



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

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

DECISION
Case #: CWA - 220576

PRELIMINARY RECITALS

Pursuant to a petition filed on October 22, 2025, under Wis. Admin. Code § HA 3.03, to review a decision by TMG, an IRIS Consultant Agency contracted by the Department of Health Services, regarding Medical Assistance (MA), a hearing was held on January 7, 2026, by telephone. The hearing was first scheduled for December 3, 2025 but postponed, with Petitioner's consent, because on that date, she had not yet received the exhibits that TMG had mailed to her.

The issue for determination is whether the Division of Hearings and Appeals has authority to order TMG to continue authorizing [REDACTED] to provide adult day services to Petitioner.

There appeared at that time the following persons:

PARTIES IN INTEREST:

Petitioner:

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

Respondent:

Department of Health Services
201 E. Washington Ave.
Madison, WI 53703
By: Angela Sutherland, TMG
Bureau of Long-Term Support
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 45-year old resident of Rusk County who is enrolled in the IRIS Program, which is a type of Medical Assistance home and community-based long term care waiver program.
2. Petitioner's IRIS Consultant Agency is TMG.
3. Adult day services is a type of home and community based service that the IRIS Program may authorize for program participants.
4. Petitioner has received adult day services from [REDACTED] for more than twenty years.
5. Petitioner's parents, who are also her guardians, have been happy with the services that the caregivers at [REDACTED] have provided to Petitioner.
6. Settings where individuals receive Medical Assistance-funded home and community based services are required by federal regulation to demonstrate certain qualities. This regulation is referred to as the "home and community-based services settings rule" (hereafter, "HCBS settings rule") and can be found at 42 C.F.R. § 441.301(c)(4).
7. The State of Wisconsin's Department of Health Services must ensure that home and community-based services, including adult day services, are provided in settings that comply with the HCBS settings rule.
8. TMG is required to ensure that home and community-based service providers meet the HCBS settings rule as a condition of receiving IRIS payment.
9. On October 6, 2025, the Department of Health Services issued a "HCBS Adult Day Services Settings Rule Compliance Review - Remediation Report" to [REDACTED] [REDACTED] which identified HCBS requirements that the Department had determined [REDACTED] was not meeting and provided a deadline for [REDACTED] to take steps to come into compliance. See Resp. Ex. H.
10. On October 8, 2025, the Department notified TMG that [REDACTED] was not in current compliance with HCBS requirements. See Resp. Ex. G.
11. On October 10, 2025, TMG sent a Notice of Action to Petitioner advising him that adult day services at [REDACTED] would be terminated as of October 26, 2025 but that adult day services would continue to be authorized if Petitioner identified another "vendor" (i.e., provider). See Resp. Ex. B.
12. Petitioner filed a request for fair hearing on October 22, 2025 and requested continuing benefits pending the outcome of the hearing. Continuing benefits were ordered.
13. By notice dated December 11, 2025, the Department of Health Services issued a "Notice of Non Compliance: Medicaid Waiver Home and Community-Based Services Settings Requirements" to [REDACTED] which stated that "[REDACTED]-Adult Day Services (Setting) is noncompliant with the federal home and community-based services settings rule under 42 C.F.R. §441/301(c)(4)." See Resp. Addendum, Ex. N.

DISCUSSION

The Include, Respect, I Self-Direct (IRIS) program is a Medical Assistance home and community-based long term care program that serves elderly individuals and adults with physical and developmental disabilities. The broad purpose of 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, Medicaid Eligibility Handbook* §28.1, et. seq. and 42 C.F.R. §441.300, et. seq.

To offer the IRIS program to Wisconsin residents, the Department of Health Services (“the Department”) is required to obtain ongoing approval from the Centers for Medicare and Medicaid Services (CMS), which is a federal agency. To obtain approval, the Department files an application with CMS which includes details about the IRIS program’s structure and assurances that the Department will meet certain standards, such as the requirement that settings where home and community-based services are provided have the qualities listed in 42 C.F.R. §441.301(c)(4). The IRIS Application most recently approved by 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, 2026 (“IRIS Application”)*.

The Department of Health Services contracts with private entities to work directly with IRIS Program participants. These entities, are known as IRIS Consultant Agencies, and are required to act in concert with the IRIS Application, applicable federal regulations, and various Department-issued policies (e.g., *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>).

The legal question presented by this case is whether the Division of Hearings and Appeals has the legal authority to order TMG to continue paying ██████████ to provide Petitioner with adult day services in light of the Department’s finding that ██████████ is not fully compliant with the home and community-based settings rule set forth in 42 C.F.R. §441.301(c)(4). See Finding of Fact No. 13. For the reasons set forth below, I find that the Division of Hearings and Appeals does not have that authority.

IRIS policy provides the following definition of day services:

Day Services are the provision of regularly scheduled activities in a non-residential setting, separate from the participant’s private residence or other residential living arrangement, such as assistance with acquisition, retention, or improvement in self-help, socialization, and adaptive skills that enhance social development and develop skills in performing routine daily activities and full community citizenship. Activities and environments are designed to foster the acquisition of skills, and to build positive social behavior and interpersonal competence, greater independence, and personal choice.

