



FH

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

In the Matter of

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

DECISION

Case #: CWA - 217415

PRELIMINARY RECITALS

Pursuant to a petition filed on March 10, 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 issue for determination is whether the agency erred in its action to disenroll petitioner from the IRIS program.

There appeared at that time the following persons:

PARTIES IN INTEREST:

Petitioner:

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

Respondent:

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

By: A. Butzbaugh – Progressive Community Services
Bureau of Long-Term Support
PO Box 7851
Madison, WI 53707-7851

ADMINISTRATIVE LAW JUDGE:

John Tedesco
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES #) is a resident of Dane County.
2. Petitioner has been enrolled in IRIS with services provided through Progressive Community Services since May 2023.
3. Petitioner's current behavior support plan has not been approved by DHS or the IRIS program. That plan indicates that staff are to call 911 when "de-escalation strategies are not effective. Staff are then directed to leave the house and get into their car if [REDACTED] begins to hit them. Staff are also directed to monitor him from a safe distance..."
4. In October 2024, the IRIS agency deemed this plan unsafe and directed petitioner to engage a behavior support plan specialist to complete as acceptable plan.
5. That has not been completed.
6. The IRIS program acted to disenroll petitioner from IRIS due to the potential application of restrictive measures with no behavioral support plan in place. The agency sent notice on 2/26/25 to petitioner informing him that he would be disenrolled effect 3/18/25.
7. As of the hearing date an alternative plan had still not been developed or submitted to DHS for approval.

DISCUSSION

The Include, Respect, I Self-Direct (IRIS) program was developed pursuant to a Medical Assistance waiver obtained by the State of Wisconsin, pursuant to section 6087 of the Deficit Reduction Act of 2005 (DRA), and section 1915(j) of the Social Security Act. IRIS is a fee-for-service, self-directed personal care program.

The federal government has promulgated 42 C.F.R. §441.450 - .484 to provide general guidance for this program. Those regulations require that the Department's agent must assess the participant's needs and preferences, and then develop a service plan based on the assessed needs. *Id.*, §441.466. The service plan may include personal care and homemaker services. *Id.*, §440.180(b). The program is designed to allow great flexibility in self-direction by petitioner and petitioner's representatives. The agency is much less involved in day to day operation compared to the Family Care Program.

The Department's IRIS policies allow the program to end a participant's enrollment when the program substantiates mismanagement of employer authority. The Department's IRIS policy document, *IRIS Policy Work Manual* available at <https://www.dhs.wisconsin.gov/publications/p0/p00708a.pdf> (viewed 8/30/22), also allows for denial of enrollment if the agency is unable to develop a plan with the petitioner that ensures health and safety of petitioner. *See IRIS Policy Work Manual* at Section 3.3A.1. This is consistent with the IRIS waiver language that indicates which requires that "at a minimum, [the agency] effectively assures the participant's health and safety. *See* IRIS Waiver Application for 1915(c) HCBS Waiver: WI.0484.R03.00 – Jan 01, 2021 at p.5 (<https://www.medicaid.gov/Medicaid-CHIP-Program-Information/By-Topics/Waivers/Downloads/WI0484R03.zip>). Furthermore, the waiver language specifically allows for involuntary disenrollment under those circumstances. *Id.* at p.202. The waiver also stresses that an agency "is responsible for ensuring participant health and safety." *Id.* at p.218.

Additionally:

13.8 IRIS SDPC Disenrollment Participants receiving IRIS SDPC services have the right to disenroll themselves from the IRIS SDPC Program at any time. This process is described in Section 13.8A. The IRIS SDPC Oversight Agency retains the right to involuntarily disenroll

participants from the IRIS SDPC Program for the reasons outlined in Section 13.8B.

** * **

13.8B IRIS SDPC Involuntary Disenrollment The Department of Health Services and the IRIS SDPC Oversight Agency reserves the right to involuntarily disenroll IRIS SDPC participants when any of the following conditions are present:

- 1. The participant's health and/or safety are jeopardized;*
- 2. The participant mismanages his/her purchasing authority;*
- 3. The participant refuses to report information necessary to adequately monitor the situation; or*
- 4. The participant chooses to move to an ineligible living situation.*

Following an involuntarily [sic] disenrollment from IRIS SDPC, the IRIS SDPC participant is connected with MAPC providers to ensure continuity of care.

42 CFR 441.456, Involuntary Disenrollment states:

"§ 441.458 Involuntary disenrollment.

