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## STATE OF WISCONSIN Division of Hearings and Appeals

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In the Matter of

[REDACTED]

### DECISION

Case #: CWA - 219315

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#### PRELIMINARY RECITALS

Pursuant to a petition filed on July 21, 2025, under Wis. Admin. Code § HA 3.03, to review a decision by the Department of Health Services regarding IRIS, a hearing was held on September 16, 2025, by telephone. The hearing was first scheduled for September 3, 2025 but rescheduled by the administrative law judge to ensure that all agents of Respondent that were likely to have knowledge relevant to the issue in dispute received notice of the hearing.

The issue for determination is whether the respondent agency properly denied Petitioner's request for a budget amendment increase sufficient to fund residential services at [REDACTED], an adult family home.

There appeared at that time the following persons:

#### PARTIES IN INTEREST:

##### Petitioner:

[REDACTED]

##### Respondent:

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

By: Alexa Butzbaugh, Progressive Community Services  
Department of Health Services  
PO Box 7851  
Madison, WI 53707-7851

#### ADMINISTRATIVE LAW JUDGE:

Teresa A. Perez  
Division of Hearings and Appeals

**FINDINGS OF FACT**

1. Petitioner is a 30-year old resident of Dane County who resides in a certified 1-2 bed adult family home operated by [REDACTED] (hereafter, “[REDACTED”)).
2. Petitioner is enrolled in Family Care. Her managed care organization is MyChoice.
3. Petitioner’s parents are her co-guardians of the person.
4. Petitioner has medical diagnoses including but not limited to: unspecified intellectual disabilities, autistic disorder, ataxic cerebral palsy, dysphagia, osteoarthritis, TMG, chronic headaches, lumbago, acquired deformities of foot, tubule-interstitial nephritis, major depressive disorder, mood affective disorder, adjustment disorder with disturbance of conduct, suicidal ideations, personality disorder, visual disturbance, impulse disorder, gender identity disorder, homicidal ideations, and otalgia.
5. Petitioner’s mental health diagnoses are severe and persistent even with medications and other treatments. She engages in behaviors that require intervention five or more times a week including self-injurious behavior, suicidal ideations and threats (e.g., threats to drink poisonous household substances), offensive behavior towards others including hitting, kicking, punching, spitting, and throwing items. She has a formal Behavior Support Plan that caregivers are to follow.
6. Petitioner does not require line of sight supervision and, per her Behavior Support Plan, may be redirected to and left alone in her bedroom for up to an hour to calm down after engaging in offensive behaviors. However, Petitioner requires at least 1:1 staffing.
7. Petitioner requires hands-on assistance with bathing, dressing, mobility, toileting, and transferring. She also requires assistance with meal preparation, medication administration and management, money management, and laundry and chores. She is unable to drive due to both her mental and physical health conditions. She is not employed but if she were to work, she would require the continuous presence of another person to assist her.
8. Petitioner requires overnight care and supervision where the caregiver is unable to get at least six hours of uninterrupted sleep.
9. Over the past ten years, Petitioner has been cared for by eight different agencies. Each of those agencies terminated care for Petitioner due to her behaviors.
10. Neither the Department nor any of its agents identified any other residential services provider willing to serve Petitioner.
11. In mid-January 2025, Petitioner was arrested in her home and charged with multiple felonies after attacking a staff member. This incident led Petitioner’s parents to ask the MCO to provide a list of alternative residential services providers that may be appropriate for Petitioner. Petitioner’s parents called those providers, some of whom were determined to be unsuitable and/or uninterested. Among the providers on the list provided by the MCO to Petitioner’s parents were [REDACTED] and [REDACTED]. Petitioner’s parents were satisfied that both [REDACTED] and [REDACTED] would be qualified to provide Petitioner services. The MCO determined that [REDACTED] was “a good fit” for Petitioner but the MCO was,

initially, unwilling to authorize the \$950 daily rate requested by [REDACTED]. The MCO determined, for unspecified reasons, that [REDACTED], which was willing to accept less than \$950 per day, was not “a good fit” for Petitioner.

