



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

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In the Matter of

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██████████████████  
██████████████████  
████████████████████

**DECISION**  
Case #: CWK - 206852

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**PRELIMINARY RECITALS**

Pursuant to a petition filed November 14, 2022, under Wis. Admin. Code, §HA 3.03(1), to review a decision by the Eau Claire County Dept. of Human Services to deny a requested service under the Children's Long-Term Support (CLTS) program, a hearing was held on January 4, 2023, by telephone.

The issue for determination is whether the agency correctly denied a vehicle modification because safety could not be assured.

**PARTIES IN INTEREST:**

Petitioner:

██████████  
██████████████████  
██████████████████  
████████████████████

Respondent:

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

By: ██████████  
Eau Claire County Dept. of Human Services  
PO Box 840  
Eau Claire, WI 54702-0840

**ADMINISTRATIVE LAW JUDGE:**

Brian C. Schneider  
Division of Hearings and Appeals

**FINDINGS OF FACT**

1. Petitioner is a 4-year-old resident of Eau Claire County. He is eligible for the CLTS with Eau Claire County DHS as his consulting agency.

2. Petitioner has Vici Syndrome. He is non-ambulatory and wheelchair-bound. He has recurring low-grade seizures and also requires frequent suctioning. He is not a candidate for public transportation because he is immunocompromised.
3. When petitioner is transported, his mother has been putting him in a car-seat, facing backward, in the front passenger seat. That way she can reach him when he needs suctioning (which she can do with one hand) or when he is having a seizure (which she can resolve by touching him). Petitioner, however, is outgrowing his car seat and its placement in the front seat.
4. In September, 2022, petitioner requested CLTS funding of a vehicle modification. She is purchasing a pick-up truck and is requesting the modification of removing the front passenger seat, installing wheelchair locking devices and an elevator, at a cost of some \$37,000. Agency personnel looked into the request, but ultimately denied it because petitioner’s safety could not be assured due to the front seat placement and the potential for inattentive driving. A notice denying the request was sent on September 30, 2022.

### DISCUSSION

The CLTS program started on January 1, 2004. The department utilizes a *Medicaid Home and Community-Based Services Waivers Manual* (“the *Manual*”). It can be found on the internet at <https://www.dhs.wisconsin.gov/publications/p02256.pdf>.

Vehicle modifications are allowed pursuant to the *Manual*, §4.6.31:

Vehicle modifications are physical adaptations or alterations to the vehicle that is the participant’s primary means of transportation. This service includes the purchase of vehicle modifications that allow the vehicle to be used by the participant to access the community, or those costs associated with the maintenance or repair of these items. Examples include but are not limited to vehicle lift/transfer units (manual, hydraulic, or electronic) and vehicle hand controls.

Such services must meet all applicable standards of manufacture, safety, design, and installation. *Manual*, §4.6.31.2.

The sole reason for the denial here is that petitioner’s safety could not be confirmed. Agency personnel spoke with the provider who helped design the planned modification, and he could not confirm that petitioner could be transported safely.

The decision here essentially comes down to picking the best of imperfect solutions. Ms. [REDACTED] acknowledged that if the modification occurred in the back seat of the truck it would likely be approved. However, petitioner’s mother testified, and petitioner’s doctor agrees, that petitioner’s unique needs make it safer for him to be in front so that his mother can directly observe him and act if needed. See pages 12 and 44 of petitioner’s submission for the doctor’s letters. I note here that the Wisconsin Administrative Code, §Trans 310.05(1), provides for an exception to the usual safety restraint rules for a disabled child who cannot be transported in a typical safety restraint system. I note further that the U.S. Department of Transportation acknowledges that certain children can be transported in the front passenger seat. See page 33 of petitioner’s submission.

Petitioner’s mother showed that the installation would be done according to national standards. She noted that medical transportation such as Abby Vans are only for specific medical purposes and do not provide space for a passenger to observe the person, a necessity for petitioner. She testified how she can assist petitioner with virtually no impact on her attention to driving.

The issue comes down to the statement by the provider that safety could not be confirmed. As described credibly by petitioner’s mother, the provider responded as such in a general manner, saying essentially that in any irregular modification there is not a 100% assurance of safety (irregular because it is in the front rather than a back seat). The response sounds similar to a surgeon refusing to provide 100% assurance that a surgery will not have complications. In the end, I conclude that the proposed modification is the best solution to a difficult, rare situation. No matter how petitioner is transported there will be some risk, and this is the best available. I thus will order the modification to be approved.

I note two final points. First, the cost effectiveness of the modification is not an issue. It is acknowledged that \$37,000 is within the usual range for a modification. Second, this decision addresses only the specific modification. Petitioner’s mother mentioned that she may also request funding for an air bag on/off switch. That issue would be addressed separately, although I would hypothesize that simply turning off the air bag would be sufficient since petitioner would be the only person ever placed in the front passenger seat area.

### CONCLUSIONS OF LAW

The requested vehicle modification is done according to standards and is the safest means of transporting petitioner given his unique medical needs.

**THEREFORE, it is ORDERED**

That the matter be remanded to the agency with instructions to, within 10 days of this decision, approve the requested vehicle modification and take necessary steps to assure it is provided using CLTS funds.

### **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, 4822 Madison Yards Way, 5<sup>th</sup> Floor North, 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**

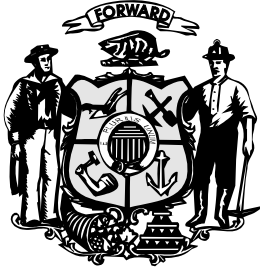
You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Health Services, 1 West Wilson Street, Room 651, **and** on those identified in this decision 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 10th day of January, 2023



\s \_\_\_\_\_  
Brian C. Schneider  
Administrative Law Judge  
Division of Hearings and Appeals



**State of Wisconsin \DIVISION OF HEARINGS AND APPEALS**

Brian Hayes, Administrator  
5<sup>th</sup> Floor North  
4822 Madison Yards Way  
Madison, WI 53705-5400

Telephone: (608) 266-3096  
FAX: (608) 264-9885  
email: [DHAmail@wisconsin.gov](mailto:DHAmail@wisconsin.gov)  
Internet: <http://dha.state.wi.us>

The preceding decision was sent to the following parties on January 10, 2023.

Eau Claire County Department of Human Services  
Bureau of Long-Term Support

