



FH  
[REDACTED]

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

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In the Matter of

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

DECISION

CWK/165856

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**PRELIMINARY RECITALS**

Pursuant to a petition filed May 06, 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 23, 2015.

The issue for determination is whether the agency correctly denied the petitioner's Children's Long Term Support Home and Community-based Services (CLTS) Waiver application for lack of eligibility. Specifically, the question is whether or not the petitioner meets the program's institutional "level of care" requirement.

There appeared at that time 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: 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 applied for the CLTS Waiver program. On March 23, 2015, the county agency advised the petitioner that his application for CLTS had been denied. The petitioner timely appealed. The agency's basis for denial is that the petitioner does not satisfy the level of care eligibility criterion for the program. In making its determination, the agency assigned scores to the petitioner's functional deficits and had the Wisconsin Department of Health Services run those scores through a computerized care level "screen.". The result of that computerized determination was the decision by the respondent that the recipient does not have care needs at an institutional level.
3. The petitioner is 15 years old. He is diagnosed with Mood Disorder-NOS, ADHD, and Oppositional Defiant Disorder.
4. Petitioner has no significant physical problems.
5. Petitioner has a history of suicidal ideation, aggression, property destruction, and self-harming behaviors, but had not exhibited those in the six months preceding his application.
6. The petitioner has an IEP for emotional behavioral supports during the school year.

### DISCUSSION

The petitioner is a 15-year-old boy diagnosed with Mood Disorder-NOS, ADHD, and Oppositional Defiant Disorder who has applied to participate in CLTS. In March, after reviewing his case, the respondent determined that he does not meet 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 does not have a developmental disability diagnosis, so he is not developmentally disabled, and he has no significant physical problems. This means that to qualify, he must demonstrate that he 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](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)

He meets the first criterion because he has diagnoses of Mood Disorder-NOS, ADHD, and Oppositional Defiant Disorder. *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 and he receives therapy. *Id.*, p. 10-11. The question is whether he presently exhibits severe symptomology or dangerous behaviors at the requisite frequency.

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 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.

The petitioner’s history reveals issues with suicidal ideation, self-harm and property destruction. However, in the 6 months preceding the functional screen assessment, he did not exhibit any of these behaviors. The petitioner’s mother testified that petitioner hoards food and now weighs over 300 pounds. She also raised concerns that petitioner may be (or may at least be at risk of) participating in pedophilia activity. While I certainly do not discount her concerns, there is simply nothing to corroborate this concern in the record before me. Nor has petitioner presented any information that would counter or rebut the respondent’s findings that petitioner has not engaged in high risk behaviors in the last 6 months.

Overall, the petitioner’s problems are serious. He has a long history of therapy and mental health problems that continue. But the children’s waiver is meant to provide benefits to only the most severely handicapped. He simply does not fall into this category because he does not demonstrate the frequency of symptomology or high risk behaviors required to fit into that category. This can be seen 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](http://www.dhs.wisconsin.gov/bdds/waivermanual/CLTS_LOC.pdf).

### **CONCLUSIONS OF LAW**

The Department correctly determined that the petitioner is not eligible for the Children’s Long Term Support Waiver because he does not meet the severe emotional disturbance 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 9th day of July, 2015.

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\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 July 9, 2015.

Family Support & Resource Center  
Bureau of Long-Term Support