



FH

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

In the Matter of

██████████ ██████████
c/o ██████████ and ██████████ ██████████
██████████ ██████████
██████████ ██████████

DECISION

CWK/148965

PRELIMINARY RECITALS

Pursuant to a petition filed April 25, 2013, under Wis. Admin. Code § HA 3.03(1), to review a decision by the Family Support & Resource Center in regard to Medical Assistance (MA) - based Children's Long-Term Support Waiver (CLTS) eligibility, a hearing was held on June 4, 2013, by telephone.

The issue for determination is whether the agency correctly discontinued the petitioner's CLTS eligibility. Specifically, the question is whether or not the petitioner meets the program's institutional "level of care" requirement.

There appeared at that time the following persons:

PARTIES IN INTEREST:

Petitioner:

██████████ ██████████
By: ██████████ and ██████████ ██████████, parents
██████████ ██████████
██████████ ██████████

Respondent:

Department of Health Services
1 West Wilson Street
██████████, Wisconsin 53703
By written submission of Angela Radloff
Community Program Spec.
Family Support & Resource Center
101 Nob Hill Rd
Suite 201
██████████, WI 53713

ADMINISTRATIVE LAW JUDGE:

Nancy J. Gagnon
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner is a resident of Dane County.
2. The petitioner was eligible for the CLTS Waiver program prior to March 2013. His case underwent a required periodic review in February 2013. On February 11, 2013, the Department advised the petitioner that his CLTS eligibility would be discontinued effective March 11, 2013. The petitioner timely appealed. The agency's basis for discontinuance is that the petitioner does not satisfy the level of care eligibility criterion for the program. In making its determination, the agency assigned scores to the petitioner's functional deficits and had the Wisconsin Department of Health Services run those scores through a computerized care level "screen." The result of that computerized determination was the decision by DHS that the recipient does not have care needs at an institutional level.
3. The petitioner, age 14, has been diagnosed with Asperger's Disorder; this diagnosis will not change within the next year. He also suffers from behavioral problems and encopresis. Asperger's Disorder/Syndrome is a pervasive **developmental disorder** on the autism disorder spectrum that is characterized by an inability to understand how to interact socially. Typical features of the syndrome also may include clumsy and uncoordinated motor movements, social impairment with extreme egocentricity, limited interests and unusual preoccupations, repetitive routines or rituals, speech and language peculiarities, and non-verbal communication problems.
4. *SED-related facts:* The petitioner has a diagnosis of a mental health disorder listed in the *DSM-IV-R*. He currently requires mental health services and in-school supports for emotional and/or behavioral problems. The petitioner is currently suicidal, and engaging in acts that endanger the lives of others. He has not required inpatient psychiatric hospitalization in the past year.
6. The petitioner does not meet the Hospital level of care because he does not have a severe life-threatening condition requiring daily active interventions to sustain life.
7. The petitioner does not meet the Nursing Home level of care because his general physical health is satisfactory, and he is not at "high risk for sudden changes in medical status." The petitioner does not currently receive IV feedings, ostomy-related cares, G-tube feedings, aspiration, dialysis, catheter use, application of dressings, treatment of decubitus ulcers or other wounds, prescribed heat treatments, or administration of medical gases.
8. The petitioner has at least average cognitive ability. Although he was performing adequately in the fall of 2012, his school performance has cratered. He was asked to leave the [REDACTED] School in 2013. He returned to the [REDACTED] School District, where he had a string of behavioral issues in the spring of 2013. His spring semester grades were as follows: Art – F, English – F, Consumer Science-F, Study Skills – C, Core – F, Music – B, Phys Ed – C, Science – F, Social Studies – F, and Tech Ed – C+.
9. The petitioner is able to sit, stand, walk, and transfer independently. He is physically capable of independence in eating, dressing, toileting, bathing and grooming. However, he currently will not eat unless food is placed in front of him. He will not make clothing selections, preferring to wander the house in his underwear and wrapped in a blanket. He currently resists brushing his teeth and showering. The child has trouble sleeping, and uses an entire roll of toilet paper for wiping after a single bowel movement.

