



FH

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

Case #: CWA - 215724

PRELIMINARY RECITALS

Pursuant to a petition filed on October 31, 2024, 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 December 18, 2024, by telephone. A hearing scheduled for November 26, 2024 was rescheduled at the request of the Petitioner.

The issue for determination is whether respondent correctly terminated the petitioner from the IRIS program based on a finding she did not require a nursing home level of care.

There appeared at that time the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]

Petitioner's Representative:

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

Respondent:

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

By: TMG

Bureau of Long-Term Support
PO Box 7851
Madison, WI 53707-7851

ADMINISTRATIVE LAW JUDGE:

Jason M. Grace
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner is a resident of Wood County. She is enrolled in IRIS, with TMG her IRIS consultant agency.
2. Petitioner has medical diagnoses that include Hypothyroid, Constipation, GERD (gastroesophageal reflux disease), Vitamin D deficiency, Chronic pain, Dyspareunia in female, Endometriosis, Menorrhagia, Ovarian remnant syndrome, Anxiety, Obsessive-compulsive disorder, PTSD (post-traumatic stress disorder), Bipolar disorder, Depression, and Attention deficit hyperactivity disorder.
3. On or about September 5, 2024, a Long Term Care Functional Screen (LTCFS) of Petitioner was completed by TMG. The screen determined the Petitioner was independent as to all activities of daily living (ADLs) of bathing, dressing, eating, mobility in the home, toileting, and transfers. The screen further determined the Petitioner requires assistance with the instrumental activities of daily living (IADLs) of meal preparation, medication management/administration, money management, laundry/chores, employment. It was found that she also has a cognitive impairment. Petitioner was found to meet criteria for the Physical Disability and Severe and Persistent Mental Illness target groups but to be at a non-nursing home level of care.
4. By notice dated October 22, 2024, the Petitioner was informed that she was being terminated from the IRIS program because she was functionally ineligible as she did not require a nursing home level of care.
5. On October 31 2024, the Petitioner filed an appeal with the Division of Hearings and Appeals.

DISCUSSION

To be functionally eligible for IRIS program benefits, an individual must be a member of one of the following “target groups”: frail elderly; adult with a physical disability; or adult with a developmental disability, as that term is defined by 42 U.S.C. § 15002(8), and must also require a “nursing home” level of care. IRIS Policy and Procedure (P-03515, 09/2023), found online at <https://www.dhs.wisconsin.gov/publications/p03515.pdf>.

In this case, TMG found that Petitioner does not require a nursing home level of care and is therefore no longer functionally eligible for IRIS.

To assess an individual’s functional eligibility, an extensive interview regarding his functional abilities and limitations is conducted. The assessment also entails a review of relevant collateral material, such as the applicant’s medical records. The information gathered from the assessment is then inputted into a computer program which ultimately determines the person’s functional eligibility and level of care. As noted previously by the Division of Hearings and Appeals (DHA), there are times when the logic or algorithm used by the computer program produces results that are at odds with the state regulations that govern the Family Care and IRIS programs. When such conflict is present, the regulations, not the computer program, control the outcome. See, DHA Case No. CWA-194921 (Wis. Div. Hearing and Appeals October 9, 2019)(DHS); DHA Case No. FCP-188090 (Wis. Div. Hearing and Appeals September 17, 2018)(DHS); DHA Case No. CWA-183951 (Wis. Div. Hearing and Appeals February 16, 2018)(DHS); DHA Case No. FCP-176611 (Wis. Div. Hearing and Appeals October 18, 2016) (DHS), and DHA Case No. FCP-197060 (Wis. Div. Hearing and Appeals February 10, 2020) (DHS).

