



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

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In the Matter of

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

DECISION

CWK/148585

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**PRELIMINARY RECITALS**

Pursuant to a petition filed April 05, 2013, under Wis. Admin. Code § HA 3.03(1), to review a decision by the Rock County Department of Social Services in regard to Medical Assistance, a hearing was held on May 20, 2013, at Janesville, Wisconsin.

The issue for determination is whether petitioner meets the level of care requirements for Children’s Long Term Supports (CLTS) Medicaid Waivers program eligibility.

There appeared at that time and place the following persons:

**PARTIES IN INTEREST:**

Petitioner:

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

Respondent:

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

By: Angela Bouton  
Rock County Department of Social Services  
1900 Center Avenue  
PO Box 1649  
Janesville, WI 53546

**ADMINISTRATIVE LAW JUDGE:**

Peter McCombs (telephonically)  
Division of Hearings and Appeals

**FINDINGS OF FACT**

1. Petitioner (CARES # [REDACTED]) is a 14 year old resident of Rock County.

2. Petitioner is diagnosed with Asperger's Syndrome, Anxiety NOS, ADHD and seizure disorder. He has substantial limitations in social functioning and exhibits verbal and physical aggression. He has been previously determined eligible for CLTS. Exhibit 1.
3. Petitioner is primarily independent in activities of self-care. Exhibit 1.
4. Petitioner continues to need accommodations and supports in school, but with those accommodations and supports he is going well overall. Exhibit 1.
5. The county agency conducted an annual review of petitioner's eligibility in March, 2013. Based upon the findings in the functional screen, petitioner was found to no longer meet the level of care. The county informed petitioner of the negative action in notice dated March 26, 2013.

### **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.

Petitioner is not physically disabled or developmentally disabled. He was eligible under the psychiatric hospital (SED) criteria.

The level of care criteria are found in the Manual's Appendix A-10. To meet the level of care under the 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 specific psychiatric symptoms or significant functional impairments in two of the following; self-care, community involvement, social relationships, family relationships, and school/work; and the child must be receiving services from service systems such as the juvenile system, child protective services, special education relating to emotional needs, or the mental health system. *Id.*, p. 8. The child must be at risk of psychiatric hospitalization without appropriate home/community interventions.

I will not discuss the diagnoses or durational requirement because petitioner meets both of them.

The child must receive or require services from at least two of a number of listed service systems (one system if the intensity is expected to be three hours or more per week). The listed services are mental health services, child protective services, criminal justice system, substance abuse services, or formal service plan for in-school supports. Petitioner receives mental health and in-school support services.

The fourth criterion is that the child must have severe symptomology or substantial impairments in behavior or functioning.

Under the current criteria the severe symptom criterion includes several standards in descending order. The first standard is that the child will be found to have severe symptoms if he has one of four symptoms either currently, within the past three months, or twice within the past year: psychosis, suicidality, violence, or anorexia/bulimia. With regard to suicidality the child must have attempted suicide within the past three

months or had significant suicidal ideation within the past 30 days such that he required direct, daily interventions to avoid hospitalization. Petitioner does not have any of those symptoms.

The next standard under the severe symptom criterion is that the child have frequent and intense problems in two of the following four behaviors: (1) High-risk behaviors such as running away, substance abuse, dangerous sexual contact, use of inhalants, (2) self-injurious behaviors such as head banging against hard surfaces, cutting/burning oneself, biting oneself severely, tearing at or out body parts, inserting harmful objects into body orifices, (3) aggressive/offensive behavior toward others such as verbal abuse, hitting/biting/kicking, masturbating in public, urinating on another or smearing feces, serious threats of violence, sexually inappropriate behavior, animal abuse, (4) lack of behavioral controls such as destruction of property, stealing/burglary, obsessions interfering with daily life.

Such behaviors must occur frequently. For example, one instance of running away does not meet the criterion; attempted runaways must occur once per week and require professional intervention when they occur. Head banging and aggression must occur four times per week and require professional intervention. The record does not demonstrate that petitioner meets any of those behaviors at the required intensity.

The third standard is that the child has one of the four behaviors in the second standard, plus a significant deficit in social skills or school/work issues. Deficits in social skills include not making eye contact, absence/dramatic reduction of social interactions, inability to interpret others' non-verbal cues, not having similar aged friends (i.e. friends are either much older or much younger), excessive familiarity with strangers. School/work issues include failing grades, repeated truancy, and/or inability to conform to the school or work schedule, or the need for in-school supports for emotional/behavioral problems at least one-third of the time.

Again, petitioner does not meet the requirement of one dangerous behavior and it is not substantiated in the record that he meets the standards for social skills or school issues.

The final standard requires the child to meet one dangerous behavior or one deficit in social or school/work skills, plus have a "rare and extreme circumstance" such as daily extreme disruptive behaviors, severe nightmares or night terrors four times per week, or being unable to complete routine events daily due to an obsession. Again, petitioner's current mental/emotional problems are not at those levels.

I conclude that petitioner does not meet the SED level of care. The simple fact is that, through a probable combination of successful professional intervention and personal growth, petitioner's condition has improved beyond the severity of the levels described above. The agency thus correctly sought to close CLTS eligibility. The petitioner's mother testified that she is concerned that petitioner's behaviors will worsen next year, as he enters high school and does not have the benefit of a 1-on-1 teacher. Unfortunately, the respondent is required to work with the information that it has available, without trying to predict how petitioner's behavior will evolve. The respondent has presented a very well-documented basis for its determination that petitioner no longer meets the SED level of care, including pertinent school and medical records. While I certainly empathize with petitioner's situation, I cannot find any error in the determination made by the respondent.

### **CONCLUSIONS OF LAW**

Petitioner no longer meets the CLTS functional eligibility criteria, and thus the proposed discontinuance of the program was correct.

**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 1st day of July, 2013

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\sPeter McCombs  
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 July 1, 2013.

Rock County Department of Social Services  
Bureau of Long-Term Support