



STATE OF WISCONSIN  
Division of Hearings and Appeals

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In the Matter of

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

DECISION

CWK/157775

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**PRELIMINARY RECITALS**

Pursuant to a petition filed May 16, 2014, under Wis. Admin. Code §HA 3.03(1), to review a decision by the Milwaukee Cty Disability Services Division-DSD in regard to Medical Assistance (MA), a telephonic hearing was held on July 11, 2014.

The issue for determination is whether the agency correctly denied petitioner from the Children's Long-Term Support Medicaid Home and Community-Based Services Waiver (CLTS) services because the petitioner does not meet the "level of care" requirement.

There appeared at that time and place the following persons:

**PARTIES IN INTEREST:**

Petitioner:

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

Respondent:

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

By: Nancy Dumas, Disability Services Coordinator, Milwaukee County  
Milwaukee Cty Disability Services Division-DSD  
Attention: Mark Stein-DSD  
1220 W. Vliet Street, Suite 300  
Milwaukee, WI 53205

**ADMINISTRATIVE LAW JUDGE:**

Kelly Cochrane  
Division of Hearings and Appeals

**FINDINGS OF FACT**

1. Petitioner is a resident of Milwaukee County.

2. Petitioner is diagnosed with Autism. He is 15 years old and lives at home.
3. Petitioner has an IEP under which he receives 30 minutes per month with the school psychologist.
4. Petitioner had been previously eligible for CLTS under the Psychiatric Hospital Level of Care, also termed Severe Emotional Disturbance (SED) Level of Care.
5. An annual functional screen was completed for petitioner in March 2014 and he was found to no longer meet the level of care requirements.
6. On April 4, 2014 the Milwaukee County Disabilities Services Division issued a notice to petitioner stating that petitioner no longer the level of care requirement necessary to be eligible for CLTS and his participation in the program would end May 4, 2014.

### DISCUSSION

The CLTS program started on January 1, 2004, after the federal Department of Health and Human Services informed the state department that federal MA funding would no longer be available for in-home autism services. The department drafted and released the Interim Medicaid Home and Community-Based Waivers Manual (*Manual*) that became effective with the start of the CLTS program. The Manual also covers the Community Integration 1A and 1B programs and the Traumatic Brain Injury Waiver program. The Manual was updated in January 2010. It can be found on the internet at <http://www.dhs.wisconsin.gov/bdds/waivermanual/>.

In order to be eligible, applicants to the CLTS Waivers must qualify for a DD, PD, or SED level of care (LOC) reimbursable by Medicaid in a comparable institutional setting, as determined by the Children's Long Term Care Functional Screen. See *Manual*, Chapter II, p.II-14. The LOC are described at [http://www.dhs.wisconsin.gov/bdds/waivermanual/CLTS\\_LOC.pdf](http://www.dhs.wisconsin.gov/bdds/waivermanual/CLTS_LOC.pdf) (LOC Manual).

There was no information to suggest that petitioner would qualify under any LOC other than the SED LOC for which he had been previously eligible, and therefore I discuss that LOC. The Psychiatric Hospital Level of Care, also termed Severe Emotional Disturbance (SED) LOC as discussed in the *LOC Manual* provides:

The child with a Psychiatric Hospital - Severe Emotional Disturbance (SED) Level of Care has a long-term, severe mental health condition diagnosed by a licensed psychologist or psychiatrist. In addition, this child demonstrates 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. *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.*

A child may be assigned this level of care if the child meets ALL FOUR of the criteria listed below for Severe Emotional Disturbance. The criteria are:

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.* at p. 8.

It is unclear how the screener determined the criterion from the information presented at hearing. However, it appears he did not meet the third criterion for involvement with Service Systems which provides that:

### **3. INVOLVEMENT WITH SERVICE SYSTEMS**

The child must meet **ONE** of the following:

A. The child must currently receive or require services in connection with his or her mental health diagnosis (or symptoms) from at least **TWO** of the following five listed Service Systems.

OR

B. The child must currently receive or require services in connection with his or her mental health diagnosis (or symptoms) from only **ONE** of the following five listed Service Systems, if the intensity of that service is or reasonably may be expected to be **THREE hours or more per week**.

