



FH
[REDACTED]

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

In the Matter of

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

DECISION

CWK/153879

PRELIMINARY RECITALS

Pursuant to a petition filed December 04, 2013, under Wis. Admin. Code § HA 3.03(1), to review a decision by the Family Support & Resource Center in regard to Medical Assistance, a hearing was held on February 24, 2014, at Madison, Wisconsin.

The issue for determination is

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

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

Respondent:

Department of Health Services
1 West Wilson Street, Room 651
Madison, Wisconsin 53703
By: Angela Radloff (in writing)
Family Support & Resource Center
101 Nob Hill Rd
Suite 201
Madison, WI 53713

ADMINISTRATIVE LAW JUDGE:

John P. Tedesco
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner is a resident of Dane County.
2. The petitioner is disabled.

3. The petitioner had an ongoing Katie Beckett MA certification and was eligible for the CLTS Waiver since September 2011. On November 21, 2013, the county agency advised the petitioner that her CLTS waiver and MA eligibility would be discontinued effective December 1, 2013. The petitioner timely appealed, and her aid was ordered continued pending appeal. 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.
4. The petitioner, age seven, has been diagnosed with autism spectrum disorder, which is a pervasive [developmental disorder](#). It is analogous to a cognitive disability for the purpose of this analysis.
5. SED-related facts: The petitioner is not psychotic or suicidal, and does not engage in acts that endanger others. She has not required inpatient psychiatric hospitalization.
6. The petitioner does not meet the Hospital level of care because she 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 her general physical health is now stable, and she 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. The child does have chronic lung disease, a regurgitating pulmonary valve, and accommodative esotropia (an eye muscle problem).
8. The petitioner's receptive language skills are more than 2.75 standard deviations from the mean, per her current school speech therapist. Testing from May 2011 by Karen Kane, PhD, yielded a general conceptual ability score that was more than two standard deviation from the mean. The same was true of the child's adaptive behavior composite and socialization scores from the Vineland Adaptive Behavior Scales (VABS – II). The child receives ABA therapy, as well as physical therapy, speech and occupational therapy at least weekly.
9. The petitioner is able to sit, stand, walk, and transfer independently, but fatigues easily. She is independent in eating. The petitioner requires hands-on assistance with bathing and dressing.

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://www.dhs.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 (2011). 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, SED, or Nursing Home care levels described in the *Manual. Id.* The ICF/DD care level is for individuals who suffer from mental retardation or a developmental disability.

II. ICF/DD ANALYSIS.

The ICF/DD level applies to a child with (1) a cognitive disability and at least a 35% delay in aggregate intellectual functioning, (2) substantial functional limitations, and (3) a need for active treatment. All three of these major criteria must be met to qualify for this care level.

First, the child must have been diagnosed as having a cognitive disability by qualified professional; that has occurred here (autism spectrum disorder). The record does establish that the child's language abilities are 35% delayed. Thus, the child does meet the first major criterion. The second criterion is a substantial functional limitation in one of the following domains: Communication, Social Competency, or Activities of Daily Living. At hearing, documentation from treating professionals established that the child's receptive communication is at least two standard deviations below the mean in receptive communication and social communication (e.g., CELF-P2, from 1/31/2012). I believe that the agency's screener may have seen only the school district's initial testing results of the PLS-4 exam, which were subsequently withdrawn. This appears to have occurred last years as well which resulted in a denial, an appeal, and a reversal by the ALJ. The test in not within the past year, but it is within two years and is the most reliable data available. Based on this, the child has a substantial functional limitation in at least the domain of Communication. There is also credible evidence that was not rebutted relating to limitations in at least dressing. The agency already made such a determination with regard to bathing and dressing. The Department assessor indicated that the dressing delay will least less than a year, however. I do not understand why and the parents disagree with this conclusion. The failure of the agency to appear or explain fully in its written submission makes it impossible for me to find such unexplained conclusions persuasive and reliable. Thus, I conclude that the child has a substantial functional limitation that meets the second criterion.

The agency only makes incomplete arguments and unsupported statements in its written submissions such as that petitioner's autism "symptoms do not appear severe at this time." The agency elected not to appear, so I was unable to achieve clarity on how the agency viewed petitioner's condition to have changed since last year or the year before. I am also unsure of what "severe" relates to in the criteria for levels of care under the CLTS. I was unable to clarify that as there was no appearance by respondent.

CONCLUSIONS OF LAW

1. The petitioner currently has care needs that are at an institutional level of care (ICF-DD).
2. The Department incorrectly discontinued the petitioner's CLTS Waiver MA 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 immediately continue to process the petitioner's CLTS Waiver MA certification renewal in accord with the Conclusions above. The agency shall report back to this office that it is continuing to process the renewal, within 10 days of the date of this Decision.

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 7th day of March, 2014

\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 March 7, 2014.

Family Support & Resource Center
Bureau of Long-Term Support