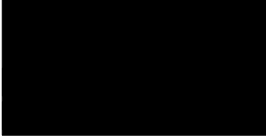




STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of



DECISION
Case #: CWK - 208175

PRELIMINARY RECITALS

Pursuant to a petition filed on March 31, 2023, under Wis. Admin. Code § HA 3.03(1), to review a decision by the Brown County Human Services regarding Medical Assistance / the Children's Long-Term Support (CLTS) Program, a hearing was held on May 10, 2023, by telephone. This appeal was heard at the same time as a related appeal, DHA Case No. CWK-208176. The petitioners in these two cases are brothers. The parties agreed that the legal issue and relevant facts in the two cases are identical and that the appeals should therefore be heard together.

The issue for determination is whether the agency properly reclassified 38 hours per week of care received by Petitioner through the CLTS Program from respite to child care.

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: Christina Courtney, Birth to 3 and CLTS Supervisor
Brown County Human Services
Economic Support-2nd Floor
111 N. Jefferson St.
Green Bay, WI 54301

ADMINISTRATIVE LAW JUDGE:

Teresa A. Perez
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner is a three-year old resident of Brown County who is eligible for services through the Children's Long-Term Support (CLTS) program.
2. Petitioner and his brother, [REDACTED] are two surviving triplets who were born 16 weeks early and suffer from numerous complex health problems and developmental disabilities. They both require significant specialty and therapeutic care.
3. Petitioner previously resided in Outagamie County and was first enrolled in the CLTS Program while a resident there.
4. In October 2022, Petitioner and his family moved to Brown County; however, Outagamie County continued serving them until approximately February 2023 at which point both his case and his brother's case were transferred to Brown County.
5. While receiving services through Outagamie County, Petitioner's Individual Service Plan (ISP) included authorization for 40 hours per week of group respite care for the hours when his parents are working. His brother's ISP also included 40 hours of respite care per week.
6. While receiving services through Outagamie County, Petitioner's parents were not responsible for costs related to the provision of respite care.
7. When reviewing the ISP approved by Outagamie County, Brown County agency staff determined that the care being provided under the respite service category should be authorized as child care instead.
8. Parents of children who are enrolled in CLTS and who qualify for child care services are required to contribute to the cost of child care. The CLTS Program pays only for the portion of child care determined to be related to the exceptional needs of its participants.
9. By notice dated March 22, 2023, the agency informed Petitioner's parents that, effective April 24, 2023, "38 hours of group respite is being changed to childcare service" because "care matches childcare SPC, as parents are working during that time." The agency also authorized 10 hours per week for group respite.
10. Petitioner's parents filed an appeal and are seeking 40 hours per week of respite care per child.

DISCUSSION

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 who have significant disabilities, who require a level of support that would qualify them for institutional care but who reside at home and in the community, and who satisfy Medicaid financial and non-financial requirements. 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. See *Medicaid Home and Community-Based Services (HCBS) Waiver Manual for the CLTS Waiver Program* ("CLTS Manual"), Chapter 2.

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 working with families to authorize covered waiver supports and services. All waiver services are furnished pursuant to an individual service plan (ISP). 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. See *CLTS Manual*, Chapter 7.

The issue in dispute here is whether the agency has properly determined that Petitioner should receive his care under the “child care” service category or under the “respite” service category. This is of great importance to Petitioner’s family because such a change would require them to begin paying \$560 per month per child (i.e., a total of \$1,120). There was no dispute raised regarding the amount of time Petitioner requires services; the sole issue at the hearing was how to properly categorize that care.

The *CLTS Manual* provides the following definitions of respite care and child care:

4.6.26 Respite Care

4.6.26.1 Definition

Respite care services maintain and strengthen the participant’s natural supports by easing the daily stress and care demands for their family, or other primary caregiver(s), *on a short-term basis*.

These services provide a level of care and supervision appropriate to the participant’s needs while their family or other *primary caregiver(s) are temporarily relieved from daily caregiving demands*. Respite care may take place in a residential setting, institutional setting, the home of the participant, the home of a caregiver, or in other community settings.

...

4.6.3 Child Care

4.6.3.1 Definition

Child care services ensure the participant’s exceptional physical, emotional, behavioral, or personal care needs are met *during times when their family members are working*, pursuing education and employment goals, or participating in training to strengthen the family’s capacity to care for the participant. . .

Children Under 12 Years of Age

For a participant under age 12, this service includes the supplemental cost of child care to meet the participant’s exceptional care needs. This includes staffing necessary to meet the participant’s care needs above and beyond the cost of basic child care that all families with young children may incur.

The basic cost of child care is the rate charged by and paid to a child care provider for children who do not have special needs. The basic cost of child care does not include the provision of supplementary staffing, which may be covered by this service.

These policies are consistent with the service definitions found in the waiver application approved by the Centers for Medicare and Medicaid Services. See *Application for 1915(c) HCBS Waiver: Draft WI.036.04.00 - Jan 01, 2022, Appendix C-1/C-3* (available on-line at <https://www.dhs.wisconsin.gov/clts/waiver/1915c-renewal-app.pdf>).

The representative for Brown County argued that Outagamie County had erred in authorizing Petitioner to receive 40 hours per week of respite care because it was in fact intended to provide care while his parents worked. It is a simple argument and it is a persuasive one. The definitions quoted above show that child care is intended to provide care to children while their parents are working and that respite is intended to be provided on a “short-term basis” and to allow “primary caregiver(s) [to be] temporarily relieved from daily caregiving demands.” The type of care Petitioner requires while his parents are working full-time every week cannot be reasonably described as care that is “short-term” or care that provides temporary relief.

Petitioner’s mother explained that prior to moving, she had consulted with Outagamie County workers who assured her that the transition of CLTS services for her children would be seamless. Petitioner and his family then moved to a new home in a new county. And, instead of a seamless transition, Petitioner’s parents were notified that they would have a \$1,120 monthly cost for which they had not budgeted and that will require the family to make significant changes (e.g., Petitioner’s mother may have to stop working). Although I am sympathetic to the hardships that this regrettable situation has created for the family through no fault of their own, I do not have the authority to grant equitable remedies in my role as an administrative law judge.

Petitioner’s mother observed that there is no explicit language in the *CLTS Waiver Manual* that says parents cannot work while using respite care or that child care has to be prioritized over respite care. The agency’s representative concurred that no such explicit language exists; however, she argued rationally that there is a specific service category for child care, and that by itself demonstrates that child care is the appropriate category for care provided to children while parents are working.

Finally, Petitioner’s mother noted that CLTS participants have a right