FH
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STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[redacted]

DECISION

CWK/144924

PRELIMINARY RECITALS

Pursuant to a petition filed October 31, 2012, under Wis. Admin. Code § HA 3.03(1), to review a decision by the Milwaukee County Department of Human Services in regard to Medical Assistance, a Hearing was held via telephone on December 05, 2012.

The issue for determination is whether it was correct to discontinue petitioner's eligibility for the Children's Long-Term Support Medicaid Home and Community-Based Services Waiver ["CLTS"] program.

There appeared at that time via telephone the following persons:

PARTIES IN INTEREST:

Petitioner:

[redacted] (not present for December 5, 2012 Hearing)
[redacted]

Represented by:

[redacted], petitioner's parents
[redacted]

Respondent:

Department of Health Services
1 West Wilson Street
Madison, Wisconsin 53703
By: Nancy Dumas, Disabilities Services Coordinator
Milwaukee County Department of Human Services
1220 W. Vliet Street
1st Floor, Room 106
Milwaukee, WI 53205

ADMINISTRATIVE LAW JUDGE:
Sean P. Maloney
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [redacted] is a resident of Milwaukee County.
2. Petitioner (age 7 years) is diagnosed with Pervasive Developmental Disorder ["PDD"]; he is currently receiving autism services through Integrated Developmen t Services, Inc. ["IDS"]; he has qualitative impairments in social communications, social interactions, and behavioral regulation. Exhibit #2.
3. Petitioner struggles with some of the pragmatics of communication, intuitive social conventions, and social emotional perspective; at times he does not effectively reference and coordinate non-verbal cues; he exhibits impairment in social interactions, poor use of non-verbal behaviors and interpreting facial expressions, and challenges to appropriate peer relationships. Exhibits #1 & #2.
4. Petitioner struggles to use appropriate strategies to gain attention from others; he will touch his mother (and other adults) inappropriately (grabbing at his mother's chest, continually hugging, jumping-up in her face; his mother states that he once tried to touch his sister inappropriately in the bath); a behavior plan has been implemented and this behavior has been reduced but continues to be present; he is fearful of showers and needs assistance showering; he sometimes runs away which is a potential danger in parking lots and stores. Exhibit #2.
5. Petitioner is aggressive towards his siblings and his mother and sometimes others (hitting and kicking when frustrated); he will yell loudly and may hit his siblings or grab toys; he does not appear to be aware that he has upset his siblings. Exhibits #1 & #2.
6. Petitioner has a difficult time maintaining attention to task (especially when there are multiple people in an activity); he relies on moderate support (verbal and visual) to follow a leader's instructions and remain on topic; he relies on prompts to initiate greetings and interactions with peers; he will frequently refuse his peer's ideas and will often walk away if a peer initiates a topic of conversation he does not find interesting; he has problems with impulse control and will react quickly when upset. Exhibits #1 & #2.
7. Petitioner attends school where he receives special education services, has an aide, sees a school psychologist once per week (to whom he has not yet spoken), and has an Individualized Education Plan ["IEP"] ; he is on a toileting schedule at school because he has toileting accidents; he has made improvement in reading, reading comprehension and expressive language but still struggles with receptive language; he has a difficult time following multistep directions and directions often need to be repeated; he lacks skills to make friends and participate in groups of play; petitioner's results from an evaluation in November 2011 using the *Preschool Language Scale-4* show that he is within normal limits in communication. Exhibits #1 & #2.
8. Petitioner does not have a Cognitive Disability that substantially impairs learning; he does not have Substantial Functional Limitations when compared to age appropriate activities; he does not have a Severe Symptomology or Dangerous Behaviors; he does not require skilled

Nursing Interventions; he does not require Frequent and Complex Medical Care. Exhibits #1 & #2.

9. By a letter dated October 16, 2012 the Milwaukee County Department of Human Services ["County"] informed petitioner's parents that petitioner's CLTS would end as of October 31, 2012 because petitioner "does not meet the Level of Care requirements necessary to be eligible for the Children's Long-Term Support Home and Community-Based Services Waiver (CLTS Waiver)." Exhibit #1.

DISCUSSION

CLTS is run according to the terms of waivers that were granted to the State of Wisconsin by the United States federal government. The waivers allow the State of Wisconsin to operate CLTS without following all of the rules that normally apply to Medical Assistance ["MA"]. Wis. Stat. §§ 46.27(11) (2009-10); See also, 42 C.F.R. §§ 435.217, 440.180 & 441.300 et. seq. (2011).

