



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[Redacted]
[Redacted]
Redact
[Redacted]

DECISION

CWK/163675

PRELIMINARY RECITALS

Pursuant to a petition filed February 3, 2015, under Wis. Admin. Code, §HA 3.03(1), to review a decision by the Milwaukee County Disability Services Division to discontinue Children’s Long Term Support (CLTS) services, a hearing was held on April 8, 2015, by telephone. A hearing set for March 3, 2015 was rescheduled at the petitioner’s request.

The issue for determination is whether the agency correctly determined that petitioner no longer meets the level of care requirement for CLTS eligibility.

PARTIES IN INTEREST:

Petitioner:

[Redacted]
[Redacted]
Redact
[Redacted]

Respondent:

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

By: Written submission of [Redacted]
Milwaukee Cty Disability Services Division
Attention: [Redacted]-DSD
1220 W. Vliet Street, Suite 300
Milwaukee, WI 53205

ADMINISTRATIVE LAW JUDGE:

Brian C. Schneider
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner is a 16-year-old resident of Milwaukee County.
2. Petitioner received CLTS services until the agency action. In October, 2014 the agency did an annual reassessment that included a new functional screen. The result of the functional screen

was that petitioner no longer met the ICF/MR level of care requirement for CLTS eligibility. The agency informed petitioner's parents of the change by a notice dated January 16, 2015. Services have not continued pending this decision.

3. Petitioner has pervasive developmental disorder, attention deficit hyperactivity disorder (ADHD) and neuromuscular disorder.
4. Petitioner took an IQ test in November, 2014. The results showed a full-scale IQ of 71, with sub-test scores having a wide range of results (for example perceptual reasoning had a score of 96 while the processing speed score was 59). The agency assessor spoke with petitioner's school psychologist, who explained that the IQ test is of problematic accuracy because of the differences in his verbal and non-verbal abilities. The agency thereafter accepted an earlier IQ score of 97 from 2009, and concluded that petitioner does not have a condition related to mental retardation.
5. The same psychologist concluded that petitioner is at borderline cognitive functioning. The 71 score is a better indicator of his functioning than the 97.
6. Petitioner is functioning at several levels below his age in school subjects. Reading is at the 2nd-3rd grade level, and math also is at the grade school level.

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 ("the 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. It can be found on the internet at <http://www.dhs.wisconsin.gov/bdds/waivermanual/index.htm>.

The Manual provides that an individual must meet several eligibility criteria for these programs, one of which is level of care. Manual, §2.07D. In addition, the child must be part of a waiver target group. Those groups include children with developmental disabilities, those with physical disabilities, and those with severe emotional disturbance. Manual, §2.02.

The level of care criteria are found in the Manual's Appendix A-10, dated February, 2011. Petitioner was eligible for CLTS under the ICF/MR (DD) level of care, and that is the one I will focus on. To meet the DD level of care, the child must have a diagnosis of mental retardation or a closely related condition that results in impairment of intellectual functioning or adaptive behavior similar to that of mentally retarded persons. App. A-10, page 3. In addition, the impairment must be manifested before age 22, likely to continue indefinitely, and result in a substantial limitation in at least one of the following three areas: communication, social competency, or activities of daily living. *Id.*, p. 5. Finally, the child must need active treatment.

To meet the cognitive impairment standard the child must not only have a diagnosis of cognitive disability but also have a substantial learning impairment that is a 30% delay in intellectual functioning as shown by standardized scores or score of at least two standard deviations below the mean on valid measures of intellectual functioning. This appears to be the primary basis for the change in petitioner's functional screen result. It is evident that petitioner is well behind in school functioning, and his school psychologist testified that he is functioning at the cognitive borderline.

Even beyond the requirement of cognitive disability, the child must have a substantial limitation in communication, social competency, or ADLs. In communication the child must have the same 30% delay or score of two deviations below the norm on testing. Petitioner met that standard in the functional screen.

The final requirement is that the child requires active treatment defined in the Manual as follows at Appendix A-10, page 7:

To meet this criterion a child must require a continuous active treatment program that includes aggressive, consistent implementation of training, therapies, health and related services designed to address the child's substantial functional limitations resulting from her/his cognitive deficits to achieve:

- The acquisition of the skills and behaviors necessary for the child to function with as much self determination and independence as possible; and
- The prevention of deceleration, regression, or loss of optimal functional status.

For treatment to be categorized as active it must be needed on a continuous and pervasive basis throughout the child's daily routines in home, school and community. Active treatment does not include services to maintain generally independent clients who are able to function with little supervision or in the absence of a continuous active treatment program.

Until the agency action petitioner was involved in in-home autism services along with school services and mental health services. This was not a stated basis for the failure to meet the level of care.

I conclude that petitioner has the requisite cognitive impairment that meets the DD standard, and the evidence shows that he meets the other level of care prongs. The discontinuance thus was incorrect.

CONCLUSIONS OF LAW

Petitioner continues to meet the ICF/MR level of care required for CLTS eligibility.

THEREFORE, it is ORDERED

That the matter be remanded to the agency with instructions to restore petitioner's CLTS eligibility and his ongoing services at the ICF/MR level of care, within 10 days 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 13th day of April, 2015

\sBrian C. Schneider
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 13, 2015.

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