



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

In the Matter of

[REDACTED]
[REDACTED]
c/o [REDACTED]
[REDACTED]
[REDACTED]

DECISION

CWK/165094

PRELIMINARY RECITALS

Pursuant to a petition filed April 01, 2015, under Wis. Admin. Code § HA 3.03(1), to review a decision by the Family Support & Resource Center in regard to Medical Assistance, a telephone hearing was held on June 24, 2015.

The issue for determination is whether the petitioner is functionally eligible for the Children’s Long-Term Support Waiver.

There appeared at that time the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
c/o [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 (CARES # [REDACTED]) is a resident of Dane County.

2. The petitioner has participated in the Wisconsin Children’s Long Term Support Medicaid and Community-based Services (CLTS) Waiver program for six years. On March 27, 2015, acting on a functional screen performed in March 12, 2015, the county agency notified petitioner that he was no longer functionally eligible for the program.
3. The petitioner was 156 years old at the time of the functional screen assessment. He is diagnosed with autism spectrum disorder, unspecified anxiety disorder, and unspecified depressive disorder.
4. The petitioner’s IQ is 78. He has no significant physical problems.
5. The petitioner has trouble initiating and maintaining friendships. His verbal communication is good, but he has great difficulty writing and his overall communication is compromised by his anxiety.
6. The petitioner has an IEP during the school year, and attends summer school through his school district.
7. The petitioner attempted suicide in October of 2014, and his medical history is significant for admittance to a psychiatric hospital when he was in the 3rd grade.
8. The petitioner has engaged in high-risk behaviors including running away approximately one year ago, self-harm (slicing his arms) and damaging school property when angered.

DISCUSSION

The petitioner is a 15-year-old boy diagnosed with autism who has been participating in the Children’s Long-Term Support Waiver (CLTS) for six years. In March of 2015, after conducting a functional re-screen, the county agency determined that he 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, children with physical disabilities, and children with severe emotional disturbances. *Medicaid Waivers Manual*, p II-4. The petitioner has an IQ of 78, so he is not developmentally disabled, and he has no significant physical problems. This means that to qualify, he must demonstrate that she has a severe emotional disturbance.

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.” He 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)

Petitioner meets the first criterion because he has autism. *Id.*, p.9. He meets the second because he has had these symptoms for over six months and they can be expected to last for at least another year. He meets the third criterion because he has an individualized education program. *Id.*, p. 10-11. The question is whether he 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 he 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 himself, 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.

The petitioner has trouble making friends, and he is described as occasionally violent when angry, unable to interact socially, and occasionally self-harming. Overall, the petitioner’s problems are serious. He has a long history of therapy and mental health problems that continue. The children’s waiver is meant to provide benefits to only the most severely handicapped. The respondent’s determination was based upon an acknowledgement of petitioner’s current mental health status and a finding that the petitioner’s symptomology and/or dangerous behaviors occur at a level that requires intervention such as constant supervision, frequent police involvement, or hospitalizations. Based on the record before me, I am unable to concur with the respondent’s findings.

Specifically, petitioner attempted suicide approximately 5 months prior to the functional screen assessment. In that same period he engaged in self-harm and was involved in two incidents at his high school involving significant damage to property. Petitioner ran away from home approximately 8 months prior to the March, 2015, functional screen. As recently as March of 2015, petitioner’s special education teacher reported that petitioner had thrown a chair at another student. A March of 2014, functional screen reported:

He continues to have a fascination with violent imagery and words and raised concerns from school staff earlier in the school year when he wrote a note that read, “Have you ever wanted to kill someone so much that you plotted it out?” [REDACTED]’s use of shocking language is not believed to be threatening in nature, but instead an attempt to gain attention coupled with his overall interest in death and war.

Exhibit 7.

Several months later, the record indicates that petitioner attempted suicide and engaged in self-harming behavior. Accordingly I conclude that petitioner does exhibit severe symptomology and dangerous behaviors.

I note to the petitioner that, as his ability to control his symptomology and behaviors improves, it remains likely that he will improve to the point that he will no longer be eligible to participate in the CLTS program. While he has not reached that point yet, based on the information before me, he is approaching that status. I note that this was a close decision, and I applaud the efforts of petitioner, his care-givers, and his teachers to date.

CONCLUSIONS OF LAW

The Department incorrectly determined that the petitioner no longer is eligible for the Children's Long Term Support Waiver because he presently meets the criteria to establish a severe emotional disturbance.

THEREFORE, it is

ORDERED

That this matter is remanded to the respondent to rescind its determination that petitioner no longer meets the level of care requirement necessary for participation in the Wisconsin Children's Long Term Support Medicaid and Community-based Services (CLTS) Waiver program. All actions required by this Order shall be completed within 10 days following issuance 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 8th day of July, 2015.

\sPeter McCombs
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
FAX: (608) 264-9885
email: DHAmail@wisconsin.gov
Internet: <http://dha.state.wi.us>

The preceding decision was sent to the following parties on July 8, 2015.

Family Support & Resource Center
Bureau of Long-Term Support