Wis. Admin. Code § DHS 10.33(2)(c) defines nursing home level of care as the following:

A person is functionally eligible at the comprehensive level if the person requires ongoing care, assistance or supervision from another person, as is evidenced by any of the following findings from application of the functional screening:

1. The person cannot safely or appropriately perform 3 or more activities of daily living.
2. The person cannot safely or appropriately perform 2 or more ADLs and one or more instrumental activities of daily living.
3. The person cannot safely or appropriately perform 5 or more IADLs.
4. The person cannot safely or appropriately perform one or more ADL and 3 or more IADLs and has cognitive impairment.
5. The person cannot safely or appropriately perform 4 or more IADLs and has cognitive impairment.
6. The person has a complicating condition that limits the person's ability to independently meet his or her needs as evidenced by meeting both of the following conditions:
 - a. The person requires frequent medical or social intervention to safely maintain an acceptable health or developmental status; or requires frequent changes in service due to intermittent or unpredictable changes in his or her condition; or requires a range of medical or social interventions due to a multiplicity of conditions.
 - b. The person has a developmental disability that requires specialized services; or has impaired cognition exhibited by memory deficits or disorientation to person, place or time; or has impaired decision making ability exhibited by wandering, physical abuse of self or others, self neglect or resistance to needed care.

Activities of daily living refer to “bathing, dressing, eating, mobility, transferring from one surface to another such as bed to chair and using the toilet.” Wis. Admin. Code, § DHS 10.13(1m). “Instrumental activities of daily living” are defined as “... management of medications and treatments, meal preparation and nutrition, money management, using the telephone, arranging and using transportation, and the ability to function at a job site.” Wis. Admin. Code § DHS 10.313(32). The LTCFS report also includes as an IADL “Laundry and/or Chores.” This indicates Department policy is to include the performance of laundry and chores as a separate IADL. Moreover, Federal Medicaid regulations include the performance of essential household chores within the definition of IADLs. See, 42 C.F.R. § 441.505. The DHA has previously issued decisions recognizing that laundry and chores are an IADL for purposes of determining level of care. See, DHA Case No. CWA-194921 (Wis. Div. Hearing and Appeals October 9, 2019)(DHS); DHA Case No. FCP-192455 (Wis. Div. Hearing and Appeals April 10, 2019)(DHS); DHA Case No. FCP-188090 (Wis. Div. Hearing and Appeals September 17, 2018)(DHS); and DHA Case No. FCP-176611 (Wis. Div. Hearing and Appeals October 18, 2016) (DHS).

In this case, it was not contested that the Petitioner’s LTCFS indicates she needs assistance with 5 IADLs (meal preparation, medication management/administration, money management, laundry/chores, and employment), has a cognitive impairment, and belongs to the Physical Disability target group. Per Wis. Admin. Code § DHS 10.33(2)(c)3 and 5, Petitioner qualifies for a nursing home level of care.

Although the screening personnel followed their DHS instructions correctly, the conclusion relating to level of care was incorrect under the Code. Based upon the above, I find that the Petitioner falls into the nursing home level of care according to the Wisconsin Administrative Code provisions, and continues to

be functionally eligible for the IRIS program. As such, I will remand this matter to the respondent to rescind the notice of termination.

CONCLUSIONS OF LAW

1. Petitioner requires a nursing home level of care.
2. The respondent incorrectly found that the Petitioner was functionally ineligible for IRIS and terminated her enrollment in the IRIS program.

THEREFORE, it is

ORDERED

The matter is remanded to the Department / TMG with instructions to rescind the October 22, 2024 Notice of Action and to revise its records to reflect Petitioner's continuing eligibility for IRIS at a nursing home level of care. The Department / TMG shall fully comply with these instructions within ten (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, 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.

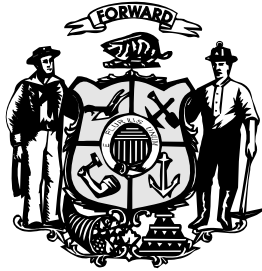
APPEAL TO COURT

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 10th day of January, 2025

\s _____
Jason M. Grace
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 January 10, 2025.

Bureau of Long-Term Support