DISCUSSION

I. INTRODUCTION

The CLTS program started on January 1, 2004, after the federal Department of Health and Human Services informed Wisconsin that federal MA funding would no longer be available for in-home autism services. The Wisconsin Department of Health and Family Services (now the Department of Health Services) released the *Medicaid Home and Community-Based Services Waivers Manual (Manual)* to assist in administering the CLTS program. The *Manual* also covers the Community Integration 1A and 1B programs, and the Brain Injury Waiver program. It can be found on the internet at <http://dhfs.wisconsin.gov/bdds/waivermanual/index.htm>.

The *Manual* requires a person to meet several eligibility criteria for the CLTS program, including disability and meeting an institutional level of care. *Manual*, §2.01 – 2.02 (2010). The disability determination is made for the agency by the Wisconsin Disability Determination Bureau. If the child clears this hurdle, the second step is to determine whether the child requires a level of care that is typically provided in a hospital, nursing home, or ICF-MR. See 42 C.F.R. §435.225(b)(1).

The level of care criteria are found in the *Manual* at Appendix A-10 (cross-referenced from *Manual* §2.07D), which defines and describes childhood care levels. There is no dispute that the petitioner does not satisfy the Hospital or Nursing Home care levels described in the *Manual*. *Id.* A child whose psychological problems rise to the level of needing inpatient psychiatric hospital care, can qualify for the SED level. The ICF/DD care level is for individuals who suffer from mental retardation or a developmental disability.

II. SED ANALYSIS.

The SED level applies to a child with the following:

1. A diagnosis of a recognized mental illness,
2. The diagnosis/symptoms have been present for 6 months and the are expected to persist for at least one year,
3. The child requires services from at least two of five enumerated service systems, *and*
4. The child exhibits severe symptomology or dangerous behaviors of sufficient intensity that, without daily community-based intervention, s/he would be at risk for institutionalization in a psychiatric hospital.

There is agreement that the petitioner has diagnoses of a mental illness that has been present for at least six months, and is expected to be present for at least another year. There is also agreement that the child requires services from at least two of the named service systems.

The Department seeks benefit discontinuance here because it believes that this child no longer exhibits sufficiently severe symptomology to be at risk of psychiatric institutionalization if daily intervention is not provided. The program's treatment professionals have developed a policy list of what constitutes symptoms that would lead to institutionalization. They include psychosis, suicidality, engaging in acts that endanger the lives of others, anorexia/bulimia, and specified "dangerous behaviors."

The petitioner's condition has taken a nosedive since his review assessment in February 2013. This is at least in part attributable to reduction in his behavioral therapy. Specifically, he displays severe symptomology in the form of verbalizing a desire to commit suicide several times weekly. He seized the household's largest kitchen knife and went into another room, threatening to kill himself. He has taken matches and lighters into a room in his home, locked the door, and attempted to set fires. The child has "meltdowns" of increasing intensity, in which he breaks household appliances with a hammer, has intentionally broken glass objects, and cuts countertops with a knife. These in-home behaviors were documented by a letter from an eyewitness, who happens to be a psychologist.

CONCLUSIONS OF LAW

1. The petitioner currently has care needs that are at an institutional level of care (SED).
2. The Department incorrectly discontinued the petitioner's CLTS Waiver eligibility for failure to satisfy the institutional level of care requirements.

THEREFORE, it is

ORDERED

That the petition herein be remanded to the county agency with instructions to continue to process the petitioner's CLTS Waiver renewal application in accord with the Conclusions above.

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 July, 2013

\sNancy J. Gagnon
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

Wayne J. Wiedenhoef, Acting Administrator
Suite 201
5005 University Avenue
██████████, WI 53705-5400

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

The preceding decision was sent to the following parties on July 9, 2013.

██████████ Family Support & Resource Center
Bureau of Long-Term Support