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# STATE OF WISCONSIN
# Division of Hearings and Appeals

In the Matter of

[redacted]

**DECISION**
Case #: CWA - 215403

## PRELIMINARY RECITALS

Pursuant to a petition filed on October 4, 2024, under Wis. Admin. Code § HA 3.03, to review a denial of an IRIS budget amendment request issued by the by the Department of Health Services, Bureau of Program and Policy, a hearing was held on December 19, 2024, by telephone. The hearing was first scheduled for November 20, 2024 but Petitioner requested additional time to prepare his case and that request was granted.

The issue for determination is whether Petitioner is entitled to a budget amendment request to fund an increased daily rate at the adult family home where he currently resides.

There appeared at that time the following persons:

PARTIES IN INTEREST:

Petitioner:

[redacted]

Respondent:

Department of Health Services
1 West Wilson Street, Room 651
Madison, WI 53703
By: Pamela Schreiber, TMG
Bureau of Program and Policy
PO Box 7851
Madison, WI 53707-7851

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

## FINDINGS OF FACT

1. Petitioner is a [redacted] old resident of Milwaukee County and IRIS participant. His IRIS Consultant Agency is TMG.
2. Petitioner resides at [redacted], a 3-4 bed adult family home.
3. Petitioner meets the IRIS program definition of "frail elder."
4. Petitioner has the following current medical diagnoses: osteoarthritis, bilateral total hip replacements, chronic joint pain, depression, and substance abuse disorder.
5. Petitioner suffers from limited range of motion in his upper body and limited dexterity in his hands as a result of his chronic pain.
6. Due to his medical impairments and symptoms, Petitioner requires total assistance with bathing, dressing, mobility in his home toileting, and transferring. He also requires assistance with meal preparation, laundry / chores, medication administration (e.g., applying lotion), and performing daily range of motion exercises recommended by his doctor. He is able to make small and large financial transactions independently although he has been the target of exploitation. He is unable to drive.
7. Petitioner is able to communicate without impairment, has no diagnosed memory or cognitive impairment, and makes his own decisions.
8. Petitioner regularly drinks to excess. When he does so, he tends to become aggressive with staff. On at least one occasion, Petitioner hit a staff member in the arm when they refused to walk with him to purchase alcohol.
9. Petitioner's current annual IRIS budget for plan year April 1, 2024 through March 31, 2025 is $77,861.52. The entire budget amount is used for the adult family home where he resides.
10. In October 2023, at the request of the adult family home, the ICA submitted a Budget Amendment (BA) Request to the Department of Health Services to fund an increase in the adult family home's daily rate from $194.72 to $241.17. The adult family home owners reported that the rate increase was sought for two primary reasons: (1) to pay for increased rent, utilities, and property taxes, and (2) to fund 2:1 staffing needed because of Petitioner's behavioral and physical conditions.
11. By notice dated July 10, 2024, the Department of Health Services informed Petitioner that his budget amendment request was denied because the IRIS program cannot pay for room and board costs and that because Petitioner's reported aggressive behaviors are not the result of a cognitive impairment, those behaviors are "unable to be marked in the long-term care functional screen." The Department also noted that Petitioner may obtain services to address his substance abuse disorder through his Medicaid card.

## 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: 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." *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, the Department estimated, based on Petitioner's long term care functional screen and a prior budget amendment request, that $77,861.52 is needed to effectively satisfy his annual long term care needs and Petitioner filed a BA request sufficient to fund a daily rate of $241 at the adult family home where he resides (i.e., an additional $1,432.75 per month).

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 new services, the participant bears the burden to prove the requested services meets 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 those provided by licensed adult family homes are allowable IRIS services and 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.
>
> **Exclusions**:
>
> The cost of room and board is excluded from this service category.

*IRIS Service Definition Manual*, pp. 7 – 8.

At hearing, Petitioner was represented by the adult family home owners, who contended that Petitioner requires 2:1 care. In support of that contention, they explained that Petitioner has numerous diagnoses and medications that do not appear on his long term care functional screen despite being previously reported to TMG, that Petitioner wanders and has self-injurious behaviors, that he falls out of bed and injures himself, that he has memory loss, mood problems, and offensive behavior more than weekly, that he has a cognitive impairment and signs of dementia and PTSD. However, the adult family home owners did not offer medical or other documentation to substantiate that testimony.

I note that the adult family home owners also testified that Petitioner was scheduled to attend a neurologist appointment and to undergo an MRI sometime following the hearing. As stated by TMG's representative at hearing, if there is medical documentation of any new diagnoses, Petitioner is encouraged to provide that to TMG so that a new screen can be conducted. Similarly, if there is medical or other documentation to demonstrate that there are medications, symptoms and/or behaviors not accounted for on the long-term care screen, Petitioner should submit it to TMG for review.

The Department correctly concluded that a budget amendment request cannot be granted to fund increases in housing costs since room and board is not an approved waiver benefit. And, Petitioner did not offer sufficient evidence to establish that he requires 2:1 care.

## CONCLUSIONS OF LAW

Because a preponderance of the evidence in the record does not establish that Petitioner requires 2:1 care and because IRIS funds cannot be used to pay for rent, utilities, or property taxes because they are room and board expenses, Petitioner has not established that he is entitled to the requested budget amendment.

## THEREFORE, it is ORDERED

That 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 5th day of February, 2025

\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 5, 2025.

Bureau of Long-Term Support