



STATE OF WISCONSIN
DEPARTMENT OF HEALTH SERVICES

In the Matter of

DECISION

Case No: CWA-217265

The attached proposed decision of the Administrative Law Judge dated May 16, 2025 is hereby adopted as the final order of the Department.

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, Madison, WI, 53703, **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 request (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 22nd day
of July, 2025.

Kirsten L. Johnson, Secretary
Department of Health Services



FH

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STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of



PROPOSED DECISION
Case #: CWA - 217265

PRELIMINARY RECITALS

Pursuant to a petition filed on February 27, 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 9, 2025, by telephone.

The issue for determination is whether the petitioner's start date for IRIS benefits should be adjusted.

There appeared at that time the following persons:

PARTIES IN INTEREST:

Petitioner:



Respondent:

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

By: Jennifer Madera, Erin Neary, TMG
Bureau of Long-Term Support
PO Box 7851
Madison, WI 53707-7851

ADMINISTRATIVE LAW JUDGE:
Kate J. Schilling
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES #) is a 78 year old resident of Pierce County who has been on the IRIS program for several years. Her brother is the sole paid caregiver for her supportive home care hours, and provides 8.5 hours per week of assistance with housekeeping, laundry, grocery shopping, and running errands. (The petitioner also has separate MAPC hours through the [REDACTED])
2. On September 4, 2024, the agency sent the petitioner a notice that her Medicaid and community waivers would end on October 1, 2024, if she did not complete her annual renewal and provide verification of income and assets.
3. The petitioner failed to verify her assets with the agency by September 30, 2024. She lost eligibility for Medicaid and community waivers (IRIS) as of October 1, 2024.
4. On October 16, 2024, the petitioner regained eligibility for Medicaid under the Medicaid Purchase Plan (MAPP) program. Medicaid card services were opened and retroactive to October 1, 2024.
5. On October 23, 2024, the petitioner was referred by the Aging and Disability Resource Center (ADRC) to her prior IRIS Consultant Agency (ICA) and a new Fiscal Employer Agency (FEA).
6. The new FEA obtained the petitioner's records on December 2, 2024. The FEA then indicated that it would need a judgment of conviction from the petitioner's caregiver before it could finish processing the background check. The judgment of conviction was then provided to the FEA on or about December 5, 2024.
7. On December 18, 2024, the FEA determined that the petitioner's sole caregiver could not be approved as an IRIS caregiver due to an issue with the background check. The petitioner's caregiver was informed that he would need to submit an appeal for a determination by DHS as to whether he could be approved as a paid caregiver in the IRIS program going forward.
8. Due to a series of delays, the caregiver background check was not received by DHS until February 10, 2025. It was approved on February 13, 2025, and IRIS benefits officially opened on that date.
9. On February 27, 2025, the petitioner filed an appeal with the Division of Hearings and Appeals regarding the gap in IRIS coverage from October 1, 2024 through February 12, 2025.

DISCUSSION

The IRIS program is a Medical Assistance (MA) home and community-based long term care waiver program authorized under §1915(c) of the Social Security Act. The program permits a state to furnish an array of home and community-based services that assist Medicaid beneficiaries to live in the community and avoid institutionalization. The State has broad discretion to design its waiver program to address the needs of the waivers target population. The waiver approved by the Centers for Medicare and Medicaid Services (CMS) which provides the program's authority is available at <https://www.dhs.wisconsin.gov/iris/hcbw.pdf>. State policies governing administration of the IRIS program are included in the IRIS Policy Manual (available at <https://www.dhs.wisconsin.gov/publications/p0/p00708.pdf>).

The petitioner lost Medicaid financial eligibility as of October 1, 2024, due to a failure to verify assets during her renewal. The petitioner seemingly does not dispute that this verification item was outstanding

at the end of September 2024 or that it took until approximately October 16, 2024 to re-establish Medicaid financial eligibility. The Income Maintenance agency (IM agency) backdated Medicaid card services (non-long term care eligibility) to October 1, 2024, pursuant to policy in the *Medicaid Eligibility Handbook* (MEH) §2.8.2.