Day Services enable the participant to attain or maintain his or her maximum potential and shall be coordinated with any needed therapies in the ISSP, such as physical, occupational, or speech therapy. For participants with degenerative conditions, day service activities may include training and supports to maintain skills and functioning and to slow regression, rather than acquiring new skills or improving existing skills. Day Services may also be used to provide retirement activities. As some participants get older they may no longer desire to work and may need supports to assist them in meaningful retirement activities in their communities.

Day Services must be provided in a variety of settings in the community except for the participant's residence. Day Services may take place in stores, restaurants, libraries, parks, recreational facilities, community centers, or any other place in the community. Services must be provided in integrated community settings that meet HCBS requirements. Day Services must be provided in a variety of settings in the community except for the participant's residence. Day Services may take place in stores, restaurants, libraries, parks, recreational facilities, community centers, or any other place in the community. Services must be provided in integrated community settings that meet HCBS requirements. **[Emphasis added.]**

IRIS Service Definition Manual (03/24), pp. 31-32.

Petitioner's parents, who represented Petitioner in this matter, explained that Petitioner is non-verbal, medically vulnerable, and upset by change. They testified that their daughter has received high quality and stable care from [REDACTED], and that it is important for her to receive care from people who are familiar with her and the ways in which she expresses her needs. They further testified that they are very concerned that the alternative provider lacks the capacity to provide the particular types of complex care that their daughter requires and that the alternative provider does not have a physical space that will allow their daughter to receive personal cares in privacy. In short, Petitioner's parents want her to continue receiving care at [REDACTED].

The authority of the Division of Hearings and Appeals to review agency actions is inextricably linked to an IRIS participant's right to a fair hearing regarding certain agency actions. The *IRIS Policy Manual* describes the agency actions that a participant has the right to review through the fair hearing process as follows:

Participants may appeal a decision upon receipt of a [Notice of Action] for the following situations:

- Reduced, terminated, or denied requests for services;
- Denied request for payment;
- Failure to provide services or items included in a participant's support and service plan in a timely manner;
- Failure to resolve appeal or grievance in a timely manner;
- Unacceptable support and service plan because it:
 - Requires participant to live somewhere they do not choose to live;
 - Fails to provide sufficient care, treatment, or support; or
 - Requires the participant to accept care, treatment, or support that is unnecessarily restrictive or unwanted.

See *IRIS Policy Manual (10/2025), Sec. 7.1A.*

The Notice of Action issued to Petitioner specified that adult day services remain on Petitioner's Individual Supports and Services Plan. TMG's representative at hearing noted that there is another adult day service provider willing to serve Petitioner, to make changes to their physical space, and to hire someone to provide her with 1:1 care. TMG's representative also expressed awareness that this is a difficult situation and that the transition of Petitioner's day services from one provider to another will require careful planning and time.

TMG is not intending to terminate Petitioner's adult day services authorization--an action that would be reviewable by DHA. Rather, TMG will no longer pay for adult day services from a provider that the

Department has found to be out of compliance with the HCBS Settings Rule. Neither TMG's decision to terminate ██████'s authorization nor the Department's finding that ██████ is out of compliance with the HCBS Settings Rule is among the type of agency actions that the Division of Hearings and Appeals may review.

Although the Division of Hearings and Appeals does not have the authority to review TMG's action in this matter, I note that the IRIS program policy regarding day service providers (quoted in full above) specifically requires that day services "**be provided in integrated community settings that meet HCBS requirement.**" *IRIS Service Definition Manual* (03/24), pp. 31-32. Since it is undisputed that the Department found that ██████ is not in compliance with the HCBS Settings Rule, TMG's decision to no longer authorize ██████ to provide Petitioner with day services is consistent with program policy.

As stated above, Petitioner's parents have been very pleased with the care provided by ██████ and are understandably opposed to changing that care. I am sympathetic to their position and the concerns that they articulated regarding the disruption to their daughter's cares, particularly given the significant challenges that their daughter faces and the long-term relationship that she has had with some of her caregivers at ██████. Although both their daughter's considerable needs and her parents' satisfaction with ██████'s ability to meet those needs seem to have remained stable for some time now, the legal requirements that ██████ must meet to remain a provider in the IRIS Program have changed. The HCBS Settings Rule was published by the federal government (i.e., CMS) in 2014 but States were not required to comply with the new rule until recently. More information about the HCBS Settings Rule for non-residential providers and how the State of Wisconsin has implemented that rule can be found at: <https://www.dhs.wisconsin.gov/hcbs/nonresidential.htm>.

CONCLUSIONS OF LAW

The Division of Hearings and Appeals does not have the legal authority to order TMG to continue paying for ██████ to provide adult day services to Petitioner.

THEREFORE, it is

ORDERED

Petitioner's appeal 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, 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.

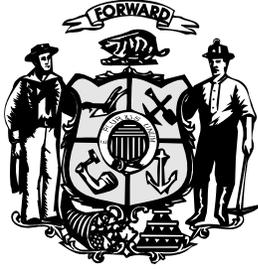
APPEAL TO COURT

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, 201 E. Washington Ave., **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 17th day of February, 2026

\s _____
Teresa A. Perez
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 February 17, 2026.

Bureau of Long-Term Support