



FH
[REDACTED]

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

In the Matter of

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

DECISION

CWK/156470

PRELIMINARY RECITALS

Pursuant to a petition filed March 31, 2014, under Wis. Admin. Code § HA 3.03(1), to review a decision by the Green County Department of Human Services and the Department of Health Services' Division of Long Term Care (Department) in regard to Medical Assistance (MA) - based Children's Long-Term Support Waiver (CLTS) eligibility and Katie Beckett MA eligibility, a hearing was held on May 20, 2014, by telephone.

The issue for determination is whether the agency correctly denied the petitioner's CLTS eligibility. Specifically, the question is whether or not the petitioner meets the program's institutional "level of care" requirement.

There appeared at that time the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
By: [REDACTED]
[REDACTED]
[REDACTED]

Respondent:

Department of Health Services
1 West Wilson Street, Room 651
Madison, Wisconsin 53703
By written submission of: Stacey Palermo
Lutheran Social Services, for
Green County Department of Human Services
N3152 State Road 81
Monroe, WI 53566

ADMINISTRATIVE LAW JUDGE:

Nancy J. Gagnon
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Green County.
2. The petitioner is disabled.
3. The petitioner applied for CLTS eligibility in January 2014. On February 13, 2014, the Department advised the petitioner that his CLTS eligibility had been denied. The petitioner timely appealed. The agency's basis for denial 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 apparently a decision by DHS that the recipient does not have care needs at an institutional level (screen result document not in the hearing record).
4. The petitioner, age twelve, has been diagnosed with anxiety disorder, ADHD, mood disorder, obsessive-compulsive disorder and conduct disorder; these diagnoses are not expected to change within the next year. The petitioner recently returned to attending public school in Monroe, and has a full-time aide to deal with homework and behavior concerns.
5. SED-related facts: The petitioner has a diagnosis of a mental health disorder listed in the *DSM-IV-R*. He currently requires mental health services and in-school supports for emotional and/or behavioral problems. The child is seen by a psychiatrist for medication management, and is regularly seen by a psychotherapist. Although not psychotic, the petitioner engages in acts that endanger the physical health of others. He does not have an eating disorder. During the past year, the child has engaged in "dangerous behaviors," as that term is defined in Department policy for this program. In the past year, the child has no history of running away, substance abuse, or dangerous sexual contact. He has not required inpatient psychiatric hospitalization in the past year. The petitioner does become upset easily, and will yell, scream, hit and kick others when upset, multiple times weekly.
6. The petitioner does not meet the Hospital level of care because he 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 his general physical health is satisfactory, and he 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.
8. The petitioner has an IQ of 87. He meets the criteria for special education services in the area of emotional behavioral disabilities. Per testing done in February 2014, the petitioner has math skills in the "low average" range, and scattered language skills that averaged out to the "average" range.
9. The petitioner is able to sit, stand, walk, and transfer independently. He is independent in eating and all other self-cares, with reminders.

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. See, http://www.dhs.wisconsin.gov/ltc_cop/waivermanual/index.htm (viewed in June 2014).

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. There is no dispute that the petitioner does not satisfy the Hospital, Nursing Home or ICF/DD 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. SED ANALYSIS.

The SED level applies to a child with the following:

1. A diagnosis of a recognized mental illness,
2. The diagnosis/symptoms have been present for 6 months and the are expected to persist for at least one year,
3. The child requires services from at least two of five enumerated service systems, *and*
4. The child exhibits severe symptomology or dangerous behaviors of sufficient intensity that, without daily community-based intervention, s/he would be at risk for institutionalization in a psychiatric hospital.

There is agreement that the petitioner has diagnoses of a mental illness that has been present for at least six months, and is expected to be present for at least another year. The child requires services from at least two of the named service systems (mental health and special school services).

The Department denied eligibility here because it believes that this child no longer exhibits sufficiently severe symptomology to be at risk of psychiatric institutionalization if daily intervention is not provided. The program's treatment professionals have developed a policy list of what constitutes symptoms that would lead to institutionalization. They include psychosis, suicidality (actual attempts), engaging in acts that endanger the lives of others, and anorexia/bulimia. The petitioner does not contend that he has psychosis, suicidality or anorexia/bulimia.

Another symptom category is "dangerous behaviors." This category has four subsets: (1) High-risk behaviors, (2) Self-Injurious behaviors, (3) **Aggressive/Offensive Behaviors**, or (4) Lack of Behavioral Controls. The High-Risk Behaviors subset consists of running away, substance abuse, or dangerous sexual contact. The petitioner provided no evidence that these behaviors are present. Self-injurious behaviors consist of self-cutting, severe self-biting, tearing at body parts, inserting harmful objects into body orifices, or head-banging. The petitioner does engage in self-cutting and head-banging, but not at

the frequency required in the standard. Aggressive/Offensive Behavior toward Others is defined as (a) serious threats of violence, (b) sexually inappropriate behavior, (c) abuse/torture of animals, (d) hitting, biting or kicking that seriously harms others, (e) public masturbation, (f) urinating on another or smearing feces, or (g) verbal abuse. Finally, lack of Behavioral Controls is defined as destruction of property/vandalism, or theft/burglary. The petitioner does not allege that he is currently engaging in property destruction or theft.

The petitioner does meet the standards in the “dangerous behavior” category of Aggressive/Offensive Behavior toward Others. Specifically, he engages in serious threats of violence. He was kicked out of his online/home schooling program for threatening an online teacher. He also engages in hitting, biting or kicking four days a week, and requires constant “within arm’s reach” supervision. The child was expelled from a parochial school for hitting other children. In the year preceding his recent online schooling attempt, the child was in public school and was injuring other children, kicked and injured a teacher, and damaged school property. He regularly strikes his mother, who cannot get sitters. In his current school setting, he has an aide at all times. These behaviors currently occur in school, at home, and in his rare forays into the community.

Thus, the child does meet the “level of care” criteria, and the CLTS Waiver eligibility was incorrectly denied. Because Katie Beckett MA (coverage for disabled children, without regard to parental income) uses the same criteria, the Katie Beckett MA certification was also incorrectly discontinued.

CONCLUSIONS OF LAW

1. The Department incorrectly denied the petitioner’s CLTS Waiver eligibility for failure to meet the institutional level of care requirements.

THEREFORE, it is

ORDERED

That the petition is remanded to the Department with instructions to continue the processing of the petitioner’s CLTS application in accord with the Conclusion of Law above. This action shall be taken within 10 days of the date of this Decision.

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 26th day of June, 2014

\sNancy J. Gagnon
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 June 26, 2014.

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