**Definition of require:** *Require* is based on the qualified, treating professional's recommendation that a specific service is essential to address the child's identified mental health need. The professional recommendation must be made within the past year. It cannot be solely based on parental desire for services. Most children who *require* these services will be receiving them, but on occasion a parent or child cannot, or will not, participate in recommended services or the recommended services are not available. If the parent or child has refused to access recommended services for over 12 months, then this recommendation is no longer valid.

#### **Service Systems:**

1. **Mental Health Services** – These services include psychotherapy, psychiatric hospitalization, community-based day treatment programs and intensive in-home treatment for children with Autism Spectrum Disorders.

The use of psychiatric medications is not considered a mental health service.

However, a visit to a psychiatrist on a regular basis for the prescription and monitoring of these medications is considered a mental health service.

Programs dedicated to substance abuse treatment only are excluded as this type of program is captured below.

2. **Child Protective Services** – Formal ongoing involvement with the child welfare system.

3. **Criminal Justice System** - Includes Juvenile and Adult Justice Systems.

4. **Formal Service Plan for In-School Supports** -

- Child has an Individualized Educational Plan (IEP) specifically for Emotional/Behavioral Disability (EBD) programming. This is defined as special educational support that specifically addresses the emotional and behavioral concerns of the student.

- Child has an Individualized Educational Plan (IEP) for special education support programming that contains an active Behavioral Intervention Plan (BIP). *Active* is defined as interventions are actually implemented *at least three times per week*.

5. **Substance Abuse Services** - Includes day treatment and outpatient services.

**NOTE:** The Children's Functional Screen asks about a child's need for "clinical case management and service coordination across systems." This item specifically relates to the Comprehensive Community Services benefit, for which the Children's Functional Screen calculates eligibility. It is **not relevant** to the institutional level of care determination for psychiatric hospital.

For example, children who would MEET Criterion 3 - Involvement with Service Systems:

- A child has an IEP at school for support in the Emotional/Behavioral Disability program and the support he receives is more than three hours per week. *Although he only receives support from one service system, that one service provides more than three hours a week of support.*
- A child not currently receiving any services has a current recommendation by a PhD clinical psychologist to receive intensive in-home treatment for children with Autism that will be more than three hours a week once the programming begins. *This child meets the criteria by requiring a service, based on a doctor's recommendation within the past year, at more than three hours a week, even though she is not currently receiving the service.*
- A child receives psychological therapy once a week and has a BIP in his IEP at school that is implemented daily, approximately 15 minutes a day, but the total time does not amount to three hours a week. *He receives services from two of the eligible service systems.*
- A child whose psychologist recently recommended inpatient care or day treatment, but the family's private health insurance does not cover the cost of care so the family must decline services. *She meets the criteria by requiring a service based on a doctor's recommendation within the past year for more than three hours a week of service even though she is not currently receiving the service.* For example, children who would NOT MEET Criterion 3 - Involvement with Service Systems:
  - A child is on medication for Depression, receives ongoing case management services and attends hour-long mental health counseling sessions on a weekly basis. She sees a psychiatrist twice a month for medication management. *Since Case Management is not an eligible service, she is only receiving Mental Health Services when two different services are required. The Mental Health Services do not amount to more than 3 hours/week.*
  - A child has a BIP in her IEP at school that is implemented daily, approximately 20 minutes a day during the transition to/from the school bus, but the total time does not amount to three hours a week. *She has only one service and it is not more than 3 hours/week.*
  - A child whose parents want the child to receive intensive in-home treatment for children with Autism, but there has not been an official recommendation for this treatment by a qualified, treating professional. *Recommendations for services must be from a qualified professional, not just parental desire.* *The Diagnosis, Duration AND Involvement with Service Systems Criteria must be met before considering Criterion 4: Severe Symptomology or Dangerous Behaviors. If Criterion 3 is not met, the reviewer **must stop here**, but may consider levels of care other than Psychiatric Hospital, if appropriate.*

According to the evidence at hand, petitioner only receives 30 minutes per month with his school psychologist and his IEP does not include support in the Emotional/Behavioral Disability Program nor does he have a BIP. Because much time was spent discussing the fourth criterion at hearing, I will address that as well. The *LOC Manual* provides the following description:

**4. SEVERE SYMPTOMOLOGY OR DANGEROUS BEHAVIORS**

The child must meet at least **ONE** of the seven Standards (I-VII) described below at the required definition, intensity, duration, and frequency of the behavior and required interventions.

