



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]
c/o [REDACTED] & [REDACTED]
[REDACTED]
[REDACTED]

DECISION

CWK/169468

PRELIMINARY RECITALS

Pursuant to a petition filed October 18, 2015, under Wis. Admin. Code § HA 3.03(1), to review a decision by the Family Support & Resource Center in regard to Medical Assistance, a telephone hearing was held on December 22, 2015. A previously scheduled appeal on November 24, 2015, was rescheduled at petitioner's request.

The issue for determination is whether the petitioner continues to require support at the level of care needed to remain in the Children's Long-Term Support Waiver.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
c/o [REDACTED] & [REDACTED]
[REDACTED]
[REDACTED]

Petitioner's Representative:

Attorney [REDACTED]
[REDACTED]
[REDACTED]

Respondent:

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

By: [REDACTED]
Family Support & Resource Center
101 Nob Hill Rd
Suite 201
Madison, WI 53713

ADMINISTRATIVE LAW JUDGE:

Peter McCombs
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner is a resident of Dane County.

2. The petitioner’s IQ and speech are in the normal to above-average range for a child his age.
3. The petitioner is 16 year old. He is diagnosed with autism-spectrum Asperger’s.
4. The petitioner has no significant physical problems.
5. The petitioner does cause disciplinary problems at home and at school.
6. The petitioner does not exhibit psychotic symptoms, suicidality, anorexia, or bulimia.

DISCUSSION

The petitioner is diagnosed with Asperger’s autism. He has been receiving services through the Children’s Long Term Support Home and Community-based Waiver under the Wisconsin Medicaid Program (CLTS). In 2014, the respondent determined that petitioner was no longer eligible for CLTS; petitioner successfully appealed and the ineligibility determination was overturned. Petitioner’s 2015, Functional Screen again found him to be ineligible, and petitioner has again appealed.

The respondent determined that he no longer meets the level of care required to receive benefits. The petitioner counters that his behaviors have not improved since the 2014 Functional Screen, and may have actually deteriorated.

To qualify, a child must be part of one of the three waiver target groups: children with developmental disabilities, children with physical disabilities, and children with severe emotional disturbances. *Medicaid Waivers Manual*, p II-4. The petitioner has an IQ of 126, so he is not developmentally disabled, and he has no significant physical problems. This means that to qualify, he must demonstrate that he has a severe emotional disturbance.

This level of care is described in *Institutional Levels of Care, Children’s Long Term Support Program in Wisconsin* found online at http://www.dhs.wisconsin.gov/bdds/waivermanual/CLTS_LOC.pdf. It requires the petitioner to demonstrate a “long-term, severe mental health condition diagnosed by a licensed psychologist or psychiatrist.” She must also demonstrate persistent behaviors that create a danger to self or others, requiring ongoing therapeutic support in order to be able to live at home and in the community.” *Id.* p.8. The Level of Care manual goes onto state: “*The intensity and frequency of the required ongoing therapeutic support must be so substantial that without the support the child is at risk of inpatient psychiatric hospitalization.*” *Id.* (Emphasis in original)

The petitioner must meet all four of the following criteria to establish a severe emotional disturbance:

1. The child has a **Diagnosis** of a mental health condition; and
2. The child’s mental health diagnosis or symptoms related to the diagnosis have existed and are expected to persist for a specific **Duration** of time; and
3. The child is in need of **Involvement with Service Systems** related to mental health support; and
4. The child exhibits **Severe Symptomology or Dangerous Behaviors** at a specific intensity and frequency of required interventions such that without this direct, daily community-based intervention, the child is at risk for institutionalization within a psychiatric hospital.

Id. (emphasis in original)

She meets the first criterion because he has Aspergers. *Id.*, p.9. He meets the second because he has had these symptoms for over six months and they can be expected to last for at least another year. He likely meets the third criterion because he has 504 Individual Accommodation Plan through his school and he

receives regular therapy. *Id.*, p. 10-11. The question is whether he exhibits severe symptomology or dangerous behaviors.

There are four standards for meeting severe symptomology and four for meeting dangerous behaviors. Severe symptomology involves psychotic symptoms, suicidality, violence, or anorexia/bulimia. All of these standards require that the child not only exhibit the behavior but that she must require “direct, daily interventions to avoid institutionalization in a psychiatric hospital.” *Id.*, p.13. There are several categories of dangerous behaviors. They include high risk behaviors, self-injurious behaviors, aggressive and offensive behaviors, and lack of behavioral controls. *Id.*, p.14.

Petitioner’s representatives presented ample testimony regarding petitioner’s risk of running away, as well as his inappropriate self-touching and anger issues. While this is a very close decision, I conclude that the petitioner has presented just enough evidence to rebut the respondent’s ineligibility determination. Specifically, petitioner’s continued behavioral problems ranging from physical aggression toward his brother to inappropriate self-touching and lack of social boundaries, lead me to conclude that he continues to exhibit aggressive and offensive behaviors, and lack of behavioral controls. The respondent conceded in testimony at hearing that the 2015 Functional Screen did not reference petitioner’s tendency to touch his groin area. This is especially notable since it is unknown how or if including such information would have impacted the functional screen.

CONCLUSIONS OF LAW

The Department has not established that it correctly determined that the petitioner no longer is eligible for the Children’s Long Term Support Waiver because he failed to meet the required level of care.

THEREFORE, it is

ORDERED

This matter is remanded to the respondent with instructions to rescind, within 10 days following issuance of this Decision, its September 21, 2015, determination that petitioner no longer meets the level of care requirement necessary to be eligible for participation in the Children’s Long Term Support Home and Community-based Waiver under the Wisconsin Medicaid Program, and restore petitioner’s CLTS services.

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, Madison, Wisconsin 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 (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 February, 2016

\sPeter McCombs
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

Brian Hayes, Administrator
Suite 201
5005 University Avenue
Madison, WI 53705-5400

Telephone: (608) 266-3096
FAX: (608) 264-9885
email: DHAmail@wisconsin.gov
Internet: <http://dha.state.wi.us>

The preceding decision was sent to the following parties on February 22, 2016.

Family Support & Resource Center
Bureau of Long-Term Support
Attorney [REDACTED] [REDACTED]