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## STATE OF WISCONSIN Division of Hearings and Appeals

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In the Matter of

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

### DECISION

Case #: CWA - 216860

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### PRELIMINARY RECITALS

Pursuant to a petition filed on January 28, 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 March 13, 2025, by telephone.

NOTE: The record was held open until the end of the day to allow Petitioner to submit pages that were inadvertently left out of Exhibit 2, and to allow the agency to provide information concerning the rates being charged by a certain provider. The additional documents have been marked as Exhibits six, seven, and eight, respectively.

The issue for determination is whether the Department of Health Services, Bureau of Long-Term Support (herein after referred to as DHS) correctly denied Petitioner's request for increased IRIS funding for adult day services.

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: Monica Steren, Quality Services Specialist  
Bureau of Long-Term Support  
PO Box 7851  
Madison, WI 53707-7851

ADMINISTRATIVE LAW JUDGE:  
Mayumi M. Ishii  
Division of Hearings and Appeals

### **FINDINGS OF FACT**

1. Petitioner (CARES # [REDACTED]) is a resident of Walworth County.
2. The Petitioner has been receiving adult day services from [REDACTED] since January 2022. (Testimony of Monica Sterns)
3. The services provided included 1:1 staffing while on [REDACTED] property and 2:1 staffing when in the community because, Petitioner needs constant supervision and cueing. Petitioner is autistic with cognitive delays, and he likes to be nude and will undress. He is also an elopement risk, and is noted to make attempts to elope 2-6 times per week. (Testimony of Petitioner's mother; Exhibit 1, pg. 22 and 24, and pgs. 70-71)
4. As of January 2022, [REDACTED] charged Petitioner \$157.50 per day for the adult day services. (Id.)
5. As of October 16, 2024, Petitioner's IRIS Budget included 72 days per year of adult day services at a rate of \$157.50 per day. (Exhibit 1 pg. 41)
6. On November 25, 2024, the DHS approved an additional .40 days per week at a rate of \$157 per week. (Exhibit 1, pg. 59)
7. On an unspecified date, [REDACTED] informed Petitioner that it was increasing the rate it was charging for adult day services effective January 1, 2025, from \$157.50 per day to \$168.50 per day. (Testimony Petitioner's mother; see also Exhibit 4)
8. On an unspecified date, the Petitioner submitted a Budget Amendment (BA) request seeking an increase in the rate of pay for the adult day services. (Exhibit 1, pg. 50)
9. On December 11, 2024, TMG, the Iris Consulting Agency (ICA) sent Petitioner a notice of action denying requested rate increase. (Exhibit 1, pg. 8)

### **DISCUSSION**

The IRIS program is a Medical Assistance long term care waiver program that serves elderly individuals and adults with physical and developmental disabilities. It is an alternative to Family Care, Partnership, and PACE 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. The IRIS program allows participants to direct their own care and to hire and direct their own workers. See *IRIS Policy Manual §1.1B*.

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*.

The federal government has promulgated 42 C.F.R. §441.300 - .310 to provide general guidance for this program. 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>).

There is no dispute that Petitioner needs adult day services, nor is there any dispute that [REDACTED] is an appropriate provider of that service. There is also no dispute that Petitioner requires adult day services at the level currently approved, and Petitioner is not seeking an increase in the number of hours of service. It is Petitioner's desire that IRIS pay an increased rate for the adult day services, based upon what [REDACTED] is charging him for the services.

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). In a case involving a change in the rate of pay for services rendered, the Petitioner has the initial burden to show that the requested rate meets the program's guidelines for approval.

Section 6.2 of the Iris Policy Manual reads as follows:

IRIS participants may choose to hire an agency to provide IRIS-funded services. Participants may use agency services in combination with participant-hired workers to meet their needs. Agencies must meet the requirements identified by their licensing or certifying entity in addition to the requirements identified in Appendix C of the approved 1915 (c) Home and Community-Based Services waiver. Agencies are required to ensure that caregivers pass the caregiver and criminal background checks prior to serving IRIS participants. Participants are responsible for negotiating **a usual and customary rate** with agency providers. Agencies are permitted to charge a daily rate but maintain responsibility for remaining compliant with the Fair Labor Standards Act.