**SEVERE SYMPTOMOLOGY (Standards I-IV)**

**Standard I: Psychotic Symptoms (A AND B)**

Psychotic Symptoms are defined as delusions, hallucinations, and/or loss of contact with reality.

A. Child must currently have psychotic symptoms, or must have had psychotic symptoms at least once in the past three months or at least twice in the past year;  
AND

B. Because of psychotic symptoms, child must require direct, daily interventions to

avoid institutionalization in a psychiatric hospital.

**Standard II: Suicidality (A AND B)**

Suicidality is defined as a serious suicide attempt or significant suicidal ideation or plan.

A. Child must have attempted suicide once in the past three months or had significant suicidal ideation or plan in the past month; AND

B. Because of suicidality, child must require direct, daily interventions to avoid institutionalization in a psychiatric hospital.

**Standard III: Violence (A AND B)**

Violence is defined as acts that endanger another person’s life, and that cause the victim to require inpatient admission to a hospital. Additional definitions include the use of a weapon against another person (e.g., gun, knife, chains, or baseball bat), acts of arson (purposeful fire setting) or bomb threats.

A. Child must have committed violence at least once in the past three months or at least twice in the past year; AND

B. Because of commission of violence, the child must require direct, daily interventions to avoid institutionalization in a psychiatric hospital.

**Standard IV: Anorexia/Bulimia (A AND B)**

Anorexia/Bulimia is defined as life threatening effects of serious eating disorders, as determined by physician. The child must have malnutrition, electrolyte imbalances or body weight/development below 20th percentile due to the eating disorder.

A. Child must have exhibited anorexia/bulimia at least once in the past three months or at least twice in the past year; AND

B. Because of anorexia/bulimia, child must require direct, daily interventions to avoid institutionalization in a psychiatric hospital.

For example, children who would MEET Criterion 4 requirements through one of Standards I-IV:

- A child pulled a knife on a peer in the school cafeteria last month. No one was seriously hurt. Child is receiving therapeutic services on a regular basis to address issues of aggression and violence. *Symptom is current and meets definition of Violence because of use of a weapon. Child is involved in on-going community intervention to avoid hospitalization.*
- A child reveals the suicide pact he has with a friend that was made two weeks ago. The pact spells out exactly how they are going to kill themselves the next time something goes wrong. Child is under a suicide watch both at home and at school. *Plan was made within the last month and meets definition of Suicidality. Child is receiving care in the community to avoid hospitalization.*

For example, children who would NOT MEET Criterion 4 requirements through any of Standards I-IV:

- A child is extremely aggressive and got into many fist fights within the last month resulting in others having to go to the emergency room, but this did not result in admitting victims to the hospital. *This does not meet the definition of Violence.*
- A child has a diagnosis on the Autism spectrum and appears on a daily basis to be disconnected from her environment. She is not considered, in mental health terms, to be hallucinating or out of touch with reality. *This does not meet the definition of Psychosis.*

**DANGEROUS BEHAVIORS (Standards V-VII)**

The four Dangerous Behaviors categories are:

**High-Risk Behaviors**

**Self-Injurious Behaviors**

**Aggressive and Offensive Behaviors**

**Lack of Behavioral Controls**

Applicable behaviors for Standards V through VII are defined below.

**High-Risk Behaviors:**

- **Running Away:** Impulsive flight to unsafe locations with the intention of not returning. These are children who will be living on the street if intervention is not provided.
- **Substance Abuse:** Misuse of prescription medications or use of illegal drugs, alcohol or inhalants; substances that can be inhaled from an aerosol can, a cloth, a

cotton ball, a plastic bag or balloon, and will cause a mind-altering effect within 2-5 minutes after inhaling. (This does not include use of tobacco.)

- **Dangerous Sexual Contact:** The child is a victim of sexual behavior; intercourse, oral sex, or other genital contact, even if the child willingly engages in the activity. This includes contact with substantially older sexual partners, or strangers, or people met via the Internet.

