



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[Redacted case name]

DECISION

FSP/149453

PRELIMINARY RECITALS

Pursuant to a petition filed May 17, 2013, under Wis. Stat. § 46.985(6)(h), and Wis. Admin. Code § DHS 65.08, to review a decision by the Clark County Department of Social Services in regard to Medical Assistance, a hearing was held on June 10, 2013, at Neillsville, Wisconsin.

The issue for determination is whether the Department or its county agent terminated petitioner from the family support program ("FSP") without proper notice, or otherwise erred in its placement of petitioner on the FSP waitlist.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[Redacted petitioner name]

Petitioner's Representative:

Attorney Mitchell Hagopian
131 W Wilson St St 700
Madison, WI 53703-3263

Respondent:

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

By: Jacob C. Brunette, Clark Co. Corp. Counsel
Clark County Department of Social Services
Courthouse
517 Court Street, Rm. 502
Neillsville, WI 54456-0190

ADMINISTRATIVE LAW JUDGE:

John P. Tedesco
Division of Hearings and Appeals

FINDINGS OF FACT

- 1. Petitioner (CARES # [Redacted]) is a resident of Clark County.
2. [Redacted] is a child with a diagnosis of Lissencephaly which gives rise to global developmental delays which include motor and vision delays.

3. Petitioner applied for services from Clark County in August 2012.
4. Petitioner was found functionally eligible for the Children's Long-term Support ("CLTS") waiver and the Family Support Program ("FSP").
5. Petitioner was not placed on the CLTS waiver.
6. Clark County arranged for petitioner to receive services under the FSP.
7. Petitioner received services under an initial plan until December 2012.
8. A subsequent plan was then implemented which provided services until March 31, 2013.
9. Petitioner's services under the FSP ended on April 1, 2013.
10. The agency did not provide any written notice to petitioner prior to April 1, 2013 to inform him that the music therapy would end on April 1, 2013.
11. Petitioner was then placed on a waiting list for future FSP services.

DISCUSSION

The facts in this case are largely undisputed and are stated in the parties' briefs.

The Family Support Program provides individual services and supports to families that include a child with severe disabilities. It is administered by the Wisconsin Department of Health Services, pursuant to Wis. Stat. § 46.985. More detail is found in the relevant rule, Wis. Admin. Code ch. DHS 65.

Significantly, Wis. Admin. Code § DHS 65.05 & 65.08 provide the notice and appeal rights for a member under this program that attach "[w]hen an administering agency denies or reduces services to a family, or terminates a service plan participation agreement":

(11) DENYING, REDUCING OR TERMINATING SERVICES. When an administering agency denies or reduces services to a family, or terminates a service plan participation agreement, the administering agency shall:

(a) Notify the family in writing of the reasons for the service denial or reduction or termination of the service plan participation agreement; and

(b) Give the family a copy of the grievance procedures established under s. [51.61 \(5\)](#), Stats., and ch. [DHS 94](#) and written notice of the family's right to a departmental hearing under s. [227.42](#), Stats., and s. [DHS 65.08](#).

Wis. Admin Code § DHS 65.05(11); and:

DHS 65.08 Departmental hearings.

(1) Regardless of whether a family elects to file a grievance in accordance with the grievance procedures established under s. [51.61 \(5\)](#), Stats., and ch. [DHS 94](#), a family may request a departmental hearing under s. [227.42](#), Stats., to appeal an administering agency's denial of an application or termination of a service plan participation agreement.

(2) A request for a departmental hearing shall be submitted in writing to the department of administration's division of hearings and appeals and shall:

(a) Be received by the division of hearings and appeals within 90 days of the date of the application denial or termination of the service plan participation agreement notice required under s. [DHS 65.05 \(11\) \(a\)](#); and

(b) Include a copy of the notice and a statement giving the reasons and any relevant facts supporting the family's position that services were unfairly denied or terminated.

Note: A request for a hearing should be mailed to: Division of Hearings and Appeals, Post Office Box 7875, Madison, Wisconsin 53707.

Wis. Admin Code § DHS 65.08.

In this case, petitioner was receiving services for a portion of 2012 under one service plan. Petitioner was then receiving services from January 1, 2013 to March 31, 2013 under a subsequently implemented service plan. Services ended on April 1, 2013 and petitioner was then placed on a wait-list status with the possibility of future services.

The agency first argues that there was no termination from the FSP and thus no right to appeal (see Respondent's Reply Brief, ex. #8). The agency argues that petitioner "was never terminated denied or deemed ineligible from FSP...Clark County did not close [petitioner's] case." But, this argument ignores the plain language of the Code provision which provides for appeal right in the case of denial or *reduction of services or termination of a service plan*. The agency appears to take the position that appeal rights only attach with a fundamental loss of eligibility or termination of an existing member's enrollment from the FSP. The language relating to a specific service plan or reduction in services makes it obvious that the appeal rights are much broader.

In this case, the service plan terminated as of April 1, 2013. It may indeed have terminated by operation of its specific terms relating to duration of the plan. But, it still terminated. Nothing in the Code suggests that only premature termination by the agency gives rise to appeal rights. Furthermore, it is also simple fact that when petitioner progressed from a person receiving services on March 31 to a person no longer receiving services on April 1 he was a person who had his services reduced. For both of these reasons, petitioner was entitled to written appeal rights and notice of the reasons for the action relating to the termination and reduction.

The agency makes the alternative argument that appeal rights were properly given to petitioner. The agency argues that a September 24, 2012 e-mail from the agency representative (Katie Johnson) was sufficient (see ex. #8). This e-mail was wholly insufficient. First, it was not communicated to petitioner until six months after the change in FSP services. The communication did not provide any information relating to a right under Chapter 227 or that a hearing before the Division of Hearings and Appeals was an option. It appears as though this communication related to the CLTS waiver program and not the FSP.

I fully recognize that the termination of the services in this case gives rise to the broader questions about Clark County's operation of the wait list for the FSP. I do not need to reach that issue in order to resolve the instant case of petitioner. In this case, the parties agreed to go forward with this FSP issue without additional testimony. I believe that I would need further information relating to the County's development of this wait list, its implementation and facilitation of this wait list, and, possibly, testimony from the Department relating to the intent of the 2008 numbered memo relating to implementation of FSP wait lists. But, as I am deciding this case based on the failure to provide appeal rights and notice to petitioner, and as I am ordering the proper rights to appeal any future reduction in services, petitioner may raise the waitlist issue in a future proceeding if it is ripe and relevant at that time.

CONCLUSIONS OF LAW

The agency failed to provide the written appeal rights required under Wis. Admin. Code § 65.05(11) and therefore erred in terminating or reducing services effective April 1, 2013 under the FSP without such notice.

THEREFORE, it is

ORDERED

That the matter is remanded to the county agency with the following directions:

1. to reinstate the service plan and all benefits that were in effect on March 31, 2013. This action must be completed within 10 days; and,

2. It is further ordered that should the agency deem it appropriate to again terminate or reduce services to petitioner, it must provide proper notice of the reasons for the action and the appeal rights as more fully set forth in Wis. Admin. Code ch. 65.

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 18th day of October, 2013

\sJohn P. Tedesco
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 October 18, 2013.

Clark County Department of Social Services
Bureau of Long-Term Support
mitchh@drwi.org