



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

In the Matter of

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

DECISION

CWK/163598

PRELIMINARY RECITALS

Pursuant to a petition filed January 30, 2015, under Wis. Admin. Code § HA 3.03(1), to review a decision by the Waukesha County Health and Human Services in regard to Medical Assistance, a hearing was held on March 31, 2015, at Waukesha, Wisconsin.

The issue for determination is whether the Petitioner meets the eligibility criteria for the Children's Long-Term Support – Autism Waiver Services.

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: Casey Vullins, Children's Long-Term Services Supervisor
Waukesha County Health and Human Services
514 Riverview Avenue
Waukesha, WI 53188

ADMINISTRATIVE LAW JUDGE:

Mayumi M. Ishii
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner is a resident of Waukesha County.
2. On October 6, 2014, the Department of Health Services, Division of Long Term Care sent a letter to the Waukesha County Department of Health and Human Services indicating that the

Petitioner’s name had come to the top of the wait list for autism treatment services under the CLTS Wavier, and that funding was available, effective October 12, 2014. (Exhibit 15)

3. The October 6, 2014 letter directed to the county agency to confirm the family’s interest in the program and to complete a “Step One” checklist and to develop a “Step Two” packet. (Exhibit 15)
4. By September 30, 2014, the Petitioner had completed more than 104 weeks / two years of autism services that were provided at a rate of at least 10-20 hours per week. Private insurance covered the cost of these services. (Testimony of Petitioner’s mother; Exhibit 16)
5. On December 1, 2014, the agency sent the Petitioner’s parents a notice indicating that effective December 16, 2014, the Petitioner would not be eligible for the CLTS program. (Exhibit 1)
6. The Petitioner’s parents filed request for fair hearing that was received by the Division of Hearings and Appeals on January 20, 2015. (Exhibit 1)

DISCUSSION

The Children’s Long-Term Support (CLTS) Waiver program published a document called “Road Map to Receiving Early Intensive and Consultative Behavioral Intervention Services”, describing certain eligibility criteria for autism services. It can be found on-line at:

https://www.dhs.wisconsin.gov/sites/default/files/legacy/bdds/waivermanual/app_e_docs/RoadmaptoEIBI_CBI.pdf

Under Paragraph 8, it states;

Your child must not have already received two or more years of treatment services at the EIBI and/or CBI levels, regardless of source of payment. Payer sources may include, but are not limited to: private insurance, Medicaid, private pay, or other state or privately-funded programs (e.g., intensive or non-intensive services as defined by an insurer including 20-30 hours of treatment per week). All weeks of services provided by any payer source at either/both levels will be counted as services received and deducted from the three-year time period allowed in the CLTS Waiver. A child must be eligible for at least 12 months of treatment after enrollment into the Waiver in order to be authorized to participate in this program.

The aforementioned document further indicates that when a child’s name reaches the top of the wait list and it has been more than six months since the date of application, that the child’s case must be evaluated to make sure the child has continued to meet eligibility criteria. (See page 3 of the Road Map to Receiving Early Intensive and Consultative Behavioral Intervention Services)

EIBI stands for Early Intensive Behavioral Intervention Program and CBI stands for Consultative Behavioral Intervention Program. The policies and rules governing the EIBI and CBI programs can be found in Appendix E of Medicaid Home and Community Based Waivers Program Manual (HCBWM), effective March 15, 2012, which the Department of Health Services published on-line at:

http://www.dhs.wisconsin.gov/BDDS/waivermanual/app_e.htm

EIBI level services are defined as “Intensive levels of services are defined as a minimum of 30 to a maximum of 40 hours of face-to-face treatment per week provided in the location most appropriate to meet the child’s needs as determined by the treatment clinician” (HCBWM, Appendix E, EIBI Services, Paragraph 9) CBI level of service is defined as 10-20 hours of face-to-face treatment per week provided

in the location most appropriate to meet the child’s needs as determined by the treatment clinician. (Id at paragraph 10; See also HCBWM, Appendix E, CBI Services, Paragraph 9)

Two years works out to be a total of 104 weeks (52 weeks per year x 2 years). According to Exhibit 16, the Petitioner completed 114 weeks of autism treatment that met the CBI treatment level of 10-20 hours per week during the period of June 1, 2012 through September 30, 2014. Because the Petitioner already received more than two years / 104 weeks of treatment by the time her name reached the top of the wait list in October 2014, she no longer met the eligibility criteria for the CLTS – Autism Waiver Services Program.

Petitioner’s mother argued that it isn’t fair to deny her daughter services through the CLTS waiver program because she and her husband did everything they were asked to do, and because they were put in the difficult position of either choosing to go ahead with the treatment the Petitioner desperately needed and risk losing eligibility, or holding off on treatment, for who knows how long, to maintain eligibility, but risk losing an important window of opportunity to mitigate the severity of their daughter’s autism.

The frustration felt by the Petitioner’s parents is both understandable and justifiable. The bureaucracy surrounding public assistance programs is complicated and difficult to navigate; the drive and desire to do what is best for one’s child is strong, but it is not always easy to know what really is best for one’s child. In short, parenting is hard and it’s even harder when you’re trying to meet the needs of a child with special needs. However, unlike circuit court judges, administrative law judges do not have equitable powers and cannot deviate from established law and policy, but must instead apply the law as it is written.¹

CONCLUSIONS OF LAW

The Petitioner does not meet the eligibility criteria for the Children’s Long-Term Support – Autism Waiver Services.

THEREFORE, it is **ORDERED**

That the petition 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.

¹ See, *Final Decision*, OAH Case No. A-40/44630, [by Timothy F. Cullen, Secretary, DHSS] (Office of Administrative Hearings, n/k/a, Division of Hearings & Appeals- Work & Family Services Unit December 30, 1987) (DHSS); "An administrative agency has only those powers which are expressly conferred or can be fairly implied from the statutes under which it operates. [citation omitted]" *Oneida County v. Converse*, 180 Wis.2nd 120, 125, 508 N.W.2d 416 (1993)

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 Milwaukee,
Wisconsin, this 8th day of April, 2015.

\sMayumi M. Ishii
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 April 8, 2015.

Waukesha County Health and Human Services
Bureau of Long-Term Support