



STATE OF WISCONSIN  
Division of Hearings and Appeals

In the Matter of:

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

DECISION

CWK/170352

PRELIMINARY RECITALS

Pursuant to a petition filed November 23, 2015, under Wis. Admin. Code § HA 3.03(1), to review a decision by the Milwaukee County Disability Services Division ["County"] in regard to Medical Assistance ["MA"], a Hearing was held on January 20, 2016, at the Division of Hearings and Appeals ["DHA"] in Madison, Wisconsin. At petitioner's request a Hearing scheduled for December 29, 2015 was rescheduled.

The issue for determination is whether it was correct to discontinue petitioner's eligibility for the Children's Long-Term Support Medicaid Home and Community-Based Services Waiver ["CLTS"] program.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED] (not present at January 20,  
2016 Hearing)  
c/o [REDACTED]  
[REDACTED]  
[REDACTED]

Represented by:

[REDACTED] and [REDACTED], petitioner's  
parents  
[REDACTED]  
[REDACTED]

Respondent:

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

BY: [REDACTED] Program Coordinator  
Milwaukee County Disability Services Division-DSD  
Attention: Mark Stein-DSD  
1220 W. Vliet Street, Suite 300  
Milwaukee, WI 53205

ADMINISTRATIVE LAW JUDGE:  
 Sean P. Maloney  
 Division of Hearings and Appeals

### FINDINGS OF FACT

1. Petitioner (5 years old) is a resident of Milwaukee County, Wisconsin.
2. Petitioner has diagnoses of autism and Pervasive Developmental Disorder ["PDD"]; he lives at home with both his parents and 2 younger brothers; his mother is typically at home during the day; he attends school part-time. Exhibits #1, #3B, #4 & #6.
3. A *Functional Screen Report* completed in August 2015 shows that petitioner: needs to be lifted in and out of the bathtub and requires physical assistance with getting clothes on (although not with fasteners); wears diapers and needs full assistance with toileting; has a valid full scale IQ of 90; demonstrates overall language skills within the average range; is not able to complete complex institutions; needs reminders to share with peers but is responsive; he receives special education services, Speech and Language Therapy ["SLT"] (two 20 minute sessions per week), Physical Therapy ["PT"] (one 30 minute session per week), and Occupational Therapy ["OT"] (one 30 minute session per week) at school; he requires adult intervention at school an average of 5 times per day due to non-compliance and refusal behaviors (saying "no"; whining; covering his ears; pushing materials away; yelling); he does not typically engage in aggressive behaviors (although during therapy sessions, but not in other settings, he recently has started hitting, kicking, and throwing objects); he has started running away from home, but this has occurred only a few times in a 3-month time period; he requires close supervision. Exhibits #3B, #4, #5 & #6; See also, Exhibit #3A.
4. A report dated December 9, 2015 from a psychologist states that petitioner has "autism at a moderate level of impairment" and "significant developmental delays" (social interaction delays; limited expressive language; motor stereotypy; poor self-regulation); he has significant tantrums (screaming; falling out; pushing others); according to an attached *Occupational Therapy Progress Note* dated December 9, 2015 petitioner has "moderate differences in his sensory processing skills in the areas of social participation, vision, hearing, balance and motion and planning and ideas." Exhibits #4, #5 & #6.
5. By a letter dated November 20, 2015 the County informed petitioner's parents that petitioner's CLTS would end on November 30, 2015 because petitioner "does not meet the Level of Care requirement necessary to be eligible for the Wisconsin Children's Long Term Support Medicaid Home and Community-Based Services Waiver (CLTS Waiver)." Exhibit #2.

### DISCUSSION

CLTS is run according to the terms of waivers that were granted to the State of Wisconsin by the United States federal government. The waivers allow the State of Wisconsin to operate CLTS without following all of the rules that normally apply to Medical Assistance ["MA"]. Wis. Stat. §§ 46.27(11) (2013-14); See also, 42 C.F.R. §§ 435.217, 440.180 & 441.300 et. seq. (2015).

CLTS is a source of funding for long-term support for those who would otherwise face institutional care. CLTS serves children and persons under the age of 22 who have a developmental disability, physical disability, and those who have a severe emotional disturbance. *Medicaid Home & Community-Based Services Waivers Manual* ["MW Manual"] § 2.02.D (January 2010). The purpose of CLTS is to provide

funding for the option of community integration to people who are otherwise eligible for MA funded institutional care. MW Manual §§ 1.01, 2.01.2 & 2.07.D. (January 2010).

In order to be eligible for CLTS a person must meet a waiver eligible Level Of Care [“LOC”]. MW Manual, § 2.01.2 & 2.07.D. (January 2010). There are 4 waiver eligible LOCs.

The INTERMEDIATE CARE FACILITY [“ICF/MR”] LEVEL OF CARE (also known as the Developmental Disability [“DD”] Level of Care); MW Manual, Appendix A-10 [February 2011] (page 3);

The PSYCHIATRIC HOSPITAL LEVEL OF CARE (also known as the Psychiatric Hospital - Severe Emotional Disturbance [“SED”] Level of Care); MW Manual, Appendix A-10 [February 2011] (page 8);

The NURSING HOME LEVEL OF CARE (also known as Nursing Home - Physical Disabilities [“PD”] Level of Care); MW Manual, Appendix A-10 [February 2011] (page 22); and,

The HOSPITAL LEVEL OF CARE (also known as the Hospital – Physical Disabilities [“PD”] Level of Care; MW Manual, Appendix A-10 [February 2011] (page 29).

The County determined that the petitioner's LOC is not at any of the institutional Levels of Care and that, therefore, petitioner does not meet the LOC requirement of the CLTS program. Petitioner does not argue that he meets any particular LOC but, instead, states that he “needs the community waivers funding for his very important ABA therapy.” Exhibit #1.

First is the ***INTERMEDIATE CARE FACILITY [“ICF/MR”] LEVEL OF CARE***. A child with an ICF/MR - Developmental Disability [“DD”] Level of Care has a permanent cognitive disability, substantial functional limitations, and a need for active treatment.

The level of care criteria is based upon the child having needs similar to people in an intermediate care facility for children with mental retardation [“ICF/MR”]. *The intensity and frequency of required interventions to meet the child’s functional limitations must be so substantial that without the intervention, the child is at risk for institutionalization within an ICF/MR.*

A child may be assigned this level of care if the child meets **ALL THREE of the criteria listed below** for Developmental Disability. The criteria are:

1. The child has a diagnosis of a **Cognitive Disability** that substantially impairs learning and that is expected to continue indefinitely; and,
2. The child demonstrates **Substantial Functional Limitations** when compared to age appropriate activities that are expected to last a year or longer; and,
3. The child has the **Need for Active Treatment**.

MW Manual, Appendix A-10 [February 2011] (page 3).

Petitioner does not meet the ICF/MR LOC because he does not have a Cognitive Disability that substantially impairs learning. He also does not have Substantial Functional Limitations when compared to age appropriate activities.

Second is the **PSYCHIATRIC HOSPITAL LEVEL OF CARE**. The child with a Psychiatric Hospital - Severe Emotional Disturbance [“SED”] Level of Care has a long-term, severe mental health condition diagnosed by a licensed psychologist or psychiatrist. In addition, this child demonstrates 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. *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.*

A child may be assigned this level of care if the child meets **ALL FOUR of the criteria listed below** for Severe Emotional Disturbance. The criteria are:

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.

MW Manual, Appendix A-10 [February 2011] (page 8).

Petitioner does not meet the SED LOC because, among other things, he does not have a Severe Symptomology or Dangerous Behaviors at the necessary intensity and frequency (he has started running away from home, but this has occurred only a few times in a 3-month time period and there is no evidence that he requires “within arm’s reach” supervision).

Third is the **NURSING HOME LEVEL OF CARE**. The child with a Nursing Home - Physical Disabilities [“PD”] Level of Care has a long-term medical or physical condition, which significantly diminishes his/her functional capacity and interferes with the ability to perform age appropriate activities of daily living at home and in the community. This child requires an extraordinary degree of daily assistance from others to meet everyday routines and special medical needs. The special medical needs warrant skilled nursing interventions that require specialized training and monitoring that is significantly beyond that which is routinely provided to children. *The intensity and frequency of required skilled nursing interventions must be so substantial that without direct, daily intervention, the child is at risk for institutionalization within a nursing home.*

A child may be assigned this level of care if the child meets **BOTH of the criteria listed below** for Physical Disability [“PD”]. The criteria are:

1. The child has a **Diagnosis** of a medical/physical condition resulting in needs requiring long term care services; and,
2. The child requires skilled **Nursing Interventions and/or has Substantial Functional Limitations** requiring hands on assistance from others throughout their day.

MW Manual, Appendix A-10 [February 2011] (page 22).

Petitioner does not meet the Nursing Home PD LOC because, among other things, he does not require skilled Nursing Interventions and does not have Substantial Functional Limitations.

Fourth, and finally, is the **HOSPITAL LEVEL OF CARE**. A child with a Hospital – Physical Disabilities [“PD”] Level of Care has needs that are typically met in an in-patient medical hospital setting. The child’s medical needs must be chronic, persistent, and expected to last at least six months from the

date of review. The skilled care needs cannot be acute and of a short-term duration. *The frequency and complexity of the required skilled medical interventions must be so substantial that without these direct, continuous skilled medical interventions, the child is at risk of institutionalization within a long-term, in-patient medical hospital.*

A child may be assigned this level of care if the child meets **ALL THREE of the criteria listed below** for Physical Disability ["PD"]. The criteria are:

1. The child needs **Frequent and Complex Medical Care** that require the use of equipment to *prevent life-threatening situations*; and,
2. The child's complex skilled medical interventions are expected to persist for a specific **Duration** of time; and,
3. The child's overall health condition must require **Continuous Assessment of an Unstable And Life-Threatening Condition**.

MW Manual, Appendix A-10 [February 2011] (page 29).

Petitioner does not meet the Hospital PD LOC because, among other things, he does not require Frequent and Complex Medical Care.

Based upon the above review of the LOC criteria for CLTS, the petitioner's LOC is not at any of the institutional levels of care. Therefore, petitioner does not meet the LOC requirement of the CLTS program. The County's decision is affirmed.

**CONCLUSIONS OF LAW**

For the reasons discussed above, it was correct to discontinue petitioner's eligibility for CLTS.

**NOW, THEREFORE, it is**

**ORDERED**

That the petition for review herein be and the same is hereby 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 1st day of March, 2016

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\sSean P. Maloney  
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 March 1, 2016.

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