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

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In the Matter of

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

**DECISION**  
Case #: CWA - 211040

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**PRELIMINARY RECITALS**

Pursuant to a petition filed on November 16, 2023, under Wis. Admin. Code § HA 3.03, to review a decision by the Department of Health Services, IRIS Policy Section regarding a budget amendment denial, a hearing was held on December 21, 2023, by telephone.

The issue for determination is whether the Department of Health Services (“the Department”) properly denied a budget amendment request for Petitioner to attend ██████████ based on a finding that the services are duplicative of services she receives from the Department of Workforce Development, Division of Vocational Rehabilitation.

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 Policy Section  
PO Box 7851  
Madison, WI 53707-7851

**ADMINISTRATIVE LAW JUDGE:**

Teresa A. Perez  
Division of Hearings and Appeals

## FINDINGS OF FACT

1. Petitioner is an 18-year old resident of Dane County who is enrolled in the IRIS Program. Her IRIS consultant agency is TMG.
2. Petitioner has medical diagnoses including but not limited to Down Syndrome, a developmental speech and language disorder, and conductive hearing loss in her right ear.
3. Petitioner needs prompts to bathe but is otherwise independent with her activities of daily living (i.e., mobility, toileting, eating, dressing, transferring).
4. Petitioner requires support with meal preparation, money management, laundry and chores, and transportation due to cognitive impairments related to Down Syndrome.
5. Petitioner's IRIS budget for the plan year 02/22/2023 – 01/31/2024 was \$15,330.13. She received budget amendment(s) of \$19,326.18 for that plan year. Her authorized services amounted to \$22,577.04.
6. Petitioner resides with her parents but her goal is to live independently by the time she is 21 years old.
7. Petitioner graduated from high school in June 2023.
8. Petitioner works two hours per week in a cleaning position at a hair salon and 7.5 hours per week as a teaching assistant at a daycare. Both positions are 100% job coach supported. Her goal is to become fully employed and to increase her independence at work.
9. In January 2023, Petitioner and her parents notified TMG that she wished to have IRIS fund her attendance at [REDACTED], a program operated by [REDACTED], in the fall of 2023.
10. [REDACTED] is a nine-month program intended to assist people with disabilities who are transitioning from high school into adult life. The program's curriculum includes but is not limited to the following topics, skills, and activities: job searches, tours of workplaces, the "unwritten rules" of work (e.g., what to wear, social media, work pace, focus and verbal vs. non-verbal communication), filling out new hire paperwork, direct deposit, understanding one's paycheck, visiting local banks to discuss budgeting, understanding routine versus unpredicted expenses, understanding pros and cons of different transportation options, bus planning, and time management, taking a group bus ride with Metro Transit, simulating transporting to work on time, practice using resources when lost or given an unfamiliar address, understanding healthy vs. unhealthy relationships at work and outside of work, understanding social boundaries in the workplace, the value in diversity, racism, sexism, conflict resolution, speaking with Human Resource managers and asking questions about workplace conflict resolution, how to self-advocate at work and in their community, understanding proper etiquette on and off the clock.
11. Between May 30, 2023 and August 11, 2023, TMG filed budget amendment (BA) requests on Petitioner's behalf seeking authorization for her to participate in the [REDACTED] program.
12. In August 2023, the Department notified Petitioner that the cost of Petitioner attending [REDACTED] had been denied. The Department later agreed to authorize a portion but not all expenses.

13. By written notice dated August 30, 2023, the Department’s IRIS Policy Section informed Petitioner that a BA request for [REDACTED] to provide daily living skills was approved. This covers part of the cost of Petitioner’s participation in [REDACTED]. The same notice informed Petitioner that the Department had authorized specialized transportation. The transportation was requested for the purpose of getting Petitioner to and from [REDACTED].
14. By written notice dated September 7, 2023, TMG informed Petitioner that the Department denied a BA request for [REDACTED] to provide prevocational services- the effect of which was a denial of a portion of the cost of Petitioner participating in [REDACTED] [REDACTED] [REDACTED]. The Department explained that the request for prevocational services was denied because Petitioner receives services from the Wisconsin Division of Vocational Rehabilitation for her current employment and because Petitioner had already obtained integrated community employment.
15. DVR funds “supported employment job coaching services” to assist Petitioner with maintaining employment at a daycare center and hair salon. Petitioner’s vocational rehabilitation counselor at DVR has opined that, Petitioner would “benefit from instruction on how to be more independent in employment and with exploration of other career interests and opportunities available to her. I believe [Petitioner] does have the capacity to work more independently and increase her work stamina to increase her hours in employment . . . [and] fully support [her] participation in the [REDACTED] program.” Petitioner’s DVR counselor further stated that “The [REDACTED] program is not an approved DVR service . . . therefore shouldn’t be considered a duplication of a service DVR can provide.” See Petitioner’s Exhibits.
16. On November 16, 2023, Petitioner filed an appeal of the Department’s September 7, 2023 BA denial.

