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

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

Case #: CWA - 217205

PRELIMINARY RECITALS

Pursuant to a petition filed on February 22, 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 3, 2025, by telephone. The hearing record was left open for one week following the hearing for the petitioner to be able to submit additional documentation.

The issue for determination is whether the Department, by its agent, TMG, properly disenrolled the petitioner from the IRIS program as of March 1, 2025, because she was no longer functional eligible.

There appeared at that time the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]

Respondent:

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

By: Matt Field, Tracy Vandervelde, 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 is a ■ year old resident of Milwaukee County who was receiving services in the IRIS program. Her medical history includes sickle cell anemia post bone marrow transplant, chronic pain, shortness of breath, hip arthroplasty, neuropathy, fatigue, swelling of the hands and feet, asthma, and a fractured T12 vertebra.
2. On September 23, 2024, the petitioner's (former) doctor notified the petitioner's personal care agency that he was rescinding the order authorizing the petitioner's personal care services. This was later communicated to the IRIS consultant agency, which triggered a mid-year screen with the petitioner due to a perceived change in condition.
3. On January 30, 2025, a long-term care functional screen was performed. The screener found that the petitioner no longer needed as much assistance or use of durable medical equipment to complete her activities of daily living (ADLs) and instrumental activities of daily living (IADLs). It was also documented that the petitioner had less pain, dizziness, fatigue, and shortness of breath than had been previously reported.
4. When the screener entered the information into the LTCFS computer system, it was determined that the petitioner no longer met the nursing home level of care; therefore, she no longer met the functional eligibility criteria for IRIS eligibility.
5. On February 13, 2025, the IRIS consultant agency sent a notice to the petitioner that her IRIS benefits would cease as of March 1, 2025.
6. On February 17, 2025, the income maintenance (IM) agency sent a notice to the petitioner that her IRIS benefits would stop as of March 1, 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 Department has developed a computerized functional assessment screening system. The system relies upon a face-to-face interview with a quality assurance screener. The screener asks the applicant, or a recipient at a periodic review, questions about his or her medical conditions, needs, cares, skills, activities of daily living, and utilization of professional medical providers to meet these needs. The Long Term Functional Screen data is entered into a computer program to see if the person meets any of the required levels of care. If the assessor enters information into the functional screen correctly, then it is assumed that the computer will accurately determine the level of care.

The 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.

(Emphasis added.) Wis. Admin. Code § DHS 10.33(2)(c).

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 10.13(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. This is consistent with federal Medicaid regulations which indicate that IADLs include the performance of essential household chores. See 42 C.F.R. § 441.505.

The agency representative stated at the hearing that the petitioner had had a bone marrow transplant which essentially cured her sickle cell anemia condition. Medical records confirm that the bone marrow transplant was completed on June 30, 2023. (Agency Exhibit G-16; see also Petitioner’s Exhibit 1). The agency produced medical records from the petitioner’s doctor that reflect that many of her medical diagnoses have been effectively resolved due to the bone marrow transplant. (Agency Exhibit G). Additionally, the agency representative testified that during the functional screen on January 30, 2025, the petitioner informed the screener that she was feeling better, had less pain, and no longer needed assistance with many of her ADLs and IADLs. Specifically, the screen reflects that the petitioner is independent with bathing, dressing, eating, mobility at home, toileting, and transferring. The screen also indicates that the petitioner is independent with many of her IADLs, including meal preparation, medication administration, money management, laundry/chores, use of the telephone, and transportation. The screen noted that the petitioner needed help with grocery shopping and applying a prescription cream to her

body. It was also noted that the petitioner had grab bars and a shower chair to use at home while bathing, and a raised toilet seat to be able to use the toilet; however, the petitioner no longer needed or used these items.

During the hearing, the petitioner testified that she had experienced some improvements in her medical condition following the bone marrow transplant, but that she still experiences pain, fatigue, shortness of breath, and other symptoms on an almost daily basis and that she still requires assistance with most of her ADLs and IADLs. The petitioner testified that she still used grab bars and a shower chair in the shower and that her mother (her primary caregiver) assisted her with washing the lower half of her body and her back. In regards to dressing, the petitioner testified that she needs assistance putting on a splint/leg brace on her right foot. She stated that she does not need help with mobility in the home currently as she takes breaks when she is out of breath and leans or holds on to things for stability. The petitioner utilizes supplemental oxygen (2 L per minute) when she is sleeping and/or feels shortness of breath due to movement or activity.

