



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

In the Matter of

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

DECISION

CWK/160321

PRELIMINARY RECITALS

Pursuant to a petition filed August 30, 2014, under Wis. Admin. Code § HA 3.03(1), to review a decision by the Buffalo County Department of Social Services in regard to Medical Assistance, a hearing was held on October 20, 2014, at Alma, Wisconsin.

The issue for determination is whether the county agency correctly seeks to end funding for massage therapy for the petitioner.

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: Tori Bautch

Buffalo County Department of Social Services
Courthouse - 407 South Second Street
PO Box 517
Alma, WI 54610-0517

ADMINISTRATIVE LAW JUDGE:

Michael D. O'Brien
Division of Hearings and Appeals

FINDINGS OF FACT

1. The petitioner is a resident of Buffalo County.

2. The petitioner is a 16-year-old boy who receives medical assistance through the Children's Long-Term Support Waiver. His services have included massage therapy.
3. The county agency notified the petitioner on August 26, 2014, that it was ending his massage therapy.
4. The agency has not provided a single fact or any legal authority for ending the petitioner's benefits.

DISCUSSION

The petitioner receives medical assistance under a Children's Long-Term Service Waiver, which is available to certain categories of disabled persons under 22. *Medicaid Waivers Manual*, § 2.02(D). He has been receiving massage therapy under this waiver. On August 26, 2014, the county agency notified him that this service would end. It has not provided a single document, any testimony, or any legal authority for doing so. When I asked the worker the basis of its decision, she provided none, testifying only that someone above her told her that the petitioner was no longer eligible for this services.

These are adversarial proceedings. This means the agency must provide law and evidence to support its decision. Although I generally will do legal research before writing a decision, I do not even have a starting point in this matter. In essence, the agency did not appear in any meaningful way. Until the agency supports its decision to end the petitioner's massages with legal authority and facts, those benefits will continue.

CONCLUSIONS OF LAW

The county agency cannot end massages the petitioner receives through the Children's Long-Term Care Waiver because it has provided no factual or legal authority for doing so.

THEREFORE, it is

ORDERED

That this matter is remanded to the county agency with instructions that within 10 days of the date of this decision it certify that it has continued funding the petitioner's massages through the Children's Long-Term Support Waiver.

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 November, 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 November 11, 2014.

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