The three behaviors above must occur *at least*:

- Once a week** and require interventions such as regular professional treatment, constant “within arm’s reach” supervision, or environmental restraints whenever the behavior occurs; OR

- Once a month** and require very intense intervention such as police involvement or emergency medical treatment whenever the behavior occurs.

#### **Self-Injurious Behaviors:**

- **Self-Cutting, Burning or Strangulating:** Repeated and intentional cutting open one’s skin with a sharp object; repetitive, intentional burning one’s skin with a lighter, candle, or stove; strangulation involving the production of unconsciousness or near unconsciousness by restriction of the supply of oxygenated blood to the brain. (Does not include piercing or tattooing.)

- **Severe Self-Biting:** Repeated, intentional and severe biting by child of child’s own body parts, in attempt to rupture skin. (Does not include biting nails or cuticles or biting lip without intent to injure.)

- **Tearing At or Out Body Parts:** Repeated, intentional and severe picking or tearing at body parts in a manner and degree that is likely to cause severe injury. (Does not include picking at a scab or scratches until a body part bleeds, or hair pulling.)

- **Inserting Harmful Objects into Body Orifices:** Repeated and intentional insertion into body orifices of harmful objects that can tear or puncture the skin.

The four behaviors above must occur *at least*:

- Once a month** and require interventions such as regular professional treatment, constant “within arm’s reach” supervision, environmental restraints, or emergency medical treatment whenever the behavior occurs.

- **Head-banging:** Repeated, intentional and severe banging one’s head against hard surfaces. (Does not include a child who head bangs due to sensory integration or visual/hearing impairments.)

Head-banging must occur *at least*:

- Four days a week** and require interventions such as regular professional treatment, constant “within arm’s reach” supervision, environmental restraints or emergency medical treatment whenever the behavior occurs.

#### **Aggressive or Offensive Behavior toward Others:**

Because of the nature of these types of behaviors as related to early childhood development, ALL of the defined aggressive and offensive behaviors towards others ONLY apply to children **six years of age or older**.

- **Serious Threats of Violence:** Threats to seriously harm or kill one or more other people that are repeated, direct, overt, hostile and perceived by witnesses to be true threats of violence. (Does not include relatively common expressions of anger such as a child who feels he or she has too much homework saying in the cafeteria over lunch, “I hate school, I want to kill my teacher.”)

- **Sexually Inappropriate Behavior:** Sexual behaviors, including sexual activities, comments or gestures, that are not welcomed by others, or sexual molestation or abuse of others. Examples are: aggressive attempts to undress, sexually touch, or

- **Abuse or Torture of Animals:** Abusing an animal to find power/joy/fulfillment through the torture of a victim they know cannot defend itself.

The three behaviors above must occur *at least*:

- Once a week** and require interventions such as regular professional treatment, constant “within arm’s reach” supervision, or environmental restraints whenever the behavior occurs; OR

- Once a month** and require very intense intervention such as police involvement whenever the behavior occurs.

- **Hitting, Biting or Kicking:** Pattern of physically aggressive behaviors not explained

by the age or lack of maturity of the aggressor and results in serious harm to others.

- **Masturbating In Public:** Masturbation deliberately done in public places.
- **Urinating on Another or Smearing Feces:** Intentional urination on another person or intentional spreading of feces onto inappropriate places such as on the floor, walls, or furniture.
- **Verbal Abuse:** Repeated spoken words presented in a threatening, harassing, or violent manner that may reasonably be expected to cause mental or emotional harm.

The four behaviors above must occur *at least*:

- Four days a week** and require interventions such as regular professional treatment, constant “within arm’s reach” supervision, environmental restraints, police involvement or emergency medical treatment whenever the behavior occurs.

**Lack of Behavioral Controls:**

- **Destruction of Property/Vandalism:** Intentional destruction of the property of others including breaking windows, slashing tires, spray painting a wall with graffiti, and destroying a computer system through the use of a computer virus.
- **Theft or Burglary:** Taking the property of another without permission, with or without lawful entry. (Does not include taking property from the child’s own home.)

The two behaviors above must occur *at least*:

- Four days a week** and require interventions such as constant “within arm’s reach” supervision, environmental restraints or police involvement whenever the behavior occurs.

