



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

In the Matter of

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

DECISION

CWA/149074

PRELIMINARY RECITALS

Pursuant to a petition filed April 25, 2013, under Wis. Admin. Code, §HA 3.03, to review a decision by the Lutheran Social Services to deny eligibility for the Children's Long Term Support Program (CLTS), a hearing was held on June 13, 2013, by telephone. The record was held open for seven days for petitioner to provide additional documentation.

The issue for determination is whether petitioner meets an institutional level of care for CLTS eligibility.

PARTIES IN INTEREST:

Petitioner:

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

Respondent:

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

By: Written submission of Rachel Keller
Lutheran Social Services of Wisconsin & Upper Mich.
3003 N. Richmond St.
Appleton, WI 53217

ADMINISTRATIVE LAW JUDGE:

Brian C. Schneider
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner is a 7-year-old resident of Outagamie County.
2. Petitioner's parents applied for CLTS on December 2, 2012. Eventually by a letter dated April 2, 2013 the agency denied the application after finding that petitioner does not meet the required institutional level of care.

3. Petitioner has autism and attention deficit hyperactivity disorder (ADHD). He takes Adderall for the ADHD. He has a full scale IQ score of 96 and is at school in his age appropriate grade. He exhibits a variety of aggressive behaviors including yelling, screaming, hitting, punching, biting, scratching, kicking, spitting, throwing items, and eloping. The behaviors occur daily except for spitting and eloping. He does not have symptoms of anorexia/bulimia, psychosis, or suicidality.
4. Petitioner receives assistance from mental health professionals and from in-school supports specifically addressing his behaviors.
5. In school if petitioner chooses to not do an activity he first will refuse, then argue, then throw things and otherwise disturb other students. School staff will respond by removing him from situation until he calms down. He has threatened to kill others, burn them, or “bring a bomb” to school although he has never actually followed through (or likely could follow through at his age). He has been observed to bite himself or hit his head against the wall but never with any serious injury. He shows similar behavior at home.

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 developmental disabilities (DD) level 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. Petitioner has a full-scale IQ of 96. His intellectual functioning thus is not similar to mental retardation.

Petitioner’s assessment focused on the psychiatric hospital (SED) level of care. To meet that level, 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 four 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 meets the first two criteria and the fourth one. He has an emotional disturbance diagnoses using DSM-IV classifications, and he receives services from at least two service systems. The third criterion, that the child must have severe symptomology or substantial impairments in behavior or functioning, appears to be the one the led to the denial.

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. Violence is defined as acts that endanger another person's life, and that cause the victim to require inpatient admission to a hospital. Additional definitions include the use of a weapon against another person (e.g., gun, knife, chains, or baseball bat), acts of arson (purposeful fire setting) or bomb threats. The child must have committed violence at least once in the past three months or at least twice in the past year, and because of the commission of violence, the child must require direct, daily interventions to avoid institutionalization in a psychiatric hospital. *Id.*, p. 13. Petitioner does not have any of those symptoms; although he will exhibit aggressive behavior it never rises to the level defined as "violent."

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 at least four times per week and require professional intervention whenever they occur. I do not believe 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.

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.

Petitioner mother testified that recently his behavior became so out of control that the school called the police. However, petitioner calmed down before police arrived when he was told that his mother was on her way.

Petitioner obviously is a handful and likely would benefit from CLTS services. However, I must agree with the conclusion that he is not at the institutional level of care requires to be eligible. Perhaps it is due to his age, but his aggressive behaviors do not reach the levels described in the standards. When he acts out he always calms down when redirected, and he can be handled by school staff and his family. Thus he would be unlikely to be institutionalized if not for his current support system.

CONCLUSIONS OF LAW

Petitioner does not meet a level of care required for CLTS 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 2nd day of July, 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 July 2, 2013.

Lutheran Social Services of Wisconsin & Upper Michigan
Bureau of Long-Term Support