



**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/153624

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**PRELIMINARY RECITALS**

Pursuant to a petition filed November 21, 2013, under Wis. Admin. Code § HA 3.03(1), to review a decision by the Family Support & Resource Center to deny Children’s Long Term Support (CLTS) eligibility, a hearing was held on January 21, 2014, at Madison, Wisconsin. The record was held open to allow petitioner to submit additional information, which was received on February 5, 2014.

The issue for determination is whether the Department erred in determining that petitioner does not meet any CLTS Waiver level 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, Room 651  
Madison, Wisconsin 53703  
By: Eric Lynn-Miller  
Family Support & Resource Center  
101 Nob Hill Rd  
Suite 201  
Madison, WI 53713

**ADMINISTRATIVE LAW JUDGE:**

Peter McCombs  
Division of Hearings and Appeals

**FINDINGS OF FACT**

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

2. Petitioner has been diagnosed with autism spectrum disorder, pervasive development disorder – NOS, and developmental delay.
3. On November 14, 2013, the respondent completed a Long-term Functional Screen for the petitioner, which concluded that petitioner did not meet any Level of Care required as a prerequisite for participation in CLTS Waiver programs.
4. Respondent provided notice to petitioner on November 18, 2013, that he no longer met a required Level of Care

### 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 psychiatric hospital (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 severe psychiatric symptoms or dangerous behaviors as described in one of seven 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 is not at the SED level of care because he does not have the requisite psychiatric symptoms or dangerous behaviors.

To meet the Developmental Disability level of care (also known as ICF-MR), 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. To meet the cognitive impairment standard the child must not only have a diagnosis of cognitive disability but also have a substantial learning impairment that is a 30% delay in intellectual functioning as shown by standardized scores or score of at least two standard deviations below the mean on valid measures of intellectual functioning.

The problem with this level of care is that I cannot find any proof that petitioner has the requisite cognitive impairment. He might, but nowhere in the functional screen or in the medical records is there evidence of cognitive impairment, as opposed to delays in developmental areas such as communication and activities of daily living. I quote the Manual, App. A-10, page 3, concerning cognitive impairment:

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. 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.

Emphasis in original. I think it is very possible that petitioner has a cognitive impairment described above, but I cannot say that with certainty because the records do not show it. They show a diagnosis of autism and delays in areas of functioning, but they do not show the vital cognitive impairment. For that reason I must uphold the denial by the agency. Without a showing of the requisite cognitive impairment, I cannot find that petitioner meets the ICF-MR level of care.

Nothing prevents petitioner's father, with the assistance of the WEAP professionals, from reapplying for the program. If they can show that petitioner has a cognitive impairment and meets the level of care, he might be found eligible. However, based on the record before me, I must find that he has not been shown to meet the level of care criteria.

### **CONCLUSIONS OF LAW**

Petitioner is not eligible for CLTS because he has not been shown to meet the requisite level of care.

**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, Room 651, 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 27th day of February, 2014

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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 February 27, 2014.

Family Support & Resource Center  
Bureau of Long-Term Support