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

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In the Matter of

Jesse Adix  
c/o Karrie Adix  
3703 Tremont Ct.  
Mequon, WI 53092

**DECISION**  
Case #: CWA - 216742

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**PRELIMINARY RECITALS**

Pursuant to a petition filed on January 16, 2025, under Wis. Admin. Code § HA 3.03, to review a decision by the Bureau of Long-Term Support regarding Medical Assistance (MA), a hearing was held on April 23, 2025, by telephone. The hearing was rescheduled one time prior to that date at petitioner's request.

The issue for determination is whether the IRIS agency met its burden to show that it correctly seeks to terminate petitioner's Daily Living Skills (DLS) services.

There appeared at that time the following persons:

**PARTIES IN INTEREST:**

Petitioner:

[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

Petitioner's Representative:

Attorney Lori Kornblum  
Law Offices of Lori S. Kornblum  
10936 N Port Washington Rd Ste 296  
Mequon, WI 53092

Respondent:

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

By: Melanie Malm, TMG  
Bureau of Long-Term Support  
PO Box 7851  
Madison, WI 53707-7851

ADMINISTRATIVE LAW JUDGE:  
Kelly Cochrane  
Division of Hearings and Appeals

### **FINDINGS OF FACT**

1. Petitioner is a resident of [REDACTED] County and is enrolled in the IRIS program. His IRIS agency is TMG.
2. Petitioner is 24 years old and his diagnoses include autism, hypothyroidism, metabolic disorder, chronic fatigue, anxiety disorder, Lyme Disease, attention and concentration deficit/obsessive compulsive behavior, sleep disorder, and Babesiosis/disorder involving immune mechanism.
3. Petitioner requires hands on assistance for 4 Activities of Daily Living (ADLs) including bathing, dressing, eating, and toileting and for 5 Instrumental Activities of Daily Living (iADLs) including meal preparation, medication administration/management, money management, laundry/chores, and transportation. Petitioner also requires assistance with responding appropriately to an emergency and has a Behavior Support Plan in place to address self-injurious behaviors.
4. Petitioner's Individual Support and Services Plan (ISSP) for plan year 09/01/2024-08/31/2025 has a total annual budget amount of \$91,218.59, which includes respite, fitness classes, Supportive Home Care, DLS, community-based day services, and community-based prevocational services. The total amount includes a Budget Amendment (BA) of \$10,380 for Day Services and a BA of \$14,946 for DLS.
5. Petitioner has had DLS services on his ISSP since 2018. A BA has been in place for DLS since 2019.
6. On June 6, 2024, petitioner's IRIS Consultant (IC) explained to petitioner's guardian that the BA for DLS was expiring and that a new BA request would need to be submitted to the Department of Health Services (DHS) for review to be able to continue funding.
7. On June 18, 2024 the BA request was submitted to DHS.
8. On October 8, 2024, petitioner's IC explained to petitioner's guardian that DHS would approve the BA request for only six months and would not approve any BA requests for DLS in the future. The basis for ending the service was that petitioner still needs full assistance with all iADLs and he has not shown any independence in the skills at home. The IC explained that the next six months should be used as a transition time to come up with a new plan for petitioner.
9. On October 17, 2024 the IRIS agency issued a notice to petitioner stating that his BA for DLS was approved. It specifically stated, "This will consist of 12 hours per week, at a rate of \$47.00 per hour. This is approved for 6 months, during that time the participant and his team will work to find alternative service/resources and/or programs to meet his long-term care outcomes."
10. On December 23, 2024, the agency sent a Notice of Action to the petitioner stating that the DLS was being terminated effective April 30, 2025 because it was not considered a cost-effective way to meet his outcome and he did not need the service to support his outcome. It specifically stated:

In conversations with your IRIS Consultant [IC] you received education and information on your responsibilities as a participant in the IRIS Program. These responsibilities include self-directing your long-term care needs, having a safe plan of care, using your Medicaid [T-19] card services first whenever possible, making sure your plan stays within budget, proper use of budget and/or employer authority, cost-effective ways to meet outcomes, and use of unpaid or natural supports to help manage your long-term care needs.

