



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

---

In the Matter of

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

DECISION

CWK/154554

---

**PRELIMINARY RECITALS**

Pursuant to a petition filed January 04, 2014, under Wis. Admin. Code § HA 3.03(1), to review a decision by the Douglas County Department of Human Services in regard to Medical Assistance, a hearing was held on February 18, 2014, at Superior, Wisconsin.

The issue for determination is whether the petitioner is functionally eligible for the Children's Long-Term Care Waiver.

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: Maureen McIlvaine

Douglas County Department of Human Services  
1316 North 14Th Street  
Suite 400  
Superior, WI 54880

**ADMINISTRATIVE LAW JUDGE:**

Michael D. O'Brien  
Division of Hearings and Appeals

**FINDINGS OF FACT**

1. The petitioner is a resident of Douglas County.

2. The petitioner has been diagnosed with Opsoclonus Myoclonus Syndrome, an autoimmune disease. She had a tumor removed in October 2013.
3. The petitioner's treatment for the disease has ended the disease's symptoms. She can run and walk and functions at her age level mentally. She has a temper tantrum about once a month. She is not currently in danger of institutionalization if she does not receive MA-Waiver services.
4. The petitioner's treatment suppresses her immune system, which requires that she remain separate from other children and the general public until the end of April 2014. If she comes in contact with others, her Opsoclonus Myoclonus Syndrome symptoms may reoccur.
5. The petitioner receives individualized private daycare so that she does not come in contact with others. Her parents seek Children's Waiver Services to pay for her daycare.

### DISCUSSION

The Department denied the petitioner's request to participate in the Children's Long-Term Support Waiver (CLTS) because it contends that she does not meet the level of care required to receive benefits. To qualify, a child must be part of one of the three waiver target groups: children with developmental disabilities, physical disabilities, and severe emotional disturbances. *Medicaid Waivers Manual*, p II-4. The petitioner has been diagnosed with Opsoclonus Myoclonus Syndrome, an autoimmune disease. She had a tumor removed in October 2013. Her treatment for this disease impairs her immune system and requires her to remain separate from the general population until April 2014 so she does not come in contact with anything that could lead to a reoccurrence of her symptoms. The petitioner's parents request the waiver to help them pay for her private individualized day care.

Although I understand the financial burden daycare places on the petitioner's parents, her eligibility depends upon whether she meets the program's criteria. She does not have a developmental disability because she is not mentally retarded. *Medicaid Waivers Manual*, p. II-4. She does have problems controlling her temper, but to qualify as having a severe emotional disturbance because this requires severe symptomology or dangerous behaviors that could lead to institutionalization in a psychiatric hospital without direct, daily community-based intervention from service systems related to mental health support. *Medicaid Waivers Manual*, Appendix A-10, p.8. Because she does not meet these levels of care standards, to qualify for the waiver, she must demonstrate that her physical disability meets the standard.

The physical disability criteria require that the petitioner demonstrate that she has a physical condition that significantly diminishes her functional capacity and interferes with her "ability to perform age appropriate activities of daily living at home and in the community." *Medicaid Waivers Manual*, p. II-5. The evidence indicates that she is now functioning normally. Even if one considers the isolation caused by her treatment as evidence of her inability to perform age-appropriate activities in the community, she must still demonstrate that she meets the nursing home or hospital level of care. *Id.*

To meet the nursing home level of care, she must require

an extraordinary degree of daily assistance from others to meet everyday routines and special medical needs. The special medical needs warrant skilled nursing interventions that require specialized training and monitoring that is significantly beyond that which is routinely provided to children. *The intensity and frequency of required skilled nursing interventions must be so substantial that without direct, daily intervention, the child is at risk for institutionalization within a nursing home.*

*Medicaid Waivers Manual, Appendix A-10, p.22.*

The petitioner does not meet the nursing home level of care because there is no evidence she requires daily skilled nursing interventions without which she would be at risk for being placed in a nursing home.

To meet the hospital level of care, she must meet the following three criteria:

1. The child needs **Frequent and Complex Medical Care** that require the use of equipment to *prevent life-threatening situations*; and
2. The child’s complex skilled medical interventions are expected to persist for a specific **Duration** of time; and
3. The child’s overall health condition must require **Continuous Assessment of an Unstable And Life-Threatening Condition**.

*Medicaid Waivers Manual, Appendix A-10, p.29. [emphasis in original]*

The petitioner does not meet this level of care because she does not require frequent and complex medical care that requires the use of equipment to prevent life-threatening situations and her condition does not require continuous assessment of an unstable and life-threatening conditions. Because she does not meet the criteria needed to be within any of the waiver target groups, I must uphold the agency’s decision.

I note that the agency’s only piece of documentation is the form letter upholding its denial of the request. This letter contains only two sentences that refer specifically to the petitioner’s condition. The agency did not submit the initial denial letter or the petitioner’s response to that letter. Nor did it submit any medical records supporting its position. Hearings before the Division of Hearings and Appeals are somewhat informal, but they are adversarial nonetheless. The agency is expected to present the evidence it relied upon to make a decision and cannot just assert that their position is correct. This deficiency did not affect the outcome of this matter, but this will not always be true. .

**CONCLUSIONS OF LAW**

The petitioner is not eligible for benefits under the Children’s Long-Term Care Waiver because she does not meet any of the program’s target groups.

**THEREFORE, it is ORDERED**

The petitioner's 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, 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 5th day of March, 2014

---

\sMichael D. O'Brien  
Administrative Law Judge  
Division of Hearings and Appeals



**State of Wisconsin\DIVISION OF HEARINGS AND APPEALS**

Brian Hayes, Administrator  
Suite 201  
5005 University Avenue  
Madison, WI 53705-5400

Telephone: (608) 266-3096  
FAX: (608) 264-9885  
email: [DHAmail@wisconsin.gov](mailto:DHAmail@wisconsin.gov)  
Internet: <http://dha.state.wi.us>

The preceding decision was sent to the following parties on March 5, 2014.

Douglas County Department of Human Services  
Bureau of Long-Term Support