



STATE OF WISCONSIN  
Division of Hearings and Appeals

In the Matter of

[Redacted]  
[Redacted]  
[Redacted]  
[Redacted]

DECISION

CWK/173283

**PRELIMINARY RECITALS**

Pursuant to a petition filed March 31, 2016, under Wis. Admin. Code § HA 3.03(1), to review a decision by the St. Croix County Health & Human Services in regard to Medical Assistance (MA), a hearing was held on May 19, 2016, at New Richmond, Wisconsin.

The issue for determination is whether the county correctly allowed the petitioner 10 hours of supportive home care per week.

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: [Redacted]  
St. Croix County Health & Human Services  
1752 Dorset Lane  
New Richmond, WI 54017-1063

**ADMINISTRATIVE LAW JUDGE:**

Michael D. O'Brien  
Division of Hearings and Appeals

**FINDINGS OF FACT**

1. The petitioner (CARES # [Redacted]) is a resident of St. Croix County.

2. On March 1, 2016, the petitioner requested 10 hours of supportive home care a week for the summer of 2016 so that he can leave the house for two hours, five days a week. The St. Croix Department of Human Service approved five hours of supportive home care each week.
3. The petitioner requires help with all of his activities of daily living, including toileting, grooming, bathing, eating, and getting dressed. He is constantly active but has no sense of danger or his surroundings, which makes him a constant flight risk. He lacks the cognitive ability to know he is lost, and cannot talk, so he could not ask for help even if he realized he was lost.
4. The petitioner receives funding for 6.25 hours of personal care worker services per day. Much of this care is used to supervise him. These services can be provided only within the threshold of his house.
5. The petitioner requires 10 hours a week outside of his house to meet his health and safety needs.

**DISCUSSION**

The petitioner is an eight-year-old boy with a variety of mental impairments that prevent him from speaking, caring for himself, or controlling himself. He constantly wanders and has no sense of danger, so he requires continuous supervision. St. Croix County provides medical assistance-waiver services to help him meet his needs. He currently receives 6.25 hours of personal care worker services per day, but these cannot be used beyond the confines of his house. He seeks 10 hours a week of supportive home care during the summer so that he can leave the house with his family and receive supervision. St. Croix allowed five hours of supportive home care per week.

Supportive home care is not defined in Wisconsin statutes or administrative code provisions, and I do not know under what MA-waiver the petitioner receives his services, so I do not know the exact definition of supportive home care as it pertains to the petitioner’s plan of care. In general, it pertains to things such as hands-on assistance with activities of daily living, observation to ensure that he is safe, routine housekeeping, and intermittent major tasks such as washing windows and shoveling snow. In petitioner’s case, neither side disputes that supportive home care can be used to supervise him when he is outside of his house.

No one questions that the petitioner needs some time outdoors. The question is whether the five hours proposed by St. Croix meets his needs. And although St. Croix has not conceded this point, it is unlikely that he can be outdoors without supportive home care. He has two preschool siblings, and one person cannot provide for both their safety and his safety at the same time. St. Croix indicated that two 2 ½-hour outings per week would meet “health and safety needs as related to the children’s waiver.” More than this, St. Croix contends, would be a parental responsibility because parents are responsible for his supervision. It provided no medical evidence for its conclusion.

The petitioner’s parents submitted several medical studies showing that children need outdoor activity. Most of the studies pertained to children with attention deficit disorder. Although the petitioner is hyperactive, I question whether those studies pertain specifically to someone with his exceptional needs. Nevertheless, there is little question that it is not good for a person to be cooped up inside all day—and this is not an argument St. Croix makes. For a child such as the petitioner, who is physically able to move about but has no self-control, limiting him to two trips outside of the house each week borders on abuse. I have no way of determining based upon the evidence before me exactly how much outdoor activity he needs, but his request for two hours a day from Monday through Friday is more reasonable than St. Croix’s decision to limit him to outdoor activities two days a week. Therefore, I will find that he is entitled to 10 hours of supportive home care per week.

**CONCLUSIONS OF LAW**

The petitioner is entitled to 10 hours of supportive home care a week because that amount is medically necessary.

**THEREFORE, it is**

**ORDERED**

That this matter is remanded to the St. Croix Department of Health and Human Services with instructions that within 10 days of the date of this decision it fund 10 hours of supportive home care a week for the petitioner through the week ending September 10, 2016.

**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 3rd day of June, 2016

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\sMichael D. O'Brien  
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 June 3, 2016.

St. Croix County Health & Human Services  
Bureau of Long-Term Support