



FH
[REDACTED]

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

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION
Case #: CWA - 180348

PRELIMINARY RECITALS

Pursuant to a petition filed on March 28, 2017, under Wis. Admin. Code § HA 3.03, to review a decision by the Division of Medicaid Services regarding Medical Assistance (MA)/IRIS program benefits, a hearing was held on May 17, 2017, by telephone. The hearing in this matter was rescheduled once at the petitioner's request from May 4, 2017. The hearing record was held open five days to allow the petitioner to submit additional materials in support of his appeal, which were received.

The issue for determination is whether the Department correctly denied the petitioner's request for home modification including a walk-in tub under the IRIS program.

There appeared at that time the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]

Petitioner's Representative:

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

Respondent:

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

By: Sue Hankes
Division of Medicaid Services
PO Box 7851
Madison, WI 53707-7851

ADMINISTRATIVE LAW JUDGE:

Kristin P. Fredrick
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a 46 year-old resident of Iron County and is a participant in the IRIS program.
2. Petitioner is diagnosed with low back radiculopathy at 3L, 4L and 5L; leg pain, foot drop, neuropathy, sleep apnea, insomnia, GERD, cardiovascular impairment of bradycardia and depressed mood and anxiety. He can only stand for up to 10 minutes, sit for up to 30 minutes and carry up to 10 pounds. Due to his physical impairments, limited mobility, decreased strength and poor balance issues, he is a fall risk, particularly when bathing and transferring in/out of the bath.
3. Petitioner requires assistance with the activities of daily living (ADLs) of bathing, dressing, mobility, toileting and transferring; and requires assistance with the instrumental activities of daily living (IADLs) of meal preparation, medication management, laundry/chores and transportation.
4. Petitioner has an Individual Support and Services Plan (ISSP) through IRIS. The stated outcomes of petitioner's ISSP include: continuing to live in his current home; to be as independent as possible; and to maintain his health through regular medical care and taking medications.
5. In 2016 the petitioner was referred for physical therapy to address range of motion (ROM) issues and to increase strength in his legs and back. At that time, water based therapy was suggested as a gentle way to accomplish increasing strength and ROM. A subsequent physical therapy evaluation in April 2016 recommended water based therapy exercises to address poor mobility. Accordingly, the petitioner participated in two sessions of aquatic physical therapy; however, he did not continue the sessions due to transportation issues.
6. On November 29, 2016 North Country Independently Living completed an accessibility assessment determine barriers and solutions for petitioner regarding accessibility issues in his home. The assessor recommended a walk-in tub with water jets based upon the petitioner's representations of needing hydrotherapy to address ongoing pain, insomnia and to reduce the probability of a recurrence of a painful skin disease. In response to email questions from TMG submitted at the hearing, however, the assessor stated that a walk-in bathtub is recommended only when there is a medically-related need identified for hydrotherapy; otherwise a walk-in shower is recommended for ambulatory individuals with physical disabilities who experience barriers or difficulty getting in/out of tubs with sidewalls and/or when adaptive equipment such a transfer bench or shower chair have been ineffective.
7. The petitioner has fallen on numerous occasions attempting to transfer in/out of his current bathtub with the use of adaptive aids including a grab bar, shower chair and a stepping stool.
8. In the fall of 2016 the petitioner began requesting assistance from IRIS representatives in obtaining bathroom modifications, including a walk-in tub. After months of obtaining multiple contractor estimates and supplying requested medical support documentation to TMG, the petitioner's One Time Expense (OTE) request for walk-in tub was submitted to DHS on or about March 7, 2017.
9. On March 23, 2017 the DHS issued a Notice of Action to petitioner advising him that is was denying his OTE request for a walk-in tub because the request was not considered a safe way to support his outcome. The Department determined that a more effective approach would be a barrier free roll-in shower.
10. Post hearing, the petitioner submitted a letter from his primary care provider at [REDACTED] stating the petitioner "will benefit from Aqua Therapy and Physical Therapy to decrease pain and increase mobility."

DISCUSSION

The IRIS program was developed pursuant to a Medical Assistance waiver obtained by the State of Wisconsin, pursuant to section 6087 of the Deficit Reduction Act of 2005 (DRA), and section 1915(j) of the Social Security Act. It is a self-directed personal care program.

