



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

In the Matter of

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

DECISION

CWK/167551

PRELIMINARY RECITALS

Pursuant to a petition filed July 23, 2015, under Wis. Admin. Code § HA 3.03(1), to review a decision by the Lutheran Social Services of Wisconsin & Upper Mich in regard to Medical Assistance, a hearing was held on August 19, 2015, at Elkhorn, Wisconsin.

The issue for determination is whether the agency correctly determined that the petitioner was no longer functionally eligible for the CLTS waiver program.

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: Carrie Peachchurches

Lutheran Social Services of Wisconsin & Upper Mich
CLTS Program Manager
3003 N. Richmond St.
Appleton, WI 53217

ADMINISTRATIVE LAW JUDGE:

Corinne Balter
Division of Hearings and Appeals

FINDINGS OF FACT

1. The petitioner is a resident of Walworth County.

2. The petitioner was previously found eligible for the CLTS waiver program, and has been receiving services through that program.
3. On June 23, 2015 the agency completed a yearly review, which included the Children's Long Term Care Functional Screen (LTCFS). The result of this LTCFS was that the petitioner was no longer functionally eligible for the CLTS waiver program.
4. The petitioner attends school and has an Individualized Education Plan (IEP). He does not exhibit disruptive behaviors in the school setting that require redirection from an adult every three minutes on a daily basis.
5. At home the petitioner is able to bath himself, brush his teeth, wash his hands and face, complete other necessary grooming tasks, pick out his own clothes, dress himself, eat using silverware, and complete toileting on his own. He needs reminders to take a shower, change clothes, and use a napkin when eating. Once he receives reminders, he is able to finish and/or complete the task on his own.
6. The petitioner demonstrated that he is able to follow a three-step directional task. He is verbal and can be understood. The petitioner also understands what others are saying.
7. The petitioner has a friend that he eats lunch with. He is involved with boy scouts and 4H.
8. The petitioner is a thirteen year-old boy who is diagnosed with Autism.
9. On July 16, 2015 the agency sent the petitioner a notice that he no longer met the level of care requirement for the CLTS waiver program.
10. On July 27, 2015 the Division of Hearings and Appeals received the petitioner's Request for Fair Hearing.

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://dhfs.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, §2.01. 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.

To meet the level of care for developmental disabilities (DD), 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. See the Developmental Disability Decision Tree at <https://www.dhs.wisconsin.gov/publications/p00935.pdf>. In addition, the child must substantial functional limitations in one of the following areas: communication, social competency, or activities of daily living. Manual's Appendix A-10.

A child has a substantial functional limitation in the area of communication if the child has a 30% or greater delay or a standard score of 2 or more standard deviations below the mean on valid, standardized and norm referenced measures of BOTH expressive and receptive communication functioning. *Id.*

A 13 year-old child has a substantial functional limitation in the area of social competency if the child exhibits one of the following social limitations:

- Does not maintain a friendship with at least one person. This is evidenced by the child not demonstrating the interpersonal give-and-take necessary to keep a friendship. Manual's Appendix A-10.
- Does not express an interest in spending time with similar aged peers. This is evidenced by the child isolating himself or herself from peers. Manual's Appendix A-10.
- Does not show concern for the feelings of friends. This is evidence by not noticing another person's feelings and offer care or comfort. Manual's Appendix A-10.

A child has a substantial functional limitation in the area of activities of daily living if the child is unable to perform daily functions without extensive, hands-on assistance significantly beyond the age at which similar aged peers typically require such assistance. Manual's Appendix B. This assistance must be needed by the child to complete the task or function at all, rather than to complete the task better, more quickly, or to make the task easier. *Id.* The limitation must also be a direct result of the child's disability and be exhibited most of the time. *Id.* The child must also require the assistance consistently, require the assistance for at least the next 12 months, and require the assistance to function in all settings including the home, school, and community. *Id.* For a 13 year old in the area of bathing, grooming it would be a substantial limitation if the child needed physical assistance, step by step instructions, the child was combative during the process, or the child was non-compliant to the point of not completing the task for five days in a row. *Id.* In the area of dressing a 13 year old child would need physical assistance dressing. *Id.* This would not include buttons and fasteners. *Id.* In the area of eating the 13 year old would need to be tube fed, fed, or one-on-one monitoring to prevent choking or aspiration. *Id.* In the area of toileting the 13 year old would have to have incontinent issues. *Id.* In the area of mobility and transfer the 13 year old would need physical assistance. *Id.*

