



FH
[REDACTED]

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of



DECISION
Case #: CWK - 207268

PRELIMINARY RECITALS

Pursuant to a petition filed on January 4, 2023, under Wis. Admin. Code § HA 3.03(1), to review a decision by the Milwaukee Enrollment Services regarding Medical Assistance (MA), a hearing was held on February 22, 2023, by telephone.

The county agency did not appear at hearing. At the time of hearing the county had not contacted the ALJ with the name of a representative or a telephone number. The county also had not provided any documentation to be considered. Petitioner wished to proceed. This ALJ called the agency representative that petitioner identified and she did not answer at either of the two telephone numbers petitioner offered. This ALJ later discerned that the Milwaukee County Enrollment Services agency had not forwarded the hearing notice to the CLTS program. The attorney for the CLTS program sought relief following the hearing. This ALJ informed the attorney that the agency could seek rehearing by DHA or appeal to the circuit court following a final decision in this matter.

The issue for determination is whether the CLTS agency correctly denied petitioner's requests for home modifications.

There appeared at that time the following persons:

PARTIES IN INTEREST:

Petitioner:



Respondent:

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

By: No Appearance
Milwaukee Enrollment Services
1220 W Vliet St
Milwaukee, WI 53205

ADMINISTRATIVE LAW JUDGE:
John P. Tedesco
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a 16-year-old resident of Milwaukee County. Petitioner is enrolled in the CLTS program. Petitioner has diagnoses that include Conduct Disorder and Autism Spectrum Disorder. Petitioner's history includes inpatient/residential treatment.
2. According to petitioner's 8/31/22 psychological evaluation by psychologist [REDACTED], petitioner "has a history of impulsivity, aggression, and threatening behaviors, which can be harmful to others. His mother noted that [REDACTED] is threatening and verbally abusive towards his younger siblings."
3. Petitioner lives in a single-family home in Milwaukee. In 2018 the home was appraised at \$185,000. According to the appraisal report the home is a two-story with 6 bedrooms and 2 baths with a total square footage of [REDACTED] finished living area.
4. The home's six bedrooms are currently arranged to provide individual bedrooms for each child and one for the parents, as well as a piano/music room and a homeschooling room. Another room in the home is used as a dining room and petitioner's father has a home office.
5. The home is occupied by petitioner and his parents and two younger siblings.
6. Petitioner has his own bedroom.
7. Petitioner requested a fence installation of 128 feet of cedar fence in the side and back yards of the family home. The CLTS Program sought a bid for the work which was provided by A-1 Fence, a fence contractor. The 9/1/21 bid for the fence work totaled \$17,390.
8. Petitioner requested a new rubber garage roof and a railing for the garage roof. The top of the roof is accessible by the family from a raised grade on the rear of the garage. However, the front of the garage has a one-story drop. The CLTS Program sought a bid for the work, which was provided by Integral Construction and Development, LLC. The 9/19/21 bid for the roof and railing work totaled \$19,650.
9. Petitioner requested steps to access the new garage roof. The CLTS Program sought a bid for the work, which was provided by Integral Construction and Development, LLC. The 9/19/21 bid for the roof and railing work totaled \$4,750.
10. Petitioner requested interior structural remodeling. Specifically, petitioner requested the removal of an existing dining room wall, as well as the addition of a new interior wall and door and an interior window. No estimate was provided.
11. The request for interior remodeling was denied by the agency by notice issued 10/10/22.
12. The request for the fence project was denied by the agency by Notice issued 10/25/22.

DISCUSSION

The CLTS program started on January 1, 2004, after the federal Department of Health and Human Services informed Wisconsin that federal MA funding would no longer be available for in-home autism services. The Wisconsin Department of Health Services released the Medicaid Home and Community-Based Services Waivers Manual (Manual) to assist in administering the CLTS program. The Manual can be found online at <https://www.dhs.wisconsin.gov/publications/p02256.pdf>.

The overall purpose of Wisconsin's Children's Long-Term Support (CLTS) Waiver Program is to provide necessary supports and services to children from birth through age 21 in Wisconsin with significant disabilities who meet functional, Medicaid financial and non-financial requirements, and reside in allowable living situations within the community to prevent placement in an institutional setting. The CLTS Waiver Program is a component of Wisconsin's support system for children with disabilities.

