



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

In the Matter of

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

DECISION

CWK/170599

PRELIMINARY RECITALS

Pursuant to a petition filed December 03, 2015, under Wis. Admin. Code § HA 3.03(1), to review a decision by the Bureau of Long-Term Support in regard to Medical Assistance, a hearing was held on January 27, 2016, at Port Washington, Wisconsin. The record was open for 4 days to give Petitioner's mother an opportunity to submit any additional information and to review the waiver standards.

The issue for determination is whether the available evidence demonstrates that the agency correctly denied Petitioner's application for waiver benefits by determining that he does not meet the institutional level of care eligibility criteria.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED] |
[REDACTED] |
[REDACTED] |
[REDACTED] |

Respondent:

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

By: No appearance
Bureau of Long-Term Support
1 West Wilson
Madison, WI

ADMINISTRATIVE LAW JUDGE:

David D. Fleming
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner is a resident of Ozaukee County.

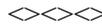
2. Petitioner’s request for Children’s Long Term Support Waiver or associated programs was denied and the family was notified by letter dated October 21, 2015. The reason for the denial was that the agency concluded that Petitioner does not meet level of care requirements.
3. Petitioner is 3 years of age ([REDACTED]). He has an autism spectrum diagnosis. He lives in the community with his family. He does attend an early education program in school. He does receive speech language therapy, occupational therapy and physical therapy in school. A January 2015 neuropsychological evaluation states that his cognitive abilities are at least average. He is noted to be very affectionate and social.

DISCUSSION

The Department of Health Services maintains a web site that links the various resources used by the Department to describe the Wisconsin’s Children’s Long-Term Support Waivers program and details the criteria used to determine eligibility:

Wisconsin’s Children’s Long-Term Support Waivers (CLTS Waivers) make Medicaid funding available to support children who are living at home or in the community and who have substantial limitations due to developmental, emotional, and/or physical disabilities. Funding may be used to support a range of different services that are identified based on an assessment of your child’s specific needs and identified goals or outcomes.

<http://www.dhs.wisconsin.gov/children/clts/waiver/family/index.htm>



All children or young adults must meet the basic requirements listed below for CLTS Waivers eligibility. To qualify for certain types of funding, there may be [additional requirements](#).

To participate in the CLTS Waivers, your child must:

- be under 22 years of age;
- be eligible for Wisconsin Medicaid, including:
 - be a United States citizen or have acceptable immigration status;
 - be a Wisconsin resident;
 - not have income in their name in excess of the current Medicaid standards;
- live at home or in a foster care setting;
- have a [level of care](#) (PDF, 134 KB) need that is typically provided in an institutional setting such as a hospital, a nursing home, or an institution for people with developmental disabilities;
- be able to receive safe and appropriate care at home and/or in the community; and
- be able to receive safe and appropriate care at home and/or in the community that does not have a cost to the Wisconsin Medicaid Program that exceeds the cost Medicaid would pay if the child were in an institution

<http://www.dhs.wisconsin.gov/children/clts/waiver/family/eligibility.htm>

Again, the purpose of the Children’s Long Term Support Programs is to provide individuals with a community alternative to institutionalization. *See Medicaid Waivers Manual Chapter I Overview and Administration Page I-1.* Among a number of eligibility criteria is the requirement that a child meet an institutional level of care. There currently are four levels of care: hospital, nursing home, psychiatric hospital, and intermediate care facility for the developmentally disabled (ICF-DD).

The DHS has developed policy, found at *Appendix A-10 to Bureau of Long-Term Support Medicaid Home & Community-Based Waivers Manual (Manual)*, which defines and describes those childhood care levels and contains the requirements needed to qualify for Child’s Long Term Support Programs. This manual was updated in 2011. The levels of care in brief are (all emphasis in the original):

- Hospital Level of Care
A child with a Hospital – Physical Disabilities (PD) Level of Care has needs that are typically met in an in-patient medical hospital setting. The child’s medical needs must be chronic,

persistent and expected to last at least six months from the date of review. The skilled care needs cannot be acute and of a short-term duration. *The frequency and complexity of the required skilled medical interventions must be so substantial that without these direct, continuous skilled medical interventions, the child is at risk of institutionalization within a long-term, in-patient medical hospital.*

- Psychiatric Hospital Level of Care

The child with a Psychiatric Hospital - Severe Emotional Disturbance (SED) Level of Care has a long-term, severe mental health condition diagnosed by a licensed psychologist or psychiatrist. In addition, this child demonstrates 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. *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.*

A child may be assigned this level of care if the child meets **ALL FOUR of the criteria listed below** for Severe Emotional Disturbance. The criteria are:

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.