Your budget was reduced following the most recent Long Term Care Functional Screen. The following options discussed with your IC included;

A Budget Amendment: A Budget Amendment (BA) was discussed on 10/08/2024. The BA approval for this service ends after 6 months. DHS will not approve any future BA requests for this service as it has been on the ISSP for 6 years and there has been no documentation of improvement.

The plan was reviewed and discussed 10/08/2024 to explore if other goods/services could be reduced to preserve more of the budget for a higher priority good/service. Specifically discussed switching to more days at a day program; ultimately, terminating Daily Living Skills Training to get the current ISSP within budget when the current BA approval ends.

Discussed utilizing or increasing natural (unpaid) supports in combination with paid services on your plan.

This change should not have a negative impact on your health, safety, current goals, and long-term care needs, based on information provided. Therefore, Daily Living Skills Training, previously authorized at 12 hours per week has been terminated from your plan.

You are able to talk with your IC at any time if you have questions about this notice, need to change your plan, and/or your health needs change. Additional resources may be available.

### **DISCUSSION**

The IRIS program is a MA long term care waiver program that serves elderly individuals and adults with physical and developmental disabilities. The IRIS program was developed pursuant to a Medical Assistance (MA) waiver obtained by the State of Wisconsin, pursuant to section 1915(c) of the Social Security Act. The federal government has promulgated 42 C.F.R. § 441.300 - .310 to provide general guidance for this program. Those regulations require that the Department of Health Service's (DHS) agent must assess the participant's needs and preferences (including health status) as a condition of IRIS participation. Id., § 441.301(c)(2). IRIS is an alternative to Family Care, Partnership, and PACE—all of which are managed long term care waiver programs in Wisconsin. The IRIS program is designed to allow participants to direct their own care and to hire and direct their own workers. The broad purpose of all 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 online at <http://www.dhs.wisconsin.gov/publications/P0/P00708.pdf>),

The IRIS waiver application (*Waiver*) most recently approved by the Centers for Medicare and Medicaid Services (CMS) is available online at <https://www.dhs.wisconsin.gov/iris/hcbw.pdf>. State policies governing administration of the IRIS program are included in the *IRIS Policy Manual*, *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>). Other resources can be found online at <https://www.dhs.wisconsin.gov/iris/resources.htm>.

As part of an individual's enrollment in IRIS, an ISSP is developed to have a plan for using waiver services to meet individual outcomes, assessed needs and health and safety needs. See *Waiver* at p.5; see also 42 CFR § 441.301(b)(1)(i). IRIS funds can only be used within an approved plan – the ISSP- and budget, and only for services, supports or goods that meet the definitions of those services within the *Waiver*. IRIS budgets are established through a model based on historic cost data. See *Waiver*, p. 175. The agency's contracted actuaries develop target group specific regression models to determine which

attributes from the LTCFS are most predictive of a participant's costs, as well as the amount of funding predicted by each attribute. *Id.* The budget is calculated by seeing which attributes the member has on the LTCFS, and adding up the funding the regression model has associated with those attributes. *Id.* This budget calculation is completed automatically as part of the LTCFS, which the agency updates annually. *Id.* Prospective participants will know this budget amount when deciding whether to participate in IRIS or another Long-term care Program. *IRIS Policy Manual*, § 5.3.

Because petitioner's IRIS budget did not cover the cost of his DLS, a BA was requested. This occurred every plan-year for 6 years. The latest BA approved stated that the DLS would end after 6 months and that DHS would not approve any future BA requests for this service because it has been on petitioner's ISSP for 6 years and "there has been no documentation of improvement." The IRIS agency then later issued notice to petitioner advising it was terminating his DLS which is the subject of this appeal.

The agency explained at hearing that the termination was due to no showing of improvement over the course of the 6 years that he has been receiving the services and that the LTCFS formed the basis for its determination that no improvement has occurred because he is still dependent in all of his iADLS. It is a well-established principle that a moving party generally has the burden of proof, especially in administrative proceedings. *State v. Hanson*, 295 N.W.2d 209, 98 Wis. 2d 80 (Wis. App. 1980). The court in *Hanson* stated that the policy behind this principle is to assign the burden to the party seeking to change a present state of affairs. The burden lies with the IRIS agency to show that it properly seeks to terminate his DLS services. Based on the evidence presented, I cannot find that it has met its burden.