The federal government has promulgated 42 C.F.R. §441.450 - .484 to provide general guidance for this program. Those regulations require that the Department's agent must assess the participant's needs and preferences (including health status) as a condition of IRIS participation. *Id.*, §441.466. The Department's agent must also develop a service plan based on the assessed needs. Further, "all of the State's applicable policies and procedures associated with service plan development must be carried out" *Id.* §441.468.

The federal rule allows IRIS to pay for items that allow the client to reduce human assistance for program-covered human assistance expenditures:

§ 441.482 Permissible purchases.

- (a) Participants, or their representatives, if applicable, may, at the State's option, use their service budgets to pay for items that increase a participant's independence or substitute (such as a microwave oven or an accessibility ramp) for human assistance, to the extent that expenditures would otherwise be made for the human assistance.
- (b) The services, supports and items that are purchased with a service budget must be linked to an assessed participant need or goal established in the service plan.

42 C.F.R. §441.482. The Department's IRIS policy document, IRIS Policy Manual, available at <https://www.dhs.wisconsin.gov/publications/p0/p00708.pdf>, declares that one-time expenditures may include cost-effective home modifications and modifications to a bathtub. *IRIS Policy Manual*, §5.8. The IRIS Policy states:

home modifications must demonstrate that the modification addresses disability related long term care needs that increase self-reliance and independence, or insure safe, accessible means of ingress/egress to a participant's living quarters, or otherwise provide safe access to rooms, facilities or equipment within the participant's living quarters, or adjacent buildings that are part of the residence.

Id., §5.8A. The participant must obtain three quotes for the cost of the home modification. *Id.* Given that home modification is a covered service, the next question is whether the petitioner requires a walk-in bathtub to meet his needs. The burden of proof for the project and its cost rests with the petitioner.

In the present matter, the petitioner submitted over three bids for the cost of the home modification. The agency informed the petitioner that it required documentation from a medical provider to support the need for a walk-in tub. The petitioner provided records from providers showing that he had a skin rash in 2015, medical records establishing his impairments and diagnosis and a referral for water based physical therapy to address mobility, strength and ROM, which he participated in two sessions. Post-hearing the petitioner submitted a letter from his primary physician that stated the petitioner would benefit from Aqua Therapy and Physical Therapy.

The Accessibility Assessment recommended a walk-in tub based upon the petitioner's representations of requiring hydrotherapy to address his insomnia, pain and skin condition. The assessor indicated that a walk-in tub is only appropriate for individuals that have been referred for hydrotherapy. Notably absent from the petitioner's submissions, however, is any referral from a medical provider for hydrotherapy (to

address insomnia, pain and/or a skin condition). Instead, the petitioner was referred for water based physical therapy exercises with a trained physical therapist to address ROM, strength and mobility issues. Moreover, the assessor indicated that if adaptive aids have not been successful for someone utilizing a standard tub, then the more appropriate alternative is a walk-in shower, which the Department then offered but the petitioner rejected. Based upon all of the evidence and testimony, there is insufficient evidence to establish that a walk-in tub is medically necessary to treat the petitioner's impairments or that a walk-in tub is necessary to meet the needs and outcomes set forth in the petitioner's ISSP. The petitioner had not met his burden in this case. Should the petitioner's condition change and/or he obtain documentation from a medical provider that supports a referral for hydrotherapy and a walk-in tub, he can always submit a new OTE.

CONCLUSIONS OF LAW

The Department correctly denied the petitioner's One Time Expense request for home modification for a walk-in tub.

THEREFORE, it is

ORDERED

The petition is hereby 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, 5005 University Avenue, Suite 201, 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.

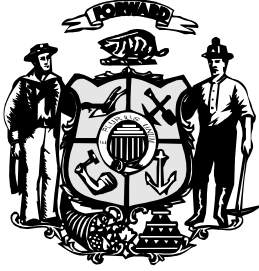
APPEAL TO COURT

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 16th day of June, 2017

\s _____
Kristin P. Fredrick
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 June 16, 2017.

Bureau of Long-Term Support