The IM agency approved the petitioner's financial eligibility for Medicaid on October 16, 2024, and referred the case to the Aging and Disability Resource Center (ADRC) for IRIS enrollment. On October 23, 2024, the ADRC referred the case to the ICA and a new FEA for re-enrollment into IRIS (as her prior FEA was under sanction and not receiving new enrollees). As the petitioner's Medicaid financial eligibility was approved within 30 days, she was eligible for expedited reinstatement of IRIS. Expedited re-enrollment streamlines the process by being able to reinstate the most recent IRIS service plan, rehiring supportive home care staff, and avoiding the need to complete the new participant orientation and paperwork. *IRIS Policy and Procedure Publication P-03547 (updated September 2024)* §B.1.b.

The petitioner's ICA received the re-referral for enrollment from the ADRC on October 23, 2024. The ICA acted immediately and made a welcome phone call the next day and then a home visit within the first week to complete the necessary paperwork. Conversely, the new FEA struggled to obtain records and documentation from the former FEA. Testimony at the hearing was that the paperwork had been lost on at least one occasion during the transition. It ultimately took until December 13, 2024, for the new FEA to obtain the documentation from the previous FEA and open a case for the petitioner. As the new FEA was processing the caregiver's background check it realized that the caregiver would need to appeal to DHS in order to become approved as an IRIS caregiver.

On January 2, 2025, the ICA received the completed caregiver background check appeal form from the petitioner's caregiver. The ICA shared this document with the FEA for processing. On January 8, 2025, the petitioner's caregiver was notified that the appeal form had to be sent to DHS. The caregiver indicated that he had done this by January 13, 2025; however, it was later discovered that DHS had not received the appeal form, and it was resent to DHS on February 10. On February 13, 2025, DHS approved the caregiver background check appeal request, and the petitioner's IRIS benefits were opened.

The FEA did not appear at the hearing or submit any documentation for inclusion in the hearing record. The ICA staff appeared at the hearing and stated that IRIS benefits cannot begin until a participant has at least one qualifying service on a service plan. This is confirmed in the IRIS Policy and Procedure Manual:

Need for Services

Participants who have met all eligibility criteria must also have an assessed need for waiver services to be eligible for participation in the IRIS program. The Centers for Medicare & Medicaid Services define "reasonable need" as follows: "In order for an individual to be determined to need waiver [IRIS] services, an individual must require (a) the provision of at least one HCBS waiver service, as documented in the service plan, and (b) the provision of HCBS waiver services occurs at least monthly or, if the need for services is less than monthly, the participant requires regular monthly monitoring which must be documented in the service plan."

IRIS Policy and Procedure Manual, (P-03515), last updated 9/2023, page 5. In this case, the petitioner's only service on her plan was supportive home care, and her brother was the only person who provided care to her. As her brother's background check was still pending, her IRIS benefits could not yet start.

5.5B Enrollment Date

An IRIS participant's enrollment date refers to the date of activation of the service authorization; therefore, the **IRIS program prohibits the payment of providers**

and/or participant-hired workers prior to the enrollment date. The approved IRIS 1915 (c) HCBS waiver describes timeframes relative to the enrollment date: “The initial welcome call to the participant is due within 3 business days of the referral date. The IRIS Consultant selection should be indicated by the participant by the third business day from the welcome call. If a participant does not choose an IRIS Consultant or does not have a preference in their IRIS Consultant, an IRIS Consultant will be auto-assigned to the participant on the fourth business day after the welcome call. The Initial Visit between the participant and the IRIS Consultant will be within fourteen calendar days from the referral date. The Initial Plan must be completed within 30 calendar days from the initial visit. The date of the implementation of the plan must be within 45 calendar days of the initial visit. **The participant’s “enrollment date” in the program is equivalent to the participant’s ‘plan implementation’ date.”**