**Standard V: Multiple Dangerous Behaviors (A AND B AND C)**

A. Child must exhibit a defined behavior in at least **TWO** of the four behavior categories consistently during the *past six months* and must reasonably be expected to engage in the behaviors during the *next six months*.

AND

B. The behaviors must occur at the specified frequency and require the interventions as outlined in the behavior definitions.

AND

C. The behaviors must be related to the child’s mental health diagnosis and must be of a nature and severity that result in psychiatric hospitalization without direct, daily, community-based intervention from others.

For example, children who would MEET Criterion 4 requirements through Standard V:

- A 14-year-old child has a long history of **torturing animals**. Currently he abuses the family dog at least once a week by kicking it across the room while laughing. He requires constant “within arm’s reach” supervision when he is around the dog to intervene and stop the behavior to keep the animal safe. He is also actively engaging in **vandalism** within the community several times a week and is involved in an intense 3 hours/week in-home therapy program to address these specific issues. There is no indication that these behaviors will subside within the next six months. *He exhibits two behaviors that meet the required definitions at the required duration, frequency, and intensity.*

- Over the past six months, a child engages in **cutting behavior** which is severe and requires emergency medical intervention when this behavior occurs at least once a month. In addition, she has been **running away** from home once or twice a month and the police are called to find her. All involved support systems believe these are long-term concerns. In order to maintain her safety in the community, she is under a 24 hour watch and there is a community emergency crisis plan in place. *She exhibits two behaviors that meet the required definitions at the required duration, frequency, and intensity.*

For example, children who would NOT MEET Criterion 4 requirements through Standard V:

- A seven-year-old child recently began to engage in the **abuse and torture of animals** once or twice a month and is receiving therapy on a monthly basis to address this issue. *This is the only applicable behavior the child demonstrates.*
- A child uses **profanity** when angry and yells at his parents in this manner on a

daily basis but the parents are not being harmed by this behavior. He also **steals** money from his parents on a weekly basis. In addition, he **runs away** from home a couple of times a week although he can always be found at one of his friend's houses. These behaviors are being addressed in family counseling on a weekly basis. *None of these behaviors meet the required behavior definitions.*

- A child **head bangs** daily and the intervention by her caretakers is to ignore the behavior since paying it any attention tends to increase the frequency of it. She also **smears feces** on the wall several times a week. When this happens, she is given a time out in her room. *These behaviors do meet the required definitions and frequency, but not the required intensity of intervention.*

**Standard VI: Dangerous Behavior PLUS Substantial Social Competency Impairment (A PLUS B)**

A. Dangerous Behavior

1. Child must exhibit a defined behavior in at least **ONE** of the four behavior categories consistently during the *past six months* and must reasonably be expected to engage in the behaviors during the *next six months*.

AND

2. The behaviors must occur at the specified frequency and require the interventions as outlined in the behavior definitions.

AND

3. The behaviors must be related to the child's mental health diagnosis and must be of a nature and severity that could result in psychiatric hospitalization without direct, daily, community-based intervention from others.

**PLUS**

B. Substantial Social Competency Impairment

1. The child must either demonstrate a substantial functional limitation in social competency by consistently exhibiting at least **ONE** of the characteristics within the child's age group identified in Appendix A.

OR

2. The child must demonstrate at least **ONE** of the following two School and/or Work issues:

a. The child has behavioral or emotional problems resulting in failing grades in the majority of academic classes, truancy from school, expulsion or suspension, or an inability to conform to school or work schedule for most of the day, occurring consistently over the past six months. (Does not include children who are home-schooled.); OR

b. The child currently needs in-school supports for emotional and/or behavioral problems as evident by an Individualized Educational Plan (IEP) for Emotional or Behavioral Disability (EBD) programming or an active Behavioral Intervention Plan (BIP). See Criterion 3 (Involvement with Service Systems) for additional instruction.