- (a) States must specify the conditions under which a participant may be involuntarily disenrolled from the self-directed PAS option.*
- (b) CMS must approve the State's conditions under which a participant may be involuntarily disenrolled.*
- (c) The State must specify in the section 1915(j) State plan amendment the safeguards that are in place to ensure continuity of services during the transition from self-directed PAS."*

The approved Medicaid 1915 (j) Self-Directed Personal Assistance Services Waiver states the following regarding involuntary disenrollment:

"The circumstances under which a participant may be involuntarily disenrolled from self-directing personal assistance services, and returned to the traditional service delivery model are noted below. The criteria for involuntary disenrollment of participants for self-directed personal assistance services include: 1) the participant's health and safety is jeopardized; 2) purchasing authority is mismanaged; 3) the enrollee refuses to report information necessary to adequately monitor the situation; or 4) the enrollee chooses to move to an ineligible living arrangement. The independent consultant agency [IRIS SDPC Oversight Agency] will make reasonable efforts to assist the participant to address any issues that may lead to involuntary disenrollment (training or other assistance). If these efforts are unsuccessful, the agency operating the program makes the recommendation to the state Medicaid agency to disenroll the individual, but the state makes the final decision to disenroll. The

Medicaid agency's role includes a conversation with the consumer and/or any legal representative and a review of the case file. The decision to restrict participation in self-directed personal assistance services can be appealed through the Fair Hearing process."

IRIS Policy Manual at Sections 13.8, 13.8B.

In this case, petitioner was subject to restrictive measures in the event of certain behaviors which presented risk to petitioner or those around petitioner. In order for such restrictive measures to be permitted, the petitioner must have an DHS-approved behavior support plan in place. The *IRIS Manual* at Section 4.3 addresses this:

The approved 1915 (c) Home and Community-Based Services waiver describes the following process for obtaining approval for the use of restrictive measures in Appendix G-2-i:

"The IRIS consultant and participant must submit the appropriate request for approval. For restraints to be used as part of a Behavior Support Plan (BSP), the form "Requests for Use of Restraints, Isolation, and Protective Equipment as Part of a Behavior Support Plan" (F-62607) is required. For restraints to be used as a medical restraint, the form 'Request for Use of Medical Restraints' (F-62608) is required. Both request forms collect information that thoroughly demonstrates the need for the restraint, including the other least restrictive options that were attempted. Specific content includes:

- *Demographic information*
- *Summary of the participant's strengths and needs*
- *Health considerations*
- *Prescribed medications*
- *Detailed description of challenging behavior(s)*
- *Previous attempted intensive behavior supports, including outcomes*
- *Current behavior supports (attach behavior support plan)*
- *Description of why the restraint is being requested*
- *Plan for monitoring, documenting, and reviewing the progress*
- *Plan for training caregivers*
- *Signatures of physician and behavioral support team*

The ICAs are required to submit the completed request forms, including supplementary documentation, such as the participant's behavior support plan, to the OIM for a pre-review via the DHS Restrictive Measures SharePoint site. The OIM ensures that the request is complete and all required documentation is attached. The OIM follows up with the ICA to obtain any missing or incomplete information through the DHS Restrictive Measures SharePoint site.

In this case, there is no behavior support plan in place. The respondent has denied continued enrollment to petitioner. The respondent has presented considerable, persuasive and credible testimony and documentary evidence demonstrating that without an appropriate and approved behavior support plan, the agency will be unable to prevent episodes in which self-care, health, and safety are in jeopardy. The agency explained that an approved plan must be in effect in order for petitioner to be enrolled in IRIS.

At hearing, petitioner conceded that there is no approved behavioral support plan in place. Petitioner's representative stated that such a plan was being worked on and should be in place shortly.

There is no entitlement to be enrolled in IRIS. In this case the IRIS program does not believe that the program is right for petitioner under the current circumstances without an approved behavioral support plan. They are concerned that petitioner or those around him may be harmed or injured, or worse. The agency is permitted to deny enrollment under such circumstances under all the program authorization language that I could find.

This was not a close case – even petitioner conceded that there is no approved plan in place. The agency's decision to deny enrollment is justified and not arbitrary. I will not overturn the program's determination that there is no current approved plan that keeps petitioner safe. This denial does not prevent the petitioner from seeking assistance through the Family Care program, which has more oversight. Petitioner may elect to apply for IRIS again after the necessary conditions are in place to ensure health and safety of petitioner.

CONCLUSIONS OF LAW

The agency was within its discretion in disenrolling petitioner based on its belief that it could not ensure his safety and health without an approved behavior support plan in effect.

THEREFORE, it is

ORDERED

That this 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.

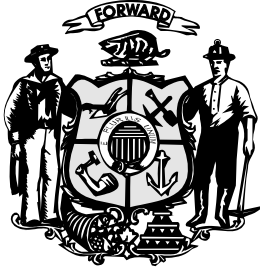
APPEAL TO COURT

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 May, 2025

\s _____
John Tedesco
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 May 5, 2025.

Bureau of Long-Term Support