According to the IRIS policy, DLS services include

the provision of education and skill development to the participant to teach or improve the skills involved to independently perform routine daily activities, including skills to increase the participant's independence and participation in community life. This service may include teaching money management, home care maintenance, parenting skills, driving evaluation and lessons, information technology training, food preparation, mobility training, self-care skills, and the skills necessary for accessing and using community resources. Daily Living Skills Training services may involve training the participant or the natural support person to assist the participant. This service is designed to allow a participant to meet assessed long-term care related outcomes in a time frame necessary to learn the identified skill and is not intended to provide substitute task performance. Accordingly, the participant's progress towards obtaining the daily living skill and outcome identified on the participant's ISSP may be monitored by both the DHS and the participant's ICA. Monitoring ensures the efficacy of the training.

*IRIS Service Definition Manual*, p.12.

Petitioner has an outcome of "I would like to continue living in my home, with my family, while I continue to work on my independent living skills at my own pace." Petitioner's representatives argued at hearing that petitioner has made great strides since receiving DLS services. They cite to his mastery of goals for meal preparation (using an air fryer) and tolerating unpreferred activities. He has improved his ability to regulate his body, which has improved his behaviors and ability to deal with them, which has allowed him to participate in activities. He has improved his communication skills. He has almost mastered following a schedule. He has gained independence with the task of bathing in that he can regulate the water temperature and wash himself. He is now brushing his teeth independently. He has gained the ability simply to go into the community and grocery shop, even if the shopping itself is not mastered. He has learned to communicate, work in a group and use social skills. His mother described how the skills have transferred to the home.

When first asked in 2024 about his progress in DLS, petitioner's representatives provided reports to the agency. They were never asked for progress reports prior to that time. In addition, petitioner's mother testified that the LTCFS last performed did not ask for information specific to his DLS services, but rather was more of a yes/no set of questions about the specific activities that the LTCFS captures. Indeed, the LTCFS captures set ADLs and iADLS. There was no dispute that DLS covers skills other than the activities of the LTCFS, and that can be seen simply from the IRIS definition of DLS.

The IRIS agency has suggested increasing petitioner's time at his current Day Service program or trying a new Day Service. Petitioner rebutted the argument that this would meet his outcomes as the DLS is more educational, where he is learning to improve specific skills. Day services are more recreational, and while also beneficial, are not apples to apples in comparison. There is no evidence that there is an alternative service for the independent living skills that DLS provides to the petitioner. A blanket assertion that his Supportive Home Care, Prevocational Services and respite services help meet his goals is insufficient. There is no evidence that any of those services provide independent living services.

In the end, there is no professional opinion in this record to show that he has failed to show improvement in DLS. There is no professional opinion to show that there is a specific timeframe in which such skills should be mastered either generally, or for this petitioner specifically, that he has failed to meet. There is no professional opinion in this record or evidence to support a finding that the LTCFS can form the sole basis for showing improvement. Rather, the preponderance of the evidence shows that he has shown improvement in his DLS - the skills involved to independently perform routine daily activities and independence and participation in community life. It may not be achieved to a level or in a timeframe preferred by the agency, but there is evidence of improvements. The evidence also shows that a timeframe for terminating such services would be specific to the individual and his ability to progress and/or transfer skills to the home/community. At this time, the evidence shows he is still progressing. Based on the foregoing, I cannot find the agency has met its burden to terminate the DLS.

### **CONCLUSIONS OF LAW**

The IRIS program has not met its burden to show that it correctly seeks to terminate petitioner's DLS.

**THEREFORE, it is**

**ORDERED**

That matter is remanded to the IRIS program with instructions to rescind the termination of petitioner's DLS per its notice of December 23, 2024 within 10 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 Milwaukee,  
Wisconsin, this 14th day of May, 2025

\s \_\_\_\_\_  
Kelly Cochrane  
Administrative Law Judge  
Division of Hearings and Appeals



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The preceding decision was sent to the following parties on May 14, 2025.

Bureau of Long-Term Support  
Attorney Lori Kornblum