IRIS Policy Manual § 5.5B, (P-00708), last updated 4/2024, page 26. While administrative law judges are sometimes able to write a (proposed) decision adjusting the start date of IRIS benefits when there is an unreasonable delay attributed to an agency, there are clear policies in the IRIS manual which specifically disallow that in situations such as these where the caregiver background check has not been completed and approved. The *IRIS Policy Manual: Work Instructions* provides unambiguously at Section 6.1B.1 regarding background checks, as follows:

6. The applicant must pass both [criminal and caregiver] background checks before starting employment....

9. The FEA may not issue payments to applicants for services rendered before the background checks are completed....

10. The FEA is prohibited from giving an applicant a start date occurring prior to the successful completion of the criminal and caregiver background checks. This includes situations wherein the FEA failed to process the applicant’s packet in a timely manner....

11. ... no participant-hired worker should provide services with the expectation of being compensated with IRIS funds prior to receiving a start date from the FEA.

(Emphasis added.) *IRIS Policy Manual* § 6.1B.1. This policy prohibits the caregiver’s employment start date from occurring before the background check is complete. Likewise, that meant that the petitioner’s IRIS benefits could start as supportive home care was the only service listed on the petitioner’s ISSP.

The DHS issued a policy clarification stating that as of October 1, 2024, iLife will not be eligible to receive new enrollments or expedited re-enrollments. The policy states that the “new FEA is expected to ‘fast track’ the enrollment process by prioritizing the enrollment, as well as contacting iLife to obtain any documents that will streamline the enrollment process. iLife will be informed to provide all requested documentation to the new FEA within 2 business days of receiving the request.” (ICA Exhibit G1).

In this case, it took 47 days for the documents and paperwork to be shared with the new FEA and an additional 11 days for the new FEA to process it and open the petitioner’s case. Thereafter, it took an additional 62 days for the background check appeal processing and ultimate approval. However, the IRIS policies clearly state that a caregiver cannot be paid until the background check process is completed and approved. The caregiver background appeal was approved by DHS on February 13, 2025; therefore, under the IRIS rules, the petitioner’s IRIS start date cannot be adjusted to start prior to that date.

I understand the petitioner's position that it took 16 weeks for her re-enrollment into IRIS to officially start, and that she relied on the fact that her caregiver had previously been approved under the IRIS program as a paid caregiver. However, I do not have equitable powers and cannot deviate from the administrative code and the statutes. "An agency or board created by the legislature has only those powers which are expressly or impliedly conferred on it by statute. Such statutes are generally strictly construed to preclude the exercise of power which is not expressly granted. [citation omitted]" *Browne v. Milwaukee Board of School Directors*, 83 Wis.2d 316, 333, 265 N.W.2d 559 (1978).) As an administrative law judge, I do not have authority to render a decision on the basis of fairness or equity. Hence, I am sending this as a Proposed Decision to the Department of Health Services for review and to determine if an equitable remedy is available.

CONCLUSIONS OF LAW

The petitioner's IRIS benefits correctly began as of February 13, 2025.

THEREFORE, it is

ORDERED

That the petition for review is hereby dismissed.


NOTICE TO RECIPIENTS OF THIS DECISION:

This is a Proposed Decision of the Division of Hearings and Appeals. IT IS NOT A FINAL DECISION AND SHOULD NOT BE IMPLEMENTED AS SUCH. If you wish to comment or object to this Proposed Decision, you may do so in writing. It is requested that you briefly state the reasons and authorities for each objection together with any argument you would like to make. Send your comments and objections to the Division of Hearings and Appeals, P.O. Box 7875, Madison, WI 53707-7875. Send a copy to the other parties named in the original decision as 'PARTIES IN INTEREST.'

All comments and objections must be received no later than 15 days after the date of this decision. Following completion of the 15-day comment period, the entire hearing record together with the Proposed Decision and the parties' objections and argument will be referred to the Secretary of the for final decision-making.

The process relating to a Proposed Decision is described in Wis. Stat. § 227.46(2).

Given under my hand at the City of Madison,
Wisconsin, this 16th day of May, 2025


Kate J. Schilling
Administrative Law Judge
Division of Hearings and Appeals