



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

In the Matter of

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

DECISION

CWK/150176

PRELIMINARY RECITALS

Pursuant to a petition filed June 19, 2013, under Wis. Admin. Code § HA 3.03(1), to review a decision by the Lincoln County Department of Social Services in regard to Medical Assistance, a hearing was held on August 13, 2013, at Merrill, Wisconsin.

The issue for determination is whether the Department erred in determining that petitioner does not meet any of the CLTS Waiver levels of care.

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: Janelle Hintz

Lincoln County Department of Social Services
607 North Sales Street
Suite 201
Merrill, WI 54452

ADMINISTRATIVE LAW JUDGE:

Peter McCombs (telephonically)
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Lincoln County.
2. Petitioner is 6 years old. He has an autism spectrum disorder diagnosis.

3. As part of the annual re-certification process, the respondent completed the CLTS functional screen and determined that petitioner did not meet the level of care for services under the waiver.
4. On June 4, 2013, the respondent sent a letter to petitioner informing him that he was denied on-going eligibility for the CLTS waiver program as he no longer met any of the applicable levels of care (LOC).

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 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. The level of care criteria are found in the *Manual's* Appendix A-10. The nursing home level of care, the hospital level of care, and the severe emotional disturbance level of care are not applicable here and will not be discussed. The remaining LOC, intermediate care facility/ developmental disability (ICF/DD) level of care, is the only real possibility under the facts in the record before me.

II. ANALYSIS.

The criteria for the various CLTS levels of care are set forth and defined in the *Institutional Levels of Care-CLTS* publication by the Department of Health Services, updated February 2011 and available at: http://www.dhs.wisconsin.gov/bdds/waivermanual/CLTS_LOC.pdf (see Appendix A-10). The ICF/DD level applies to a child who meets ALL THREE of the following criteria: (1) a cognitive disability that results in a substantial learning impairment, (2) substantial functional limitations, and (3) a need for active treatment.

Petitioner has been diagnosed with autism spectrum disorder which is one of the DD LOC diagnoses. But, the Department found no “substantial learning impairment” on petitioner’s part. According to the *Institutional Levels of Care-CLTS* manual, “substantial learning impairment is described as follows:

The diagnosis must have resulted in the child having **substantial learning impairments** as measured by **ONE** of the following:

1. A 30% (25% if the child is under one year of age) or greater delay in aggregate intellectual functioning, based on valid, standardized and norm referenced measures of aggregate

intellectual functioning; OR 2/7/2011 INTERMEDIATE CARE FACILITY (ICF/MR) LEVEL OF CARE – 4

2. A score of at least 2 (1.5 if the child is under one year of age) standard deviations below the mean on valid, standardized and norm referenced measures of aggregate intellectual functioning.

The cognitive disability criterion is not met solely based on diagnosis, but must result in a substantial learning impairment as defined above. For example, children with Autism Spectrum Disorders, Cerebral Palsy or Spina Bifida without a substantial learning impairment do not meet the ICF/MR LOC. They may be evaluated against the Nursing Home level of care screen in the case of a child with Cerebral Palsy or Spina Bifida, or the Psychiatric Hospital level of care screen in the case of a child with an Autism Spectrum Disorder.

For example, children who would MEET Criterion 1- Cognitive Disability:

- A 12-year-old child with Down Syndrome and a full scale IQ of 56. *This child has a diagnosis similar to a Cognitive Disability and a substantial impairment in learning, based on an IQ of 56 on the Wechsler Intelligence Scale for Children – Fourth Edition (WISC-IV), a valid, standardized and norm referenced measure of aggregate intellectual functioning, and therefore meets Criterion 1.*
- A 2-year-old child diagnosed with global developmental delays who has a 30% delay in cognitive development based on valid, norm referenced Birth-3 testing. *This child has a diagnosis similar to a Cognitive Disability and has a measured substantial impairment in learning and therefore meets Criterion 1.*

For example, children who would NOT MEET Criterion 1- Cognitive Disability:

* * *

- ***A child whose school testing shows evidence of learning disabilities that require a more structured educational environment plus other special modifications to address the child's individual learning style. The child continues to reason, problem-solve, and learn at a reasonable functional level even though she is behind same aged peers. This child's functional limitations with regard to cognitive capacity do not demonstrate substantial impairments in learning and therefore this child would not meet Criterion 1. [(emphasis added)].***

The Cognitive Disability Criterion must be met before considering Criterion 2: Substantial Functional Limitations. If the Cognitive

*Disability Criterion is not met, the reviewer **must stop here**, but may consider levels of care other than ICF/MR (DD), if appropriate.*

While it is clear that petitioner has delays, in this case petitioner has provided no evidence that he has a substantial learning impairment, as that term is defined hereinabove. I find no evidence supporting such a finding by the preponderance of the evidence in this record. Petitioner’s circumstance appears to most closely resemble this last example which the *Manual* states does not meet Criterion 1 and thus is not eligible under the DD level of care.

I empathize with the petitioner’s situation here, and the apparent unfairness of losing eligibility for the CLTS waiver program due to progress made, in part, thanks to previously having been found eligible. I have no equitable powers that would allow me to consider the fairness of the situation. I can only apply the law as it is written; based upon applicable law and the record before me, I affirm the respondent’s determination. If the petitioner disagrees with this decision he may appeal it to a circuit court, which does have equitable powers.

CONCLUSIONS OF LAW

The Department did not err in its denial of CLTS eligibility.

THEREFORE, it is

ORDERED

That this appeal is 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 16th day of September, 2013

\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 September 16, 2013.

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