For example, children who would MEET Criterion 4 requirements through Standard VI:

- Over the past year, a 9-year-old child has **kicked** and **hit** her peers on the school playground multiple times a week. This behavior is being addressed through close supervision during recess and weekly therapy for her Conduct Disorder. Due to this behavior, she does not participate in any group activities and truly prefers to spend time alone. *Her behavior meets the definition, duration, frequency, and intensity as set forth in Standard V and she demonstrates a deficit in social competency.*

- A 16-year-old child made **serious threats of violence** towards others on a monthly basis for the past six months. Police involvement occurs whenever these threats are made but there has been little change in his behavior. The only approach that works at this time is to severely limit his access to other children. As a result of this behavior as well as other concerns related to his mental health, he is on a limited school day schedule and only attends two hours a day in a specialized one on one classroom setting. He has an IEP that supports this limited day schedule. *His behavior meets the definition, duration, frequency, and intensity set forth in Standard V and he demonstrates an inability to conform to*

*school or work schedule more than 50% of the time.*

For example, children who would NOT MEET Criterion 4 requirements through Standard VI:

- A child **got drunk** several days a week over the summer and has continued to drink excessively with her friends after school at least weekly through the first semester of school. She is attending weekly counseling for alcohol abuse. She generally gets along with people and has not been in serious trouble with law enforcement for her drinking. She is, however, **failing** one of her academic classes and can barely hold it together throughout the school day. *The behavior meets the definition, duration, frequency, and intensity as set forth in Standard V, but failing one of her four academic classes and the inability to hold it together throughout the school day does not meet the definition under School & Work unless she was failing at least half of her academic classes.*
- A child is **aggressive** in both the classroom and at home two or three times a week resulting in the need for caretakers to be “within arm’s reach” at all times and requires in school supports for emotional and behavioral problems. *The behavior does not meet the frequency requirement of “multiple times a week (4 or more)”.*

**Standard VII: Rare and Extreme Circumstances PLUS Dangerous Behavior OR Substantial Social Competency Impairment (Not Applicable for children under six years of age) (A PLUS B; OR A PLUS C)**

A. Rare and Extreme Circumstances –

The child, six-years-old or older, must meet **ONE** of the following three specific Rare and Extreme Circumstances:

1. Extreme disruptive behaviors when the child is in structured settings that have been demonstrated **daily** for the *past six months* and that require **CONSTANT** (every few minutes) redirection from an adult. Disruptive behaviors may include sliding around a room in a chair, screaming out inappropriate words or phrases, sitting in the center of a room and refusing to move.

OR

2. Severe nightmares or night terrors *at least four times a week* consistently for the *past six months*. These nightmares or night terrors are characterized by repeated frightening episodes of intense anxiety.

OR

3. Being unable to complete routine events (e.g., hygiene tasks, leaving the house, walking on certain pavements, or sharing community equipment with others) throughout the day, **every day**, for the *past six months* due to an obsession. An obsession is a thought, a fear, an idea, an image, or words that a child cannot get out of his/her mind. It does not include self-stimulating or compulsive behaviors. The child experiencing the obsession must be aware of the obsession but not be able to control the influence of his/her own thought patterns.

**PLUS**

**Either B or C**

B. Dangerous Behavior C. Substantial Social Competency Impairment

1. Child must exhibit a defined behavior in at least **ONE** of the four behavior categories consistently during the *past six months* and must reasonably be expected to engage in the behaviors during the *next six months*.

AND

2. The behaviors must occur at the specified frequency and require the interventions as outlined in the behavior definitions.

AND

3. The behaviors must be related to the child's mental health diagnosis and must be of a nature and severity that could result in psychiatric hospitalization without direct, daily, community-based intervention from others.

The child must demonstrate a substantial functional limitation in social competency by consistently exhibiting at least **ONE** of the characteristics within the child's age group identified in APPENDIX A.