The petitioner in this case is diagnosed with autism. In order to qualify the petitioner must have 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. This does not appear to be an issue in this case. At issue is whether the petitioner has a substantial limitation in the area of communication, social competency, or activities of daily living. Although the petitioner suffers some limitations with his autism, he does not have a substantial limitation in any of these three categories.

With regard to communication, there is no evidence that he has a 30% or greater delay or a standard score of 2 or more standard deviations below the mean on valid, standardized and norm referenced measures of BOTH expressive and receptive communication functioning. In fact all of the evidence demonstrates that the petitioner communicates fairly well. The agency testified that the petitioner was able to follow a three step directional task. The petitioner's mother testified that the petitioner does not look a person in the person's face when communicating. Nonetheless, everyone agrees that the petitioner can communicate. There is no evidence that the petitioner's deficits in the area of communication are to the level required for this waiver program.

With regard to social competencies, the petitioner does not meet the program requirements. The petitioner has a friend he eats lunch with, he is involved in Boy Scouts, and 4-H. The petitioner is shy by all accounts. The father testified that at a Boy Scout outing the petitioner would have isolated himself if the father allowed him to do so. This is one incident by a child who everyone states is shy and has autism. This does not rise to level required by the waiver program. The petitioner has some difficulty when another person shows emotions. This most likely has to do with the autism diagnosis, but it does not appear that this interferes with the petitioner's ability to have friends or be involved in other social programs. Thus, the petitioner does not suffer a substantial limitation in this area.

With regard to activities of daily living (ADL), all the testimony is that the petitioner can complete these tasks on his own. The petitioner's mother testified that the petitioner needs reminders or he would not complete his ADLs. For a child of the petitioner's age to meet the requirement in this category, the child must need hands on assistance. The testimony is that the petitioner needs reminders, but not hands on assistance, and therefore there is no substantial limitation in this area.

To meet the psychiatric hospital (SED) level of care, the child must have an emotional disturbance that has persisted at least six months and is expected to persist for at least one year; it must be diagnosed by a certified psychiatrist or psychologist using the DSM-IV classifications; there must be specific psychiatric symptoms or significant functional impairments in two of the following; self-care, community involvement, social relationships, family relationships, and school/work; and the child must be receiving services from service systems such as the juvenile system, social services, special education relating to emotional needs, or the mental health system. The child must be at risk of psychiatric hospitalization without appropriate home/community interventions. Manual's Appendix A-10.

With regard to the SED, there is no evidence that this child suffers from an emotional disturbance with specific psychiatric symptoms or significant functional impairments in two categories. The petitioner practices appropriate self-care with prompting. This is fairly typical of a boy his age. He is involved in some activities. He has social and family relationships. The petitioner has an IEP at school, but is in regular classes, and transitions between those classes. There is no behavioral plan with his IEP. I can find no indication that this petitioner is at risk of psychiatric hospitalization without appropriate home/community interventions. I understand that the petitioner has meltdowns and additional emotional concerns related to his autism, but again these limitations do not rise to the level required for this program.

Overall, the crux of this case is that although this petitioner has autism, he functions fairly well. These CLTS waiver programs are designed for children who would otherwise be institutionalized, but for the services of the waiver program. This petitioner does not fit in that category. I give the parents credit in that some of the petitioner's functional abilities seem to be in large part due to years of work with this petitioner. However, given the petitioner's abilities, and the requirements of the program, the petitioner is no longer eligible.

CONCLUSIONS OF LAW

The agency correctly determined that the petitioner was no longer functionally eligible for the CLTS waiver program.

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.

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 30th day of September, 2015

\sCorinne Balter
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 September 30, 2015.

Lutheran Social Services of Wisconsin & Upper Michigan
Bureau of Long-Term Support