The approved 1915 (c) Home and Community-Based Services waiver describes the following requirements about the annual assessment of participant needs in Appendix D-1-d:

The participant is responsible for identifying and retaining either participant-hired workers or agency providers or a combination of both. The participant is responsible for negotiating reasonable and customary rates with all providers. The IRIS consultant is required to provide the necessary tools, resources, and information to locate and retain providers. The IRIS consultants are further responsible to ensure that the ISSP and subsequent service authorizations reflect the providers, **a usual and customary rate**, the type of unit, the number of units, and the timeframe for which the service authorization is valid. It is not the IRIS consultants' responsibility to recruit providers, retain providers, or negotiate rates with providers. It is the IRIS consultants' responsibility to ensure participants have the tools, resources, and information to hire, train, and otherwise manage participant-hired workers.

Iris Policy Manual §6.2 (04/2024) *Emphasis Added*.

In addition, budget amendment (BA) requests must be reviewed by the Department of Health Services Quality Assurance Staff (QAS) to make sure the request is appropriate, reasonable, and cost-effective. Pg. 5, Additional Funding Requests (11/2024). ([www.dhs.wisconsin.gov/publications/p03656.pdf](http://www.dhs.wisconsin.gov/publications/p03656.pdf))

In denying Petitioner's budget amendment request, the Department did not challenge whether the increased rate fell outside of the usual and customary rates charged by adult day service providers in Walworth county, and nothing provided by the parties suggests the \$168 per day rate is untoward or unusual. Indeed, it is not even the highest rate DHS currently pays to [REDACTED] for adult day services and falls in the midrange. (See Exhibit 8)

According to Ms. Steren, DHS denied the increased rate, stating that attendance at [REDACTED] is no longer cost-effective at \$168 per day, because the level of service provided to Petitioner will not change. However, DHS is conflating issues. Arguments regarding cost-effectiveness suggest that an individual can obtain sufficient services to meet their needs at a lesser cost with another provider or

through another means. This is not the heart of DHS's argument and DHS did not suggest that Petitioner seek adult day services through other providers or address his needs by other means. Indeed, DHS has not ended approval for adult day services at [REDACTED], and has suggested that Petitioner either reduce services in another area or negotiate a lower rate for transportation services to cover the increased cost of adult day services at [REDACTED], so that Petitioner stays within his overall budget. DHS is really arguing that the rate increase is unreasonable, because no additional services are being requested or provided to Petitioner by [REDACTED], and so it will not increase Petitioner's budget.

A letter attributed to [REDACTED], an occupational therapist from [REDACTED], indicates that the increased rate would result in improved care/welfare for the Petitioner and improved safety measures. However, he does not state what, exactly, those improvements would be. (See Exhibit 4, pg. 1). Similarly, [REDACTED] from [REDACTED] provided a letter indicating that the additional 11 dollars a day is needed to continue providing services to Petitioner, but she does not explain why. (See Exhibit 3)

[REDACTED] might have legitimate reasons for increasing the rate it is charging Petitioner, but they have not been provided in this record, to justify the increase. In the absence of that information, the increased rate cannot be approved, at this time.

Petitioner should note that he is free to submit another BA to TMG with further information concerning why [REDACTED] is increasing their rates.

### CONCLUSIONS OF LAW

DHS correctly denied Petitioner's request for increased IRIS funding for adult day services.

### ORDERED

THEREFORE, it is hereby ordered that the petition 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, 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**

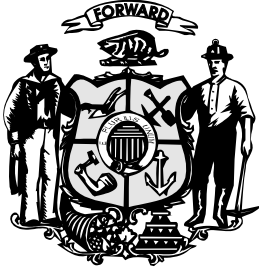
You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Health Services, 1 West Wilson Street, Room 651, **and** on those identified in this decision 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 18th day of March, 2025

\s\_\_\_\_\_  
Mayumi M. Ishii  
Administrative Law Judge  
Division of Hearings and Appeals



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The preceding decision was sent to the following parties on March 18, 2025.

Bureau of Long-Term Support