For example, children who would MEET Criterion 4 requirements through Standard VII:

- A 7-year-old child was recently adopted from Russia and has a diagnosis of Reaction Attachment Disorder. She isolates herself from her peers and plays primarily by herself. She also is having night terrors, as defined above, every night. *She has one of the rare and extreme, mental health circumstances and a deficit in social competency.*
- A 16-year-old child with Obsessive Compulsive Disorder has severe obsessions regarding germs and washes his hands repeatedly throughout the day. He receives homebound instruction since his obsession over germs restricts him to staying home at all times. He hasn't left home for over a year except for some psychiatric sessions which were very traumatic for him. Due to his restricted lifestyle, he has not developed any self-confidence in social interactions. *He meets one of the rare and extreme, mental health circumstances and has a deficit in social competency.*

For example, children who would NOT MEET Criterion 4 requirements through Standard VII:

- A 10-year-old child is very active and has a difficult time keeping her body still and mouth quiet. She is often off topic and can distract others in the classroom. Typically she is redirected by her teacher or is allowed to briefly leave the classroom every 15 minutes throughout the day. In addition, she has a difficult time transitioning between classrooms. If others are in the hall when she is, she will scream. As a result, the teacher allows her to transition 5 minutes before the rest of the class so she can get where she needs to go before others are in the hallway. *Child has a deficit in social competency but does not meet the rare and extreme, mental health circumstance of extreme disruptive behaviors. Disruptive behaviors must happen at a frequency of every few minutes throughout the day to meet the requirement.*
- A 7-year-old child is very shy. She is withdrawn and does not have a peer that she would call a friend. She is too shy to even ask a teacher a question in school although she will ask her parents questions at home. At school she keeps to herself and prefers to read books rather than play with other kids. She also has a sleep disturbance. She is often awake at night complaining about having a bad dream. She has these bad dreams every night. When she wakes during the night, she will crawl into her parents' bed and fall back to sleep with their comfort. Although she describes the dreams as "bad" dreams, she doesn't recall their content and doesn't appear particularly agitated by them. This has been going on for months and her parents wonder when she will ever sleep the whole night in her own bed again. *Child has a deficit in social competency but does not meet the rare and extreme circumstance of severe nightmares or night terrors. Although she has "bad dreams" she does not have the symptoms associated with this rare and extreme, mental health circumstance.*
- A 6-year-old child with Autism is fascinated with ceiling fans and doors. He watches the fans spin and tantrums when the fans are turned off. He will open and close doors all day long if he was allowed to but can be redirected to other activities throughout the day. He shows no interest in playing with other children

or adults and does not play with developmentally appropriate toys. *Child has a deficit in social competency but does not meet the rare and extreme, mental health circumstance of obsessions. Obsessions must restrict the child from completing daily activities and also must be something the child is cognitively aware of but cannot stop doing.*  
*If Criteria 1, 2, 3 and 4 above are ALL met, the child meets the Psychiatric Hospital (Severe Emotional Disturbance) level of care.*

*Id.* at p.13-21.

No evidence reveals petitioner qualifies under the severe symptomology criteria. While he has had incidents of what is generally considered violence – throwing things, hitting others - violence is defined under this program as acts that endanger another person’s life, and that cause the victim to require inpatient admission to a hospital. His acts do not rise to the level required here. This child has challenges and I do not mean to diminish those challenges he faces, however, the evidence in this record does not show that he requires the kind of interventions or exhibits the kinds of behaviors that would allow him to meet the levels of care. That being said, I am persuaded by the preponderance of the evidence that his condition(s) do not rise to the level of any of the foregoing levels of care.

If the petitioner’s conditions or deficits should worsen, or if the petitioner develops better documentary evidence, then he would be well-advised to re-apply. I add, assuming petitioner finds this decision unfair, that it is the long-standing position of the Division of Hearings & Appeals that the Division’s hearing examiners lack the authority to render a decision on equitable arguments. See, Wisconsin Socialist Workers 1976 Campaign Committee v. McCann, 433 F.Supp. 540, 545 (E.D. Wis.1977). This office must limit its review to the law as set forth in statutes, federal regulations, and administrative code provisions.

**CONCLUSIONS OF LAW**

1. Petitioner does not meet institutional level of care criteria for CLTS eligibility.
2. The agency correctly denied petitioner’s eligibility for CLTS services because the petitioner does not meet the “level of care” requirement.

**THEREFORE, it is** **ORDERED**

The petition for review herein be 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 Milwaukee,  
Wisconsin, this 28th day of July, 2014

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\sKelly Cochrane  
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  
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Internet: <http://dha.state.wi.us>

The preceding decision was sent to the following parties on July 28, 2014.

Milwaukee Cty Disability Services Division-DSD  
Bureau of Long-Term Support