12. Sometime prior to January 31, 2025, Petitioner applied to enroll into the IRIS Program. During the application process, Petitioner indicated that Progressive Community Services was the IRIS Consultant Agency that she would like to work with.
13. On January 31, 2025, the ICA received a referral from the Dane County Aging and Disability Resource Center indicating that Petitioner wished to enroll in IRIS and began to work with Petitioner and Petitioner’s guardian, while she remained enrolled in Family Care, to develop an Individual Services and Supports Plan (“ISSP”).
14. In May 2025, Petitioner moved into [REDACTED] and, effective May 5, 2025, MyChoice authorized the \$950 daily rate requested by that provider. Petitioner has resided there since then.
15. During the IRIS ISSP development process, Petitioner’s guardian informed the ICA that she wished to have Petitioner reside at [REDACTED] AFH and that the AFH provider’s daily rate for Petitioner is \$950.
16. Were Petitioner to enroll in IRIS, her monthly IRIS budget, pursuant to her most recent long term care functional screen (“LTCFS”), would be \$9,586.87 which would fund only 1.4 days per week of residential services at the requested \$950 daily rate.
17. In an effort to finalize a safe ISSP or Petitioner, PCS filed a budget amendment request with the Department of Health Services on Petitioner’s behalf to fund on-going residential services from [REDACTED]. That BA request, which was filed on May 27, 2025, indicated Petitioner would require \$21,298.40 additional IRIS funding per month to pay for the requested residential services.
18. At the Department’s direction, PCS asked [REDACTED] whether it would be willing to accept a \$900 daily rate. [REDACTED] refused.
19. By written notice dated July 11, 2025, TMG informed Petitioner that the Department denied the BA request for AFH Rate Continuation because the request is not the most cost effective way to support her outcome and because she does not need the service to support her outcome. The notice further stated, in part:

1915(c) waiver requires financial accountability to the Center for Medicaid Services under USC 42 CFR Sec. 441.302(b) and requires that services are both cost-effective and necessary to avoid institutionalization, as stated in USC 42 CFR Sec. 440.180 (b)(9). . .

. . . The state’s vision for long-term care reform includes the following goals, Cost Effectiveness – create a cost-effective long-term care system for the future. . .

The purpose of IRIS is to help participants design and implement plans for HCBS services and supports as an alternative to institutional care . . .

[IRIS policy requires that] the plan stays within the Individual Budget Amount . .

The department couldn't approve the provider's (██████████) initial daily rate of \$950.00 per day because the rate is not competitive or cost-effective and it doesn't include any double staffing. For the IRIS program, the rate must still be cost-effective. A rate of \$950 per day is not cost-effective rate. A rate based upon 24 hours per day is \$39.58 per hour. The staffing ratio is 1 staff to the member. At most, caregivers/staff are paid \$15.75-\$20.00 per hour. Based upon the Substitute Care Expense Tool (SCET): Salaries are listed at \$298,000 per year or \$816.44 per day. This means hourly rate for Salaries is \$34.02 per hour. The hourly rate for Salaries is not cost-effective.

20. Petitioner filed a request for an independent review of the BA denial and the Department upheld the denial.
21. On July 21, 2025, Petitioner filed a request for hearing with the Division of Hearings and Appeals regarding the Department's budget amendment denial.

### **DISCUSSION**

The Include, Respect, I Self-Direct (IRIS) program is a Medical Assistance long term care waiver program that serves elderly individuals and adults with physical and developmental disabilities. IRIS is an alternative to Family Care, Partnership, and PACE—all of which are managed long term care waiver programs. The IRIS program, in contrast, is designed to allow participants to direct their own care and to hire and direct their own workers. 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. See *IRIS Policy Manual* §1.1B (available at <https://www.dhs.wisconsin.gov/publications/p0/p00708.pdf>).

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*. 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>).

Consistent with the terms of the approved waiver, every IRIS participant is assigned a budget which is generated based on information obtained during a screening of the participant's long-term care functional needs. Relevant program policy provides:

The individual budget calculation for IRIS is based upon characteristics, and long-term support needs as collected on the Long-term care Functional Screen (LTC FS). A profile of the individual is developed based upon this information and that profile will be used to determine the projected cost of services and supports for that individual if he or she were enrolled in Family Care. Only services that are included in the IRIS Waiver are included in this calculation. The prospective participant will know this budget amount when deciding whether to participate in IRIS or another Long-term care Program.

*IRIS Policy Manual*, Sec. 5.3. With the assistance of an IRIS Consultant Agency (ICA), participants identify waiver allowable services that they need to meet their long term care outcomes. The cost of those services must typically fall within the budget estimate. *Id.* at 5.3A. Participants may however submit a budget amendment to the Department of Health Services with the assistance of their ICA. A budget amendment is "...a request made by the IRIS participant to increase the participant's budget to pay for an ongoing need not met within the current budget. Typical supports, services or goods requested through the BA process include additional Supportive Home Care, Respite, Daily Living Skills, Supported Employment, and other such services needed by an IRIS participant on an ongoing basis." *Id.* When the Department of Health Services denies a BA request, the participant may appeal the budget amount using the Medicaid fair hearing process. *Id.*

Residential services including 1-2 bed adult family homes, 3-4 bed adult family homes, and residential apartment complexes are all allowable IRIS services. *IRIS Service Definition Manual*, pp. 6-8. Residential services, including licensed adult family homes, are described in the *IRIS Service Definition Manual* as follows:

Residential services are a combination of individually tailored supports, services, treatment, and care provided within a community-integrated residential setting above the level of room and board. Residential services also include collaboration with health care, vocational, or day service providers. The scope of residential services may include performing personal care or supportive home care; however, such activities may not comprise the entirety of the service.

