it determines that agency error caused unreasonable delays despite the general preclusion on backdating enrollment into Family Care, which is a managed care program. See, e.g., [REDACTED], DHA Case No. 205394 (Wis. Div. Hearings & Appeals Sept. 29, 2022) (DHS), [REDACTED], DHA Case No. 207295 (Wis. Div. Hearings & Appeals Sept. 29, 2022) (DHS). However, the Department clarified in a Final Decision that DHA does not have the authority to make a final decision to adjust the enrollment date in the Family Care Program. That is a remedy that only the Department may authorize.

Although this is an IRIS rather than a Family Care matter, in light of the adjusted enrollment date sought, I am issuing this as a proposed decision in line with the above-referenced line of final decisions.

CONCLUSIONS OF LAW

Petitioner's enrollment date for IRIS should be backdated to July 1, 2023.

THEREFORE, it is

ORDERED

That, if this proposed decision is adopted as final by the Department Secretary, the agency must, within ten days of the date of the Final Decision, take all necessary administrative steps to revise the petitioner's IRIS enrollment date to July 1, 2023.

NOTICE TO RECIPIENTS OF THIS DECISION:

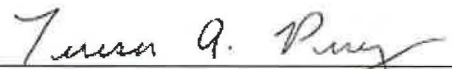
This is a Proposed Decision of the Division of Hearings and Appeals. IT IS NOT A FINAL DECISION AND SHOULD NOT BE IMPLEMENTED AS SUCH.

If you wish to comment or object to this Proposed Decision, you may do so in writing. It is requested that you briefly state the reasons and authorities for each objection together with any argument you would like to make. Send your comments and objections to the Division of Hearings and Appeals, P.O. Box 7875, Madison, WI 53707-7875. Send a copy to the other parties named in the original decision as "PARTIES IN INTEREST."

All comments and objections must be received no later than 15 days after the date of this decision. Following completion of the 15-day comment period, the entire hearing record together with the Proposed Decision and the parties' objections and argument will be referred to the Secretary of the Department of Children and Families for final decision-making.

The process relating to Proposed Decision is described in Wis. Stat. § 227.46(2).

Given under my hand at the City of Madison,
Wisconsin, this 24th day of October, 2023



Teresa A. Perez
Administrative Law Judge
Division of Hearings and Appeals