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STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION
Case #: CWA - 213491

PRELIMINARY RECITALS

Pursuant to a petition filed on May 21, 2024, under Wis. Admin. Code § HA 3.03, to review a decision by the Department of Health Services regarding IRIS, a Medical Assistance (MA) long term care waiver program, a hearing was held on September 25, 2024, by telephone. The hearing was first scheduled for July 10, 2024 but rescheduled three times to accommodate Petitioner's requests for more time to prepare and due to Petitioner's unavailability on one of the hearing dates.

The issue for determination is whether Petitioner is entitled to IRIS coverage of a home / bath modification.

There appeared at that time the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]

Petitioner's Representative:

Kayla J. Smith
Board on Aging & Long Term Care
1402 Pankratz Street
Suite 111
Madison, WI 53704

Respondent:

Department of Health Services
1 West Wilson Street, Room 651
Madison, WI 53703
By: Monica Stern, TMG
Bureau of Long-Term Support
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]-year old resident of Milwaukee County who is enrolled in IRIS as a member of the “frail elder” target group. TMG is his IRIS Consultant Agency (“ICA”).
2. Petitioner has medical diagnoses including but not limited to: [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED].
3. As a result of his various medical diagnoses, Petitioner suffers from extreme pain; has limited range of motion in his back and hips that limit his ability to reach and bend; has chronic weakness; suffers from shortness of breath and low endurance; and has a history of falls.
4. Petitioner requires hands on care to bathe and to get dressed.
5. Petitioner resides in a house that has one bathroom. The bathroom has a combination tub / shower with sliding glass doors.
6. Petitioner has tried to use a sliding transfer bench to access his bathtub but has been unsuccessful.
7. In May 2023, Petitioner notified the ICA that his bathtub no longer met his needs.
8. In September 2023, Independence First performed an accessibility study at Petitioner’s home to evaluate bathroom barriers. Independence First concluded that Petitioner needs his bathtub removed and replaced with a walk-in shower and included detailed specifications for a walk-in shower that would meet Petitioner’s specific needs.
9. Independence First prepared a written report that explained why other less expensive options are not recommended for Petitioner. Specifically, the report stated:

[Petitioner] was observed by this evaluator while trying to use a sliding transfer bench. The pain was so great that he was trembling and suppressing groans, and thus unable to tolerate sitting on and moving a sliding transfer bench. He was physically unable to lift his leg over the tub wall while standing or seated, and was unable to tolerate the pain of having his caregiver lift his leg over the tub wall when seated. It is recognized that the shower door is creating an obstruction, however even if the shower door was removed the pain of lifting his legs is too great for seated or standing entry.

Options that will not be recommended include . . .

 - All forms of tub seats and benches, with and without back support . . . because none of these options will address [his] inability to lift his legs over the tub wall. Raising the bench height to reduce the strain of the leg lift is NOT supported due to the limitations in circulation and neuropathy in his legs and feet.
 - Grab bars will not be recommended as the only modification because, while they will increase his safety, they will not address his inability to lift his legs over the tub wall.
 - Transfer devices such as the Shower Buddy and Duraglide will not be recommended because the proximity of the sink to the tub will not allow these devices to have their footrests properly positioned for a transfer . . .
10. Petitioner obtained three bids for the work recommended by Independence First, the least expensive of which was \$11,500.
11. From May 2024 through April 2025, Petitioner’s annual IRIS budget is \$14,526. He has been authorized to use \$13,409 of that budget for supportive home care.

12. On or after November 15, 2023, TMG submitted a one-time expense (“OTE”) request to the Department of Health Services (“the Department”) on behalf of Petitioner for \$9,612.65 to pay for the cost of the bathroom modification that exceeds the lowest cost of the three bids Petitioner obtained.
13. An IRIS Nurse Consultant employed by TMG who did not meet with Petitioner recommended removal of the sliding doors from Petitioner’s current tub and that Petitioner use a sliding shower transfer bench and transfer with the assistance of a personal care worker. The Nurse Consultant did not explain why she disagreed with the findings of the accessibility study performed by the evaluator who visited Petitioner at his house.
14. By notice dated April 9, 2024, the Department of Health Services informed Petitioner that his One-Time Expense request for a bathroom modification was denied as not cost-effective and because the Medicaid State Plan could fund alternative services.

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 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 federally approved waiver application that authorizes the IRIS program provides that home modifications are a coverable service if certain criteria are met. *See Application for 1915(c) HCBS Waiver: WI.0484.R02.00 - May 01, 2021* (available at <https://www.dhs.wisconsin.gov/iris/hcbw.pdf>). Specifically, the waiver states:

Home modifications are physical adaptations to the private residence of a participant or participant’s family that ensure the health, welfare, and safety of the participant and enable the participant to function with greater independence in the home. These are generally permanent fixtures and/or changes to the physical structure of the home. This service category also includes cost of materials, services, permits and inspections, maintenance, and extended warranties necessary for a home modification . . .

Acquisition of all modifications, including use of independent assessments, is subject to program policy consistent with this service definition. . . .

IRIS program policy further provides, in relevant part, as follows:

Home modifications must demonstrate that the modification addresses disability related long-term care needs that increase self-reliance and independence, or ensure safe, accessible means of ingress/egress to a participant's living quarters, or otherwise provide safe access to rooms, facilities or equipment within the participant’s living quarters, or adjacent buildings that are part of the residence. . .

Quotes from at least three providers must be obtained and submitted with the request for the home modification when the cost for modifications exceeds an amount set annually by the Department. In all cases, the provider with the most reasonable costs and the assurance of the appropriate level of quality will be selected. . .

The completed assessment provides written recommendations, alternatives, and includes a comprehensive description of all cost-effective approaches considered relative to the requested modification or related adaptation(s).

IRIS Policy Manual, §5.8A and 5.8C.1.

Petitioner has requested that IRIS authorize payment for him to receive a walk-in shower because he is unable to safely access his current tub / shower combo and even attempting to do so causes significant pain. The Department contended that using a sliding transfer bench with personal care worker's assistance would be more cost-effective.

The Department disregarded the written report prepared by Independence First following the accessibility study required by IRIS policy. See Findings of Fact Nos. 8 and 9. That report, which was prepared by an evaluator who visited Petitioner in his home and who observed him attempt to access his shower, was detailed and persuasive. No one who participated in the hearing explained why that required report was discounted. The Department's denial indicated that a physician, DME provider, or occupational therapist should determine the proper height of a tub bench; however, Petitioner's physician authored a letter recommending a walk-in shower.

Based on the evidence in the record, I find that Petitioner requires the requested bathroom modification to allow him to safely access his shower.

CONCLUSIONS OF LAW

Because the requested bathroom modification is needed to ensure Petitioner has safe and complete access to his sole bathroom, including his shower, he is entitled to IRIS coverage for the modifications included in the One-Time Expense request submitted to the Department.

THEREFORE, it is

ORDERED

That the matter is remanded to the Department / ICA to authorize the one-time expense request and to provide Petitioner written notice of that authorization. This shall be done 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

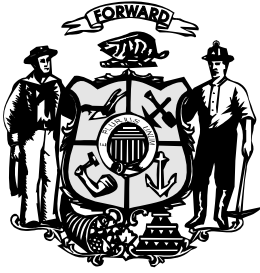
You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Health Services, 1 West Wilson Street, Room 651, **and** on those identified in this decision 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 24th day of October, 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 October 24, 2024.

Bureau of Long-Term Support

[REDACTED]