



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

CWK/157805

PRELIMINARY RECITALS

Pursuant to a petition filed May 20, 2014, under Wis. Admin. Code § HA 3.03(1), to review a decision by the Family Support & Resource Center in regard to Medical Assistance, a hearing was held on July 09, 2014, at Madison, Wisconsin. At petitioner's request the record was held open to allow for the submission of additional documentation. Said documentation was received.

The issue for determination is whether the petitioner remains 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]
[REDACTED]

Respondent:

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

By: Angela Radloff
Family Support & Resource Center
101 Nob Hill Rd
Suite 201
Madison, WI 53713

ADMINISTRATIVE LAW JUDGE:

Peter McCombs
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner is a resident of Dane County.

2. The petitioner is a 19-year-old diagnosed with anxiety state-unspecified, Oppositional Defiant Disorder, Major Depressive Disorder, Post-Traumatic Stress Disorder, and Mood Disorder, NOS.
3. The petitioner has been receiving special education services (IEP) and respite care.
4. Petitioner is independent in all self-care tasks, and at the age of 18 became her own guardian.
5. Petitioner's aggressive behaviors have been reduced.
6. The petitioner does not have frequent contact with police agencies.

DISCUSSION

The Department terminated the petitioner's participation in the Children's Long-Term Support Waiver (CLTS) because it contends 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, physical disabilities, and severe emotional disturbances. *Medicaid Waivers Manual*, p II-4. The petitioner has been receiving services because of severe emotional disturbance. To continue receiving services, she must demonstrate that she meets the psychiatric hospital level of care.

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 been diagnosed with multiple mental health conditions. *Id.* 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's had an individualized education program and she has received therapy. *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.

Petitioner’s mother testified that petitioner continues to exhibit aggressive behaviors at home, even if those behaviors have decreased in the school setting. She further noted that the petitioner often fails to take her medication and is self-injurious. Letters were submitted on petitioner’s behalf by her school social worker and a farm owner who works with petitioner weekly. Both wrote in support of continuing petitioner’s CLTS enrollment.

Unfortunately there is no evidence that petitioner’s aggressive behaviors continue to occur with the severity or frequency required to meet the severe emotional disturbance standard. Petitioner’s mother noted that she does not report these behaviors to the police, for instance, because nothing happens, and it can be expensive. I do not wish to suggest that the petitioner’s problems are insignificant; she has a long history of therapy and mental health problems. Nor do I doubt that the services have helped—and would continue to help—her improve. But the children’s waiver is meant to provide benefits to only the most severely handicapped. She simply does not fit into that category, as can be demonstrated 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 Care 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 11th day of September, 2014.

\sPeter McCombs
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 September 11, 2014.

Family Support & Resource Center
Bureau of Long-Term Support