



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

In the Matter of

██████████ ██████████
c/o ██████████ & ██████████ ██████████
██████████
██████████

DECISION

CWK/155842

PRELIMINARY RECITALS

Pursuant to a petition filed February 28, 2014, under Wis. Admin. Code § HA 3.03(1), to review a decision by the Polk County Department of Social Services in regard to Medical Assistance, a hearing was held on May 13, 2014, at Balsam Lake, Wisconsin.

The issue for determination is whether the petitioner is functionally eligible to remain on the waiting list for the Children's Long-Term Support Waiver.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

██████████ ██████████
c/o ██████████ & ██████████ ██████████
██████████
██████████

Respondent:

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

By: Mahlia Malone

Polk County Department of Social Services
100 Polk County Plaza, Suite 50
Balsam Lake, WI 54810

ADMINISTRATIVE LAW JUDGE:

Michael D. O'Brien
Division of Hearings and Appeals

FINDINGS OF FACT

1. The petitioner is a resident of Polk County.
2. The petitioner has been on the Children's Long-Term Support Waiver waiting list for four years. On February 19, 2014, acting on a functional screen performed on February 12, 2014, the county

agency notified her that she was no longer functionally eligible for the program and that it was removing her from the waiting list.

3. The petitioner is 16 year old. She is diagnosed with autism.
4. The petitioner's IQ is 102. She has no significant physical problems.
5. The petitioner has trouble maintaining friendships. She is vulnerable and naïve.
6. The petitioner receives mental health counseling once a month. She has an IEP and receives three hours of services per week from her school district.
7. The petitioner has bowel movements without noticing they are happening.
8. The petitioner does cause disciplinary problems at home or at school.
9. The petitioner does not exhibit psychotic symptoms, suicidality, violence, anorexia, or bulimia.
10. The petitioner does not engage in any high-risk behavior.

DISCUSSION

The petitioner is a 16-year-old girl diagnosed with autism who has been on the waiting list to participate in the Children's Long-Term Support Waiver (CLTS) for four years. In February, after reviewing her case for the first time since she first placed on the list, the county agency determined that she no longer meets 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, children with physical disabilities, and children with severe emotional disturbances. *Medicaid Waivers Manual*, p II-4. The petitioner has an IQ of 102, so she is not developmentally disabled, and she has no significant physical problems. This means that to qualify, she must demonstrate that she has a severe emotional disturbance.

This level of care is described in *Institutional Levels of Care, Children's Long Term Support Program in Wisconsin* found online at http://www.dhs.wisconsin.gov/bdds/waivermanual/CLTS_LOC.pdf. It requires the petitioner to demonstrate a "long-term, severe mental health condition diagnosed by a licensed psychologist or psychiatrist." She must also demonstrate persistent behaviors that create a danger to self or others, requiring ongoing therapeutic support in order to be able to live at home and in the community." *Id.* p.8. The Level of Care manual goes onto state: "*The intensity and frequency of the required ongoing therapeutic support must be so substantial that without the support the child is at risk of inpatient psychiatric hospitalization.*" *Id.* (Emphasis in original)

The petitioner must meet all four of the following criteria to establish a severe emotional disturbance:

1. The child has a **Diagnosis** of a mental health condition; and
2. The child's mental health diagnosis or symptoms related to the diagnosis have existed and are expected to persist for a specific **Duration** of time; and
3. The child is in need of **Involvement with Service Systems** related to mental health support; and
4. The child exhibits **Severe Symptomology or Dangerous Behaviors** at a specific intensity and frequency of required interventions such that without this direct, daily community-based intervention, the child is at risk for institutionalization within a psychiatric hospital.

Id. (emphasis in original)

She meets the first criterion because she has autism. *Id.*, p.9. She meets the second because she has had these symptoms for over six months and they can be expected to last for at least another year. She meets

the third criterion because she has an individualized education program and she receives psychotherapy. *Id.*, p. 10-11. The question is whether she exhibits severe symptomology or dangerous behaviors.

There are four standards for meeting severe symptomology and four for meeting dangerous behaviors. Severe symptomology involves psychotic symptoms, suicidality, violence, or anorexia/bulimia. All of these standards require that the child not only exhibit the behavior but that she must require “direct, daily interventions to avoid institutionalization in a psychiatric hospital.” *Id.*, p.13. There are several categories of dangerous behaviors. They include high risk behaviors, self-injurious behaviors, aggressive and offensive behaviors, and lack of behavioral controls. *Id.*, p.14. All of these involve only the most serious behavioral problems a child can exhibit such as frequent cutting of herself, suicide attempts, or frequent sexual contact with strangers or those much older. All require intervention such as constant supervision, frequent police involvement, or hospitalizations. *Id.*, pp. 13-21.

The petitioner has trouble making friends, and she is described as vulnerable and naïve. She also has bowel movements in her clothing every day, including sometimes to the point of complete evacuation into her underwear. She picks up no nonverbal cues from others. But she does not cause disturbances at home or at school. Overall, the petitioner’s problems are serious. She has a long history of therapy and mental health problems that continue. But the children’s waiver is meant to provide benefits to only the most severely handicapped. She simply does not all into this category because she does not demonstrate the symptomology or high risk behaviors required fit into that category. This can be seen by a review of pages 13-22 of the *Institutional Levels of Care, Children’s Long Term Support Program in Wisconsin* found online at http://www.dhs.wisconsin.gov/bdds/waivermanual/CLTS_LOC.pdf.

CONCLUSIONS OF LAW

The Department correctly determined that the petitioner no longer is eligible for the Children’s Long Term Support Waiver because she does not meet the psychiatric hospital level of care.

THEREFORE, it is

ORDERED

The petitioner's appeal is 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 27th day of May, 2014

\sMichael D. O'Brien
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 May 27, 2014.

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