## 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>).

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, TMG filed BA requests with the Department to allow Petitioner to attend [REDACTED]. The Department determined that the services offered by [REDACTED] fall into two service categories: prevocational services and day living skills. The Department denied the portion of the [REDACTED] program that has been determined to fall under the benefit category prevocational services because the Department believes Petitioner is receiving duplicative services through DVR and that she has already attained community integrated employment. The Department does not appear at hearings regarding budget amendment denials; rather, the IRIS program participant's ICA appears. Thus, the ICA is charged with both advocating for a service to the Department and then representing the Department in front of the Division of Hearings and Appeals. Given the limited nature of Petitioner's current employment, the fact that she currently requires full support at her jobs, her young age, and her goal of becoming more independent, it is not obvious, based on the record in front of me, how the Department concluded that she has received all of the prevocational services that she requires to be a successful employee.

Petitioner's parents, who represented her at hearing, explained that their family's collective goal is for Petitioner to live and work independently. They further explained that they are striving now to help her develop the skills necessary to safely and effectively work independently in part because they understand that they will unlikely be present to help her for the rest of her life. Petitioner and her parents testified that she works a limited number of hours per week cleaning at a hair salon and providing assistance at a daycare. Her parents stated that she still relies heavily on cueing from a job coach in both of those positions. They explained that the curriculum at [REDACTED] includes fundamental job-related skills (See Finding of Fact No. 10) that Petitioner has the capacity to learn but that she does not have. And, they persuasively argued that the job coaching she receives from DVR is an entirely different service than the service offered by [REDACTED]. To support their position, Petitioner's parents also offered a letter from Petitioner's current DVR counselor who described DVR's current services and stated that those services do not duplicate the services offered by [REDACTED].

At hearing, TMG indicated that Petitioner may be able to receive an authorization for “supported employment” to address the skills that Petitioner’s parents explained DVR job coaching does not address. The Department’s position that the requested services are duplicative of DVR services is inconsistent with TMG’s suggestion that Petitioner may be able to get some of the services she seeks from [REDACTED] through a different provider under a different benefit category.

When TMG brought up the possibility of funding for other options to address the goals and concerns of Petitioner and her parents, Petitioner’s mother questioned why they should have to explore different providers to offer the services they seek when they have already found a provider who offers those services. Of course, the Department has the right and the legal obligation to deny requests that are not cost-effective but that is not the reason for denial given by the Department in this case. Moreover, the BA request submitted by TMG described [REDACTED] rates as “within the normal and customary rerates in Dane County”. See Respondent’s Ex. F.

For the reasons set forth above, I find that Petitioner has established that the services offered by [REDACTED] are not duplicative of the services she receives from DVR and that the Department’s reason for denial was thus not proper.

### CONCLUSIONS OF LAW

The evidence in the record established that the services offered by [REDACTED] are not duplicative of the services offered to Petitioner by the Department of Workforce Development, Division of Vocational Rehabilitation.

**THEREFORE, it is**

**ORDERED**

That the matter is remanded to the Department / TMG to authorize complete funding for Petitioner’s participation in the [REDACTED] program and to provide Petitioner written notice of that authorization. The Department / TMG shall 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, 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

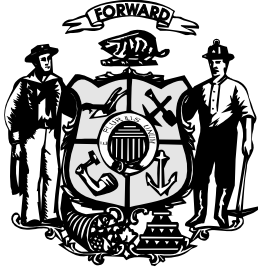
You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Health Services, 1 West Wilson Street, Room 651, **and** on those identified in this decision 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 2nd day of February, 2024

  
s \_\_\_\_\_

Teresa A. Perez  
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 February 2, 2024.

Bureau of Long-Term Support