The petitioner testified that she can get on and off of the toilet by herself as she utilizes an adaptive raised toilet seat which makes the transferring easier. She also has grab bars near the toilet to help her balance. She requires a caregiver to administer enemas to her three times per week as part of her bowel program.

Regarding medication management, the petitioner testified that she requires help from a caregiver to set up her medications in trays and help apply creams. Alarms are then set so that the petitioner remembers to take her medications on schedule. She also requires assistance from a caregiver to assist her with grocery shopping. While at the grocery store, she testified that she typically uses a motorized cart to get around the store. The petitioner also requires assistance with laundry as the washer and dryer are located in the basement and she needs assistance carrying her laundry up and down the stairs. The petitioner confirmed that she is independent with money management. Although she had a driver's license, the petitioner testified that she does not drive and relies upon her mother and grandmother for transportation to medical appointments and the grocery store.

Although functional screeners are trained to score an ADL as "independent" if the person can complete it independently with the use of adaptive equipment or durable medical equipment, the Department of Health Services has consistently upheld the policy that the need for medical equipment is the equivalent of requiring assistance. See, most recently, case no. FCP-191012, dated 2/15/19. Hence, the petitioner's testimony that she uses grab bars and a shower chair in the shower, and grab bars and a raised toilet seat to use the bathroom is the same as requiring assistance with those tasks for purposes of functional eligibility.

The petitioner submitted a letter from her hospital social worker dated March 13, 2025, that detailed her medical conditions and explained the level of support needed by the petitioner. Also submitted as evidence was a letter from the petitioner's family medicine doctor dated April 1, 2025, that stated that the petitioner still needs assistance with her ADLs and IADLs due to her chronic pain, neuropathy, asthma, hip replacement, and sickle cell anemia post-transplant.

While I see that the agency's Exhibit G reflects that many of the petitioner's listed diagnoses have been effectively resolved, it is noteworthy that the doctor who most recently reviewed and updated that list was also the same doctor who wrote a letter in support of the petitioner's need to continue to receive assistance with her ADLs and IADLs. (Petitioner's Exhibit 2). Additionally, the screener who performed the petitioner's functional screen was not able to attend the hearing as she was out on medical leave. A supervisor from the IRIS consultant agency attended the hearing in her place, but did not know the details of the discussions that occurred on the day of the screen, and why the testimony during the hearing was markedly different from the information captured during the screen in January 2025.

It is a well-established principle that a moving party generally has the burden of proof, especially in administration proceedings. *State v. Hanson*, 295 N.W.2d 209, 98 Wis. 2d 80 (Wis. App. 1980). In a case involving a termination of IRIS, the IRIS agency bears the burden to prove that the petitioner no longer meets the eligibility criteria. Here, the agency has the burden to establish that it correctly terminated the petitioner's IRIS benefits. Based upon the record before me, I find that the Petitioner does meet the nursing home level of care. As such, the agency incorrectly disenrolled her from the IRIS program.

CONCLUSIONS OF LAW

The petitioner continues to meet the nursing home level of care because she needs assistance with at least two ADLs and at least two IADLs.

THEREFORE, it is

ORDERED

That the matter be remanded to the agency with instructions to reinstate, within 10 days of this decision, petitioner's IRIS eligibility with the finding that she meets the required nursing home level of care.

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.

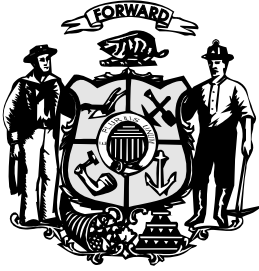
APPEAL TO COURT

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 13th day of May, 2025

\s_____
Kate J. Schilling
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 13, 2025.

Bureau of Long-Term Support

[REDACTED]