CLTS is a source of funding for long-term support for those who would otherwise face institutional care. CLTS serves children and persons under the age of 22 who have a developmental disability, physical disability, and those who have a severe emotional disturbance. *Medicaid Home & Community-Based Services Waivers Manual* ["MW Manual"] § 2.02.D (January 2010). The purpose of CLTS is to provide funding for the option of community integration to people who are otherwise eligible for MA funded institutional care. MW Manual §§ 1.01, 2.01.2 & 2.07.D. (January 2010).

In order to be eligible for CLTS a person must meet a waiver eligible Level Of Care ["LOC"]. MW Manual, § 2.01.2 (January 2010). There are 4 waiver eligible LOCs.

First is the ***INTERMEDIATE CARE FACILITY ["ICF/MR"] LEVEL OF CARE.*** 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.**

MW Manual, Appendix A-10 [February 2011] (page 3).

Petitioner does not meet the ICF/MR LOC because, based on the evidence in the record of this matter, he does not have a Cognitive Disability that substantially impairs learning. He also does not have Substantial Functional Limitations when compared to age appropriate activities.

Second is the **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.

MW Manual, Appendix A-10 [February 2011] (page 8).

Petitioner does not meet the SED LOC because, among other things, he does not have a Severe Symptomology or Dangerous Behaviors at the necessary intensity and frequency.

Third is 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.*

A child may be assigned this level of care if the child meets **BOTH of the criteria listed below** for Physical Disability ["PD"]. The criteria are:
1. The child has a **Diagnosis** of a medical/physical condition resulting in needs requiring long term care services; and,

2. The child requires skilled **Nursing Interventions and/or has Substantial Functional Limitations** requiring hands on assistance from others throughout their day.

MW Manual, Appendix A-10 [February 2011] (page 22).

Petitioner does not meet the Nursing Home PD LOC because, among other things, he does not require skilled Nursing Interventions and does not have Substantial Functional Limitations.

Fourth, and finally, is the **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.*

A child may be assigned this level of care if the child meets **ALL THREE of the criteria listed below** for Physical Disability ["PD"]. The criteria are:
1. The child needs **Frequent and Complex Medical Care** that require the use of equipment to *prevent life-threatening situations*; and,
2. The child's complex skilled medical interventions are expected to persist for a specific **Duration** of time; and,
3. The child's overall health condition must require **Continuous Assessment of an Unstable And Life-Threatening Condition.**

MW Manual, Appendix A-10 [February 2011] (page 29).

Petitioner does not meet the Hospital PD LOC because, among other things, he does not require Frequent and Complex Medical Care.

Based upon the above review of the LOC criteria for CLTS, the petitioner's LOC is not at any of the institutional levels of care. Therefore, petitioner does not meet the LOC requirement of the CLTS program. The County's decision is affirmed.

CONCLUSIONS OF LAW

For the reasons discussed above, it was correct to discontinue petitioner's eligibility for CLTS.

NOW, THEREFORE, it is

ORDERED

That the petition for review herein be and the same is hereby DISMISSED.

REQUEST FOR A REHEARING

This is a final administrative decision. If you think this decision is based on a serious mistake in the facts or the law, you may request a rehearing. You may also ask for a rehearing if you have found new evidence which would change the decision. Your request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and tell why you did not have it at your first hearing. If you do not explain these things, your request will have to be denied.

To ask for a rehearing, send a written request to the Division of Hearings and Appeals, P.O. Box 7875, Madison, WI 53707-7875. Send a copy of your request to the other people named in this decision as "PARTIES IN INTEREST." Your request for a rehearing must be received no later than 20 days after the date of the decision. Late requests cannot be granted.

The process for asking for a rehearing is in Wis. Stat. § 227.49. A copy of the statutes can be found 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 served and filed with the appropriate court no more than 30 days after the date of this hearing decision (or 30 days after a denial of rehearing, if you ask for one).

For purposes of appeal to circuit court, the Respondent in this matter is the Department of Health Services. After filing the appeal with the appropriate court, it must be served on the Secretary of that Department, either personally or by certified mail. The address of the Department is: 1 West Wilson Street, Madison, Wisconsin 53703. A copy should also be sent to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400.

The appeal must also be served on the other "PARTIES IN INTEREST" named in this decision. The process for appeals to the Circuit Court is in Wis. Stat. §§ 227.52 and 227.53.

Given under my hand at the City of
Madison, Wisconsin, this 11th day of
December, 2012

\sSean P. Maloney
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 December 11, 2012.

Milwaukee County Department of Human Services
Bureau of Long-Term Support