



FH  
[REDACTED]

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

---

In the Matter of

[REDACTED]

DECISION

CWK/144596

---

**PRELIMINARY RECITALS**

Pursuant to a petition filed October 15, 2012, under Wis. Admin. Code § HA 3.03(1), to review a decision by the St. Croix County Department of Human Services in regard to Medical Assistance, a hearing was held on December 18, 2012, at New Richmond, Wisconsin.

The issue for determination is whether the Department correctly determined that the petitioner has reached the three-year limit and is ineligible for any additional intensive autism therapy through the Children's Long-Term Support Waiver.

There appeared at that time and place the following persons:

**PARTIES IN INTEREST:**

Petitioner:

[REDACTED]

Respondent:

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

By: William Murray

St. Croix County Department of Human Services  
1445 N. Fourth Street  
New Richmond, WI 54017-1063

**ADMINISTRATIVE LAW JUDGE:**

Michael D. O'Brien  
Division of Hearings and Appeals

**FINDINGS OF FACT**

1. The petitioner (CARES # [REDACTED]) is a resident of St. Croix County.
2. The petitioner is diagnosed with autism.

3. The petitioner received at least 20 hours a week of intensive applied behavioral analysis to treat her autism from Partners in Excellence for 100 weeks between July 11, 2008, and December 30, 2010. This was received at a center and was paid for by private insurance.
4. The petitioner began receiving intensive in-home autism services funded by the Children's Long-Term Support Waiver from Integrated Development Services on August 3, 2011.
5. After subtracting the 100 weeks of therapy the petitioner received from Partners in Excellence, the Department determined that she was entitled to intensive behavioral services funded by the CLTS until September 8, 2012. She contends that the 100 hours she received from Partners in Excellence should not count toward the total because she did not receive them in her home.

### DISCUSSION

The petitioner is diagnosed with autism and seeks to continue to receive intensive behavioral services funded through the Children's Long-Term Support Waiver. She began receiving those services through the Waiver on August 3, 2011. The Department contends that she became ineligible for those services on September 8, 2012, because she had reached the three-year limit for intensive services on that date. In calculating the three years, it included 100 weeks of intensive privately paid services she received in a center. She contends that only in-home services and not those received in a center should count toward the three-year limit.

Wisconsin policy for intensive autism services is found in the *MA Waivers Manual, Appendix E, Early Intensive Behavioral Intervention (EIBI) Services: SPC 512*. These services "use behavioral treatment methods to change socially important behaviors in measurable and meaningful ways in the child's daily life." They try to "build a range of important communication, social, and learning skills, as well as reduce challenging behaviors that may occur in children diagnosed with a congenital developmental disorder, such as Autism, Asperger Syndrome or Pervasive Developmental Disorder, not otherwise specified (PDD-NOS)."

This policy was updated on November 20, 2006, and March 15, 2012. The 2006 policy defined *intensive levels of service* as "20 to 35 hours of face-to-face treatment per week provided in the child's home." It goes on to state that children "may receive a maximum of three years of intensive in-home treatment," including "all services meeting this service definition that were provided prior to participation in the CLTS Waivers regardless of the payer source of this service." The 2012 revision changed the definition of *intensive levels of service* to mean a "minimum of 30 to a maximum of 40 hours of face-to-face treatment per week provided in the location most appropriate to meet the child's needs as determined by the treatment clinician." It also altered the three-year limit to include a "total of any combination of early intensive behavioral intervention (EIBI) services and consultative behavioral intervention (CBI) services" including "all services meeting this service definition that were provided prior to participation in the CLTS Waivers regardless of the payer source." Although the current definition of *intensive levels of service* refers to 30 to 40 hours of services per week, the policy indicates that the past services that are part of the three-year period include those that were for "20 to 30" hours per week.

The Department and the petitioner appear to be arguing over whether the three-year limitation in the 2006 policy pertains only to in-home therapy, as it appears to state, or can be read to apply to therapy received elsewhere, such as at a center. This argument is irrelevant because the earlier policy is not a contract between the Department and the petitioner that binds them to its terms. The Department has a right to change its eligibility rules, and, unless it creates an exemption, those rules apply immediately to all cases, including ongoing ones. For example, the Department could reduce the income limit for the medical assistance program and have that income limit apply immediately to all recipients, including those who would not normally have their matter reviewed for several months. The 2012 policy supersedes the 2006 policy, and nothing in it indicates that the earlier policy continues to apply to those who became

eligible for intensive behavioral therapy under the Waiver while it was in force. Thus, although the petitioner started receiving Waiver services in August 2011, whether she remains eligible past September 2012 is based upon the rules in effect in September 2012. The March 2012 revision in effect in September 2012 applies the three-year restriction to all intensive behavioral therapy exceeding 20 hours per week regardless of who paid for it or where it was provided. Because it is uncontested that the petitioner has received three years of intensive behavioral therapy, I must uphold the Department's decision to end Waiver funding for that therapy regardless of the setting at which the earlier therapy was provided.

**CONCLUSIONS OF LAW**

The Department correctly ended the early intensive behavioral intervention for the petitioner on September 8, 2012, because she had received three years of intensive levels of service as of that date.

**THEREFORE, it is ORDERED**

The petitioner's appeal is 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 January, 2013

---

\sMichael D. O'Brien  
Administrative Law Judge  
Division of Hearings and Appeals



**State of Wisconsin \DIVISION OF HEARINGS AND APPEALS**

David H. Schwarz  
Suite 201  
5005 University Avenue  
Madison, WI 53705-5400

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

The preceding decision was sent to the following parties on January 11, 2013.

St. Croix County Department of Human Services  
Bureau of Long-Term Support