



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

---

In the Matter of

[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

DECISION

MKB/154669

---

**PRELIMINARY RECITALS**

Pursuant to a petition filed January 10, 2014, under Wis. Stat. § 49.45(5), and Wis. Admin. Code § HA 3.03(1), to review a decision by the Bureau of Long-Term Support in regard to Medical Assistance, a hearing was held on February 05, 2014, at Rhinelander, Wisconsin. At the request of petitioner’s representative, the record was held open for the completion of petitioner’s new long term functional screen, and then the submission of the completed screen and written closing arguments to the Division of Hearings and Appeals (DHA). Both parties timely submitted closing arguments to DHA (including the results of the new March 17, 2014 functional screen) which are received into the hearing record.

The issue for determination is whether the Department correctly discontinued the petitioner’s Katie Beckett and CLTS Waiver program eligibility effective December 26, 2013, due to his no longer meeting the Severe Emotional Disturbance (SED) levels of care or any other level of care for continued eligibility.

There appeared at that time and place the following persons:

**PARTIES IN INTEREST:**

Petitioner:

[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

Representative:

[REDACTED] [REDACTED], mother and guardian  
[REDACTED]  
[REDACTED]

Respondent:

Department of Health Services  
1 West Wilson Street, Room 651  
Madison, Wisconsin 53703

By: Melanie Fralick support and services coordinator  
Bureau of Long-Term Support  
The Human Service Center  
P.O. Box 897  
Rhinelander, WI 54501

ADMINISTRATIVE LAW JUDGE:

Gary M. Wolkstein  
Division of Hearings and Appeals

**FINDINGS OF FACT**

1. Petitioner is a resident of Oneida County is a resident of Oneida County who turned 18 years of age on June 27, 2013.
2. The petitioner was enrolled in special education at [REDACTED] in [REDACTED]. He was later transferred to an “alternative educational setting” of home bound instruction.
3. Ms. [REDACTED] [REDACTED] is the petitioner’s mother and temporary guardian.
4. The petitioner was diagnosed with Pervasive Developmental Disorder (PDD) and mood disorder per September 13, 2013 medical records of Dr. Vaughn from the Marshfield Clinic. In June, 2011, petitioner was diagnosed with Asperger’s Syndrome and Bipolar Spectrum Disorder.
5. The petitioner was eligible for the Children’s Long term Support Medicaid Home and Community-Based Waiver (CLTS Waiver) program based upon the Severe Emotional Disturbance (SED) level of care. The petitioner received his MA through the Katie Beckett program.
6. The petitioner receives mental health counseling every other week and sees a psychiatrist, Dr. Vaughn, every other month.
7. During February, 2012, petitioner was hospitalized at the Winnebago Mental Health Institute. During that hospitalization, petitioner did not exhibit any signs of active mood disorder or psychosis. He did not exhibit significant aggressive behavior. By the time of his discharge, petitioner was noted to be stable over the course of several days. He was compliant with taking his medications.
8. During October, 2013, screener Melanie Fralick met with the petitioner and his mother at their home for an annual functional screen for the CLTS and KB programs.
9. The Department sent a November 26, 2013 notice to the petitioner stating that his Katie Beckett and CLTS COP Waiver was discontinued effective December 26, 2013, due to no longer meeting the Medicaid Waiver program SED level of care or any other level of care. See Exhibit 1. That notice also stated that petitioner’s Katie Beckett (KB) eligibility was also discontinued effective December 26, 2013, also due to no longer meeting the KB level of care.
10. On January 30, 2014, the police and crisis screener were called to petitioner’s home because he was making threats to break the house windows and stated “don’t make me hurt you.” He was hospitalized at Winnebago Mental Health at which there was no new diagnosis. In his February 7, 2014 discharge summary from Winnebago Mental Health provided no new diagnosis, and his hospitalization was not remarkable with no signs of active mood disorder or psychosis.
11. At the request of petitioner, a new functional screen was completed on March 17, 2014 and the results were sent to DHA and petitioner.
12. Petitioner received home bound instructions for schooling, and only needed 2 credits in order to graduate high school during June, 2014.
13. In her closing argument, Department services coordinator and screener, Melanie Fralick, indicated that after reviewing the petitioner’s updated information/records and in completing the March 17, 2014 new functional screen, Ms. Fralick concluded that petitioner continued to not meet any level of care for continued CLTS or KB eligibility for the following reasons: a) there was a [REDACTED] Police Report (but no criminal charges filed) indicating petitioner’s “disorderly conduct” at school with a future Court date. As a result, Ms. Fralick, indicated on the new functional screen that petitioner had involvement with the criminal justice system; b) the new information regarding petitioner at Winnebago Mental Health indicated no new diagnosis for active mood disorder or psychosis or any significant aggression; c) petitioner was compliant with