The goal of the CLTS Waiver Program is to support children with substantial needs, as well as their parents/guardians, by delivering services to assure the child's health, safety and welfare needs in an inclusive home and community setting. A key tenet of the CLTS Waiver Program is that children are best served within the context of their family and community.

The Department of Health Services (DHS) enters into contractual agreements with Wisconsin's county departments to act as the local agency responsible for operating the CLTS Waiver Program, which includes determining applicants' program eligibility, authorizing covered waiver supports and services, conducting annual recertifications, and operating other long-term support programs that assist in meeting the needs of children and their families.

The county waiver agency authorizes family-centered services and supports based on the assessed need of each child and his or her family to ensure continued health, safety, inclusion in the community and ability to reside in the least restrictive setting. In accordance with 42 CFR §441.301(b)(1)(i), a participant centered service plan (of care) is developed for each participant employing the procedures specified in Appendix D. All waiver services are furnished pursuant to the service plan. The service plan describes: (a) the waiver services that are furnished to the participant, their projected frequency and the type of provider that furnishes each service and (b) the other services (regardless of funding source, including state plan services) and informal supports that complement waiver services in meeting the needs of the participant. The service plan is subject to the approval of the Medicaid agency. CLTS Waiver, Section 6; see also CLTS Manual, 4.5.

Home modifications are one type of service available for approval under the CLTS program. Home modifications serve to:

...maximize a participant's independent functioning in their home through services to assess the need for, arrange for, and provide modifications and/or improvements to the home.

Home modifications are generally permanent fixtures and/or changes to the physical structure of the home. This service may be used to ensure safe, accessible means of entry and exit to the home, and otherwise provide safe access to rooms, facilities, or equipment within the home or adjacent buildings that are part of the residence.

Medicaid Home and Community-Based Services (HCBS) Waiver Manual for the CLTS Waiver Program ("CLTS") Sec. 4.6.18.1. Section 4.6.18.1 contains an illustrative list of home modifications eligible for approval. These include fences required for safety, ramps, doors, modifications to plumbing, showers, sinks, tubs and toilets, grab bars and hand rails, faucets and water controls, flooring and/or floor covering,

stair lifts and doorways, among others. All modifications are subject to service exclusions under CLTS 4.6.18.4. Adaptations, improvements, repairs or replacements within the participant's home that are of general utility and not of benefit to the participant or not related to the disability are excluded. Id.

Finally, the CLTS Waiver program is only permitted to procure items or services that are "a cost-effective means addressing an identified need and outcome in the service plan and solely benefit the participant." *CLTS* at 4.6.21.2.

The petitioner has requested a variety of home modifications that have been denied and form the basis for this appeal. They are generally separable for consideration by the fact that some are interior remodel projects of similar nature, and others are exterior fencing and railing projects. The specifics of each are set forth in the exhibits. I will more generally refer to them as the fence project and the interior remodel project.

INTERIOR REMODEL PROJECT

At hearing, petitioner's mother provided the only testimony. I noted her repeated references to the current home and the unsatisfactory nature of it. She repeatedly referred to it not being open-concept, or it being "just a hallway with a bunch of little rooms off the side." She also noted the small bedrooms. I draw attention to this because the home is over 100 years old. These are the characteristics of a home that is over 100 years old. My perception after hearing the testimony is that petitioner's mother recognizes that this home is just not the right home for the family's needs. It seems that the requests seek to make this home something that it is not by putting huge amounts of money into it.

I also noted that the requests for the interior remodel are supported by many statements that have only indirect relevance to petitioner's needs. Much of the evidence presented seems to support the requested home modifications as a way to protect the younger siblings in the home from petitioner. In her written submission and testimony, petitioner's mother continually referred to the need to keep her other children safe from petitioner's reactive behaviors and that certain characteristics of the home tend to lead to escalation that creates risk to the other children. She also argues that in the small dining room the younger children feel great anxiety when petitioner eats with the family. In her written submission, petitioner's mother repeatedly points to the 8/32/22 psychological evaluation which recommends "[c]ontinue to keep [REDACTED] away from children when he is unsupervised or allow him to interact with children under adult supervision."