The residential service provider and participant must maintain an agreement which specifies the nature and scope of the services provided. Unless the residential setting is required to provide a service, the participants may purchase individual services from separate providers. In these cases, residential service providers must also coordinate with those external service providers. Supportive home care may only be provided by an external party when the care takes place outside of the residential setting.

All services performed by the provider are included in the residential provider's rate.

The Department's written denial of the BA request cited no law or regulation setting forth a particular method for calculating AFH rates or for analyzing the reasonableness of a requested rate. And, in reviewing the IRIS waiver application, the various IRIS policy manuals, and the *Wisconsin Medicaid Standards for Certified 1-2 Bed Adult Family Homes*, I could find no such guidance. For any service to be funded by the IRIS program however, it must be both allowable under the terms of the waiver and necessary to support an identified need. It is undisputed that adult family home services are an allowable waiver service and that Petitioner's needs require the level of service provided by AFH.

The Department's written denial referenced a Substitute Care Expense Tool to support its position that the daily fee requested by [REDACTED] is not cost-effective but did not offer that document as evidence at the hearing. The Department also asserted that Petitioner requires only 1:1 care in support of its finding that the requested daily rate is not cost-effective. At hearing, Petitioner's guardian, who is also her mother, offered credible, detailed testimony regarding Petitioner's long-standing and significant long term care needs and challenging behaviors. She further testified that Petitioner requires 2:1 cares at times when Petitioner experiences crisis and engages in violent behaviors, and whenever Petitioner goes on outings into the community. In addition, she offered a letter of support from one of Petitioner's mental health providers and logs maintained by some of her caregivers to corroborate her testimony. Neither PCS's representative nor the MCO's representative, who also appeared at the hearing, disputed the testimony

and other evidence offered regarding Petitioner's behaviors, care needs, or historical inability to retain caregivers.

Although the Department asserted that the requested daily rate is not a cost-effective means of meeting Petitioner's needs and avoiding institutionalization, the Department identified no alternative residential services provider available and willing to provide those services to Petitioner at a lower cost, or any alternative services that would meet Petitioner's needs. Petitioner's guardian testified credibly, and in detail, that she interviewed several other AFHs included on a list provided to her by the MCO prior to Petitioner moving into [REDACTED], and that she had found one provider that was willing to accept their daughter as a client at a lower rate than [REDACTED]. However, the MCO was unwilling to contract with that provider. Her testimony in that regard was not rebutted. To the contrary, the MCO's representative at hearing acknowledged that the MCO concluded that the other provider was, although willing to accept Petitioner, not a "good fit" (despite the parents' belief that the other provider was qualified), and that the MCO believed [REDACTED] was a good fit but that [REDACTED] was unwilling to accept a lower rate. Presumably, that is why the MCO has authorized residential services for Petitioner at [REDACTED] at the \$950 daily rate.

For the reasons set forth above, I find that Petitioner has established that the requested budget amendment is cost-effective.

### **CONCLUSIONS OF LAW**

The requested \$950 AFH daily rate is a cost effective and effective way to meet Petitioner's long term care needs; the respondent agency therefore did not properly deny Petitioner's request for a budget amendment to fund residential services for Petitioner at [REDACTED] Adult Family Home.

**THEREFORE, it is**

**ORDERED**

That the matter is remanded to the Department and its agents to approve the BA submitted by PCS to the Department in May 2025 which requested funding of residential services for Petitioner at [REDACTED] [REDACTED] Adult Family Home at a daily rate of \$950. The Department and/or its agents must also send written notice to Petitioner's guardians confirming that it has done so. The agency shall comply with this order within ten 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, 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.

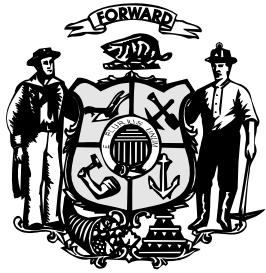
### **APPEAL TO COURT**

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 Madison,  
Wisconsin, this 9th day of October, 2025

\s \_\_\_\_\_  
Teresa A. Perez  
Administrative Law Judge  
Division of Hearings and Appeals



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The preceding decision was sent to the following parties on October 9, 2025.

Bureau of Long-Term Support

[REDACTED]  
[REDACTED]