taking his medications; d) petitioner's IQ is about 105 per [REDACTED] records dated March 6, 2012, and with no evidence of any mental retardation; and e) petitioner's mother had a temporary guardianship until April 24, 2014 with the possibility for an additional extension of time for that guardianship.

14. The petitioner is able to sit, stand, walk and transfer independently. He is independent in eating and all other self-cares.
15. The petitioner does not meet the Hospital level of care because he does not have a severe life-threatening condition requiring daily activity interventions to sustain his life.
16. The petitioner does not meet the Nursing Home level of care because his general physical health is satisfactory, and he is not at "high risk for sudden changes in medical status." Petitioner does not 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.

## 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 and the hospital level of care are clearly not applicable here and will not be discussed. The remaining two LOC's are the only real possibilities under these facts.

### II. SEVERE EMOTIONAL DISTURBANCE ("SED") ANALYSIS.

The SED Level of Care requires (1) a diagnosis of an emotional and/or behavioral problem diagnosed under the American Psychiatric Association classification system, (2) diagnosis/symptoms that have lasted at least six months and are expected to last for one year or longer, (3) the child must receive or require services from at least two of a number of listed service systems (one system if the intensity is expected to be three hours or more per week), and (4) the child must have severe symptomology or dangerous behaviors.

The fourth criterion, severe symptomology, includes seven possible standards. The first four are that the child will be found to have severe symptoms if he has either currently, within the past three months, or twice within the past year, any of the following: psychosis, suicidality, violence, or anorexia/bulimia. Each is set forth in greater detail in the *Manual* and petitioner does not meet any of these four standards.

Standards V through VII reflect the Dangerous Behaviors category. These include high-risk behaviors, such as running away and substance abuse. These are not present here. Self-injurious behaviors such as self-cutting or self-biting make up Standard VI and those do not apply in this case. Standard VII is a group of behaviors listed under “Aggressive or Offensive Behavior toward Others.” It includes true threats to kill and sexually inappropriate behavior including aggression, abuse and molestation.

Appendix A-10 at p.16.

The petitioner’s mother described some inappropriate behaviors (his taking money from his mother’s checking account, spent the night in a hotel lobby to meet a woman but she did not show up, subscribing to a pornographic web site). These are certainly examples of bad judgment. However, these behaviors do not rise to the level of risk to be the type and severity of dangerous behavior contemplated by the program rules.

### III. ICF/DD 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](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. All three of these major criteria must be met to qualify for this care level.

Petitioner has been diagnosed with Pervasive Developmental Disorder (PDD) 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 such a substantial learning impairment. 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.

Although the finding of no substantial learning impairment would end the inquiry, for the purposes of this appeal I will also note that I do not find that petitioner has a substantial functional limitation in social competency (which is really the only one that was argued by petitioner). The Department also found no "substantial functional limitations" on petitioner's part. Substantial Functional Limitations are defined, for the purposes of CLTS level of care at pages 4-6 of the *Institutional Levels of Care-CLTS* publication:

## **SUBSTANTIAL FUNCTIONAL LIMITATIONS**

The child demonstrates substantial functional limitations when compared to the child's age group and each limitation must be expected to last *at least 12 months* from the date of review. These limitations must be the direct result of the child's cognitive disability or similar diagnosis from Criterion 1, and must place the child at risk of institutionalization in an ICF/MR in the absence of extensive, consistent, and direct adult intervention to assist the child in overcoming the limitations, significantly beyond the level of intervention similar aged peers typically require. **The child must demonstrate substantial functional limitations in ONE or more of the following developmental domains: (1) communication, or (2) social competency, or (3) activities of living.**

(Emphasis added). Deficits in Social Competency are further explained in *Institutional Levels of Care-CLTS*, Appendix A:

***Social competency includes children's ability to form relationships, interest in and skills needed to maintain positive relationships with adults and children, ability to understand the perspective and feelings of others, and skills needed to get along well in a group setting (for example, conflict resolution skills).***

Petitioner's mother argued that [REDACTED] suffers from limitations in his social skills. In the March 17, 2014 new functional screen, Ms. Fralick did indicate some deficits in [REDACTED]'s social competency: stealing of his mother's money on one occasion, buying a subscription to a pornography site, and planning on meeting a woman in a hotel lobby that he only met at an on-line web site. Petitioner's mother repeatedly stated that [REDACTED] needs help and support. But, the CLTS waiver is not for every child with PDD, or for every family that needs support. The resources are limited and the program has specific criteria that must be met to ensure that the most severe cases get the services. Petitioner does not meet the criteria.

Petitioner's mother basically argued to this Division that she does not believe that the functional screen tool used by the department in its assessment and determination could capture the "full picture of [petitioner]'s situation." I wish to make clear that this Decision is not an affirmation of the functional screen or its accuracy. At hearing and while the record was held open, petitioner's representative had the opportunity to present any admissible evidence to explain the "full picture" and persuade me that the determination made by the Department was wrong. That is, the petitioner had full and fair opportunity to prove that he meets the various criteria for any one of the program's levels of care. I encouraged petitioner's mother to provide me with information to illustrate that the circumstances rise to such a level rather than simply reflecting a young man and a family with challenges. The Katie Beckett MA program uses the same criteria as the CLTS Waiver regarding the determination of level of Care. The evidence, in its entirety, has not so persuaded me and I therefore affirm the Department determination to discontinue the petitioner's Katie Beckett and CLTS eligibility effective December 26, 2013, due to no longer meeting the level of care requirement.

### **CONCLUSIONS OF LAW**

The Department correctly discontinued the petitioner's Katie Beckett and CLTS Waiver program eligibility effective December 26, 2013, due to his no longer meeting the Severe Emotional Disturbance (SED) levels of care or any other level of care for continued eligibility.

**THEREFORE, it is**

**ORDERED**

The petition for review herein be and the same is hereby Dismissed.

### **REQUEST FOR A REHEARING**

You may request a rehearing if you think this decision is based on a serious mistake in the facts or the law or if you have found new evidence that would change the decision. Your request must be **received within 20 days after the date of this decision**. Late requests cannot be granted.

Send your request for rehearing in writing to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400 **and** to those identified in this decision as "PARTIES IN INTEREST." Your rehearing request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and explain why you did not have it at your first hearing. If your request does not explain these things, it will be denied.

The process for requesting a rehearing may be found at Wis. Stat. § 227.49. A copy of the statutes may be found online or 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 filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Health Services, 1 West Wilson Street, Room 651, Madison, Wisconsin 53703, **and** on those identified in this decision as “PARTIES IN INTEREST” **no more than 30 days after the date of this decision** or 30 days after a denial of a timely rehearing (if you request one).

The process for Circuit Court Appeals may be found at Wis. Stat. §§ 227.52 and 227.53. A copy of the statutes may be found online or at your local library or courthouse.

Given under my hand at the City of Madison,  
Wisconsin, this 21st day of July, 2014

---

\sGary M. Wolkstein  
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 July 21, 2014.

Bureau of Long-Term Support  
Division of Health Care Access and Accountability  
[mf@thehumanservicecenter.org](mailto:mf@thehumanservicecenter.org)