Additionally, I wonder whether petitioner could find more of a peaceful environment that is away from the younger children if the remaining rooms in the home could be repurposed to achieve petitioner's described needs. On this record the home has a home-office, a homeschooling room, and a piano room. It would not be unreasonable to expect that some of this space be modified in purpose to achieve some of the ultimate goals at much less cost.

While petitioner's mother does also reference that a different structural environment as a result of the remodel could lead to less escalation with petitioner, such argument lacks any objective support. These solutions are apparently products of petitioner's parent's planning and hope and not as a result of consultation with autism professionals. While there are generic and abstract statements in the various evaluations and provider documents supplied in the record, none of these appear to state that the home remodel or yard fence is necessary or even recommended. I am sure that petitioner's parents are exhausted and hopeful that some relatively easy fix will change the family dynamic. And it may. But, the record includes woefully little in support of these changes aside from petitioner's mother's speculation and optimism.

I stress that this is not a low-cost request like one for outlet covers or a grab bar in the shower. Petitioner is seeking a structural home remodel. Petitioner would have to bring a much stronger case including persuasive and objective evidence that the modifications are appropriate. Until then, there is no way to deem the requested interior remodel as a cost-effective effort. This also raises the question of whether the petitioner’s parents, who own the home and stand to gain by home improvements, are biased. This is another reason why objective supporting evidence would be required before approving a modification at the cost that this interior remodel is likely to command. And, this raises the fact that petitioner has requested this remodel but has not provided any estimate. It may be \$5,000 or \$25,000. Without such evidence there is no way I could find it cost-effective and order that it be completed.

EXTERIOR GARAGE AND FENCE PROJECT

As for the exterior fence and roof and railing work, I am similarly unpersuaded. Just as with the interior work there is no objective evidence leading to the conclusion that a nearly \$20,000 fence is necessary or is going to be of any great benefit to petitioner. I also have no persuasive evidence as to why a new rubber garage roof costing another \$20,000 should be funded by the CLTS program or why it addresses any needs of petitioner. Finally, the garage roof that presents a fall risk for petitioner also presents a fall risk to the younger siblings in the family, or any friends that visit the home. Such a fall risk is something that should have probably been mitigated before now. Such mitigation is not for petitioner’s specific benefit. The yard fence is also the same situation. Petitioner’s mother described the treacherous traffic and the nearby highway adjacent to their home. I would imagine that having any of their children in the side yard is a great concern. This cannot be limited only to petitioner due to his disability. As previously stated under *CLTS* 4.6.18.4. “adaptations, improvements, repairs or replacements within the participant’s home that are of general utility and not of benefit to the participant or not related to the disability are excluded” from coverage. Fencing the yard when one lives near the highway and providing a railing to a risky precipice accessible to all the children is simply safe and prudent parenting for the general benefit of all the kids. I agree that this probably should be done. But this is not the responsibility of the CLTS program.

Finally, overall the petitioner seeks funding for what is probably in excess of \$50,000 of home remodels to make the [REDACTED] home that cost [REDACTED] marginally better for petitioner. There comes a point where the cost of the modifications simply does not make sense anymore and one must accept that the foundational home one is starting with is just not the right home for this family. Even if the requests were more substantially supported by evidence, I would likely find that under these circumstances such a cost makes little sense. A different home that already has a fence and an open-concept floor plan may be the better choice.

CONCLUSIONS OF LAW

The petitioner failed to establish that any of the requested home modifications should have been approved by the agency.

THEREFORE, it is ORDERED

That this appeal 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, 4822 Madison Yards Way, 5th 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).

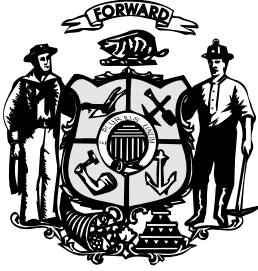
The process for Circuit Court Appeals may be found at Wis. Stat. §§ 227.52 and 227.53. A copy of the statutes may be found online or at your local library or courthouse.

Given under my hand at the City of Madison,
Wisconsin, this 28th day of March, 2023



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John P. Tedesco
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 28, 2023.

Milwaukee Enrollment Services
Bureau of Long-Term Support

[REDACTED]
[REDACTED]