- Intermediate Care Facility for Developmental Disabilities (ICF-DD or ICF-MR)

A child with an ICF/MR - Developmental Disability (DD) Level of Care has a permanent cognitive disability, substantial functional limitations and a need for active treatment. The level of care criteria is based upon the child having needs similar to people in an intermediate care facility for children with mental retardation (ICF/MR). *The intensity and frequency of required interventions to meet the child's functional limitations must be so substantial that without the intervention, the child is at risk for institutionalization within an ICF/MR.*

A child may be assigned this level of care if the child meets **ALL THREE of the criteria listed below** for Developmental Disability. The criteria are:

1. The child has a diagnosis of a **Cognitive Disability** that substantially impairs learning and that is expected to continue indefinitely; and
2. The child demonstrates **Substantial Functional Limitations** when compared to age appropriate activities that are expected to last a year or longer; and
3. The child has the **Need for Active Treatment.**
(emphasis in the original)

- The Nursing Home Level of Care

The child with a Nursing Home - Physical Disabilities (PD) Level of Care has a long-term medical or physical condition, which significantly diminishes his/her functional capacity and interferes with the ability to perform age appropriate activities of daily living at home and in the community. This child requires an extraordinary degree of daily assistance from others to meet everyday routines and special medical needs. The special medical needs warrant skilled nursing interventions that require specialized training and monitoring that is significantly beyond that which is routinely provided to children. *The intensity and frequency of required skilled nursing interventions must be so substantial that without direct, daily intervention, the child is at risk for institutionalization within a nursing home.*

.....

Taken from Appendix A-10 to Bureau of Long-Term Support Medicaid Home & Community-Based Waivers Manual

It is the developmental disability level of care that is at issue here. Eligibility analysis starts with the cognitive disability requirement. There are two prongs to that requirement. The first requires a diagnosis

of a cognitive disability and that includes autism. Petitioner meets this first element. The second element is the issue here. It requires that:

...

B. The diagnosis must have resulted in the child having **substantial learning impairments** as measured by **ONE** of the following:

1. A 30% (25% if the child is under one year of age) or greater delay in aggregate intellectual functioning, based on valid, standardized and norm referenced measures of aggregate intellectual functioning; OR
2. A score of at least 2 (1.5 if the child is under one year of age) standard deviations below the mean on valid, standardized and norm referenced measures of aggregate intellectual functioning.

...

Id., at page 3-4.

I am not able to reverse the denial of waiver benefits at this time. I can certainly understand his parent's concerns and efforts to seek help but, at this time, cannot conclude that Petitioner meets the substantial learning impairment requirement of the developmental disability level of care. For his parent's reference, I have attached a copy of the complete developmental disability level of care requirements to Petitioner's copy of this decision. (Pages 3-7 of the *Appendix A-10 to Bureau of Long-Term Support Medicaid Home & Community-Based Waivers Manual*). This certainly may be shared with any of Petitioner's caregivers and school personnel. The standards are complex and if Petitioner's caregivers are able to demonstrate that he meets the substantial learning impairment standard they may reapply at any time.

CONCLUSIONS OF LAW

That the agency correctly denied Petitioner's request for waiver benefits as the evidence does not demonstrate that he meets the relevant institutional level of care eligibility criteria.

THEREFORE, it is **ORDERED**

That this 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, 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 Milwaukee,
Wisconsin, this 21st day of March, 2016

\sDavid D. Fleming
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 March 21, 2016.

Bureau of Long-Term Support