



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

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

DECISION

CWK/171745

PRELIMINARY RECITALS

Pursuant to a petition filed January 28, 2016, under Wis. Admin. Code, §HA 3.03(1), to review a decision by the Family Support & Resource Center to discontinue eligibility for the Children’s Long Term Support program (CLTS), a hearing was held on March 9, 2016, at Madison, Wisconsin, with the parties appearing by telephone.

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

Respondent:

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

By: [REDACTED]
Dane County Dept. of Human Services
1202 Northport Drive
Madison, WI 53704

ADMINISTRATIVE LAW JUDGE:

Brian C. Schneider
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner is a 15-year-old resident of Dane County. He was eligible for CLTS until the agency action.

2. Petitioner has autism, borderline intellectual functioning, and controlled seizure disorder. In February, 2015 he was scored to have a full scale IQ of 76. His General Ability Index was in the low average range.
3. The agency did an annual reassessment in late 2015. It concluded that petitioner no longer met the functional level of care requirement for the program. By a notice dated January 12, 2016, the agency informed petitioner that CLTS eligibility would end January 22, 2016.
4. Petitioner sees a psychiatrist once every two to three months. He has an Individualized Education Program (IEP) at school that allows him a daily 1-1 aide who concentrates on school work and behavior issues. He does not receive speech, occupational, or in-home autism therapy.
5. Petitioner exhibits aggressive behaviors occasionally at school, including kicking desks, physically pushing past and threatening teachers. The frequency of such behaviors is not provided, but they do not appear to be ongoing, daily occurrences. Petitioner also has exhibited high risk behavior such as attempting to run into the highway by his school, but again, that type of behavior is not regular.

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. I will not discuss the hospital or nursing home levels because they involve physical disabilities. Petitioner’s impairments are mental and emotional.

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. Manual, 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. 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. For social competency a child between 14-17 years old can meet the standard if he is not confident in social situations, does not assert autonomy from his parents, and repeatedly gets into situations likely to result in trouble. For ADLs the child must require direct, daily hands on assistance beyond the level of similarly aged peers. For bathing, grooming, and

toileting for a 15-year-old this would include needing step-by-step cueing to complete tasks or actual physical help to complete the tasks. For dressing and eating he would require physical assistance.

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.

I find that petitioner does not meet the DD level. It is questionable that he is sufficiently cognitively impaired. His IQ is above the level for mental retardation; mild mental retardation is in the IQ range of 55-70, and a 76 IQ would be considered to be borderline intellectual functioning. It appears that when petitioner applied for CLTS his IQ score was 68, but his most recent test saw an increase in the score. He probably meets the substantial limitation in social competency requirement. However, he does not meet the active treatment requirement. He sees Dr. [REDACTED] once every two to three months. He does have an IEP that calls for a 1-1 aide, but the aide primarily assists with school work and behavior issues. This is not continuous, pervasive treatment meant to maximize functional skills as described in the level of care criteria. Petitioner is not receiving ongoing speech, occupational, or physical therapy, or in-home autism treatment.

It also is argued that petitioner meets the Severe Emotional Disturbance (SED) level of care. To meet the 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 severe psychiatric symptoms or dangerous behaviors as described in one of four standards; and the child must be receiving services from at least two service systems including the juvenile system, child protective services, special education relating to emotional needs, substance abuse services, or the mental health system (or from one of the systems but for at least three hours per week). Manual, App. A-10, p. 8. The child must be at risk of psychiatric hospitalization without appropriate home/community interventions.

The severe symptom criterion includes four standards in descending order. The first standard is that the child will be found to have severe symptoms if he has one of four symptoms either currently, within the past three months, or twice within the past year: psychosis, suicidality, violence, or anorexia/bulimia. Violence is defined as acts that endanger another person's life, and that cause the victim to require inpatient admission to a hospital. Additional definitions include the use of a weapon against another person (e.g., gun, knife, chains, or baseball bat), acts of arson (purposeful fire setting) or bomb threats. The child must have committed violence at least once in the past three months or at least twice in the past year, and

because of the commission of violence, the child must require direct, daily interventions to avoid institutionalization in a psychiatric hospital. Id., p. 13. Petitioner does not have any of those symptoms.

The next standard under the severe symptom criterion is that the child have frequent and intense problems in two of the following four behaviors: (1) High-risk behaviors such as running away, substance abuse, dangerous sexual contact, use of inhalants, (2) self-injurious behaviors such as head banging against hard surfaces, cutting/burning oneself, biting oneself severely, tearing at or out body parts, inserting harmful objects into body orifices, (3) aggressive/offensive behavior toward others such as verbal abuse, hitting/biting/kicking, masturbating in public, urinating on another or smearing feces, serious threats of violence, sexually inappropriate behavior, animal abuse, (4) lack of behavioral controls such as destruction of property, stealing/burglary, obsessions interfering with daily life.

Such behaviors must occur at least four times per week and require professional intervention whenever they occur. While petitioner has exhibited some of those behaviors, none are so regular as to meet the standard.

The third standard is that the child has one of the four behaviors in the second standard, plus a significant deficit in social skills or school/work issues. Deficits in social skills include not making eye contact, absence/dramatic reduction of social interactions, inability to interpret others' non-verbal cues, not having similar aged friends (i.e. friends are either much older or much younger), excessive familiarity with strangers. School/work issues include failing grades, repeated truancy, and/or inability to conform to the school or work schedule, or the need for in-school supports for emotional/behavioral problems at least one-third of the time. Again, petitioner does not meet the requirement of one dangerous behavior and it is not evident that he meets the standards for social skills or school issues (he might meet the issue for in-school support, but without the one dangerous behavior he would not meet the third standard).

The final standard requires the child to meet one dangerous behavior or one deficit in social or school/work skills, plus have a "rare and extreme circumstance" such as daily extreme disruptive behaviors, severe nightmares or night terrors four times per week, or being unable to complete routine events daily due to an obsession. Again, petitioner's current mental/emotional problems are not at those levels.

I must conclude that the agency correctly determined that petitioner no longer meets the level of care requirement for CLTS eligibility.

CONCLUSIONS OF LAW

The agency correctly determined that petitioner does not meet the CLTS level of care requirement based upon his reassessment results.

THEREFORE, it is **ORDERED**

That the petition for review 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 21st day of March, 2016

\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 March 21, 2016.

Family Support & Resource Center
Bureau of Long-Term Support