



FH
[REDACTED]

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

In the Matter of

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

DECISION

CWK/147554

PRELIMINARY RECITALS

Pursuant to a petition filed February 22, 2013, under Wis. Admin. Code, §HA 3.03(1), to review a decision by the Manitowoc County Human Services Dept. to discontinue Children's Long Term Support (CLTS) and the Family Support Program (FSP), a hearing was held on April 4, 2013, by telephone.

The issue for determination is whether petitioner still meets a required level of care.

PARTIES IN INTEREST:

Petitioner:

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

Respondent:

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

By: Atty. Ryan O'Rourke, Lisa Reindl
Manitowoc County Human Services Dept.
3373 Dewey Street
Manitowoc, WI 54220

ADMINISTRATIVE LAW JUDGE:

Brian C. Schneider
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a 15-year-old resident of Manitowoc County. He has been eligible for the CLTS and FSP with a finding that he met the Developmental Disability (DD) level of care.
2. In December, 2012 the agency did a reassessment of petitioner's eligibility. A functional screen was done, and after the screen petitioner was found to no longer meet the eligibility requirements.

By a notice dated January 10, 2013, the agency informed petitioner that CLTS services would be ending January 21, 2011.

3. Petitioner has autism and apraxia. He requires support in school and has a problem with “stimming” (pacing, hissing, finger clicking) when left on his own. Recent testing shows him to have a full-scale IQ of 83, and he is in the age appropriate grade. He is substantially impaired in speaking, but no longer considered substantially impaired in receptive language skills.
4. Petitioner is able to do activities of daily living but requires reminders.

DISCUSSION

The CLTS program started on January 1, 2004 after the federal Department of Health and Human Services informed the state department that federal MA funding would no longer be available for in-home autism services. The department drafted and released the Interim Medicaid Home and Community-Based Waivers Manual (“the Manual”) that became effective with the start of the CLTS program. The Manual also covers the Community Integration 1A and 1B programs and the Traumatic Brain Injury Waiver program. It can be found on the internet at <http://www.dhs.wisconsin.gov/bdds/waivermanual/index.htm>.

The Manual provides that an individual must meet several eligibility criteria for these programs, one of which is level of care. Manual, §2.07D. In addition, the child must be part of a waiver target group. Those groups include children with developmental disabilities, those with physical disabilities, and those with severe emotional disturbance. Manual, §2.02.

The level of care criteria are found in the Manual’s Appendix A-10, dated February, 2011. I will not discuss the hospital or nursing home levels because they involve physical disabilities. Petitioner’s impairments are mental and emotional.

To meet the psychiatric hospital (SED) level of care, the child must have an emotional disturbance that has persisted at least six months and is expected to persist for at least one year; it must be diagnosed by a certified psychiatrist or psychologist using the DSM-IV classifications; there must be severe psychiatric symptoms or dangerous behaviors as described in one of seven standards; and the child must be receiving services from at least two service systems including the juvenile system, child protective services, special education relating to emotional needs, substance abuse services, or the mental health system (or from one of the systems but for at least three hours per week). *Id.*, p. 8. The child must be at risk of psychiatric hospitalization without appropriate home/community interventions. Petitioner is not at the SED level of care, and indeed, was not at that level prior to the negative action in this case. I include the description for illumination.

Petitioner was eligible for CLTS under the DD level of care, and that is the one I will focus on. To meet the DD level of care, the child must have a diagnosis of mental retardation or a closely related condition that results in impairment of intellectual functioning or adaptive behavior similar to that of mentally retarded persons. App. A-10, page 3. In addition, the impairment must be manifested before age 22, likely to continue indefinitely, and result in a substantial limitation in at least one of the following three areas: communication, social competency, or activities of daily living. *Id.*, p. 5. Finally, the child must need active treatment.

To meet the cognitive impairment standard the child must not only have a diagnosis of cognitive disability but also have a substantial learning impairment that is a 30% delay in intellectual functioning as shown by standardized scores or score of at least two standard deviations below the mean on valid measures of intellectual functioning. In the past petitioner did not have standardized scores of his cognitive abilities.

However, petitioner has had an IQ test since his prior assessment. His 83 IQ puts him out of the mental retardation range.

Even beyond the requirement of cognitive disability, the child must have a substantial limitation in communication, social competency, or ADLs. In communication the child must have the same 30% delay or score of two deviations below the norm on testing. For social competency a child between 14-17 years old can meet the standard if he is not confident in social situations, does not assert autonomy from parents, or repeatedly gets into situations that could lead to trouble. For ADLs the child must require direct, daily hands on assistance beyond the level of similarly aged peers. A 15-year-old would require hands on assistance with ADLs.

The final requirement is that the child requires active treatment defined in the Manual as follows at Appendix A-10, page 7:

To meet this criterion a child must require a continuous active treatment program that includes aggressive, consistent implementation of training, therapies, health and related services designed to address the child's substantial functional limitations resulting from her/his cognitive deficits to achieve:

- The acquisition of the skills and behaviors necessary for the child to function with as much self determination and independence as possible; and
- The prevention of deceleration, regression, or loss of optimal functional status.

For treatment to be categorized as active it must be needed on a continuous and pervasive basis throughout the child's daily routines in home, school and community. Active treatment does not include services to maintain generally independent clients who are able to function with little supervision or in the absence of a continuous active treatment program.

After reviewing the functional screen and hearing the evidence, I find that the petitioner no longer meets the level of care requirement. The primary reason is that he does not have the cognitive deficit required for eligibility. The main issue during the hearing is whether petitioner could earn the IQ score if he did not have someone present keeping him focused on the task of completing the test. It is argued that the failure to acknowledge petitioner's need for assistance in taking the test makes the score unreliable.

The problem with the argument is that the test is the means to evaluate cognitive functioning. There is nothing in the evidence showing that scores are invalid or unreliable if the child needs prompts to remain focused or assistance in taking the test. I have to accept the test results because there is nothing in the Department policy or in the evidence to back up the argument that the scores are invalid because the child needs help in keeping at the task. I would think that the need for such assistance would be built into the test scores. I do not know that to be the case, but without something telling me otherwise I cannot ignore the test results. Petitioner's argument gives one pause, but merely raising the possibility that the scores are invalid does not prove that they are invalid.

While I discussed the CLTS program above, the FSP has the same level of care criteria. See Wis. Stat., 36.985(5)(a), which provides that eligibility exists for a family to keep a disabled child out of an institution. Thus the denial for FSP is affirmed as well.

CONCLUSIONS OF LAW

Petitioner no longer meets the institutional level of care required for CLTS and FSP eligibility.

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 9th day of April, 2013

\sBrian C. Schneider
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 April 9, 2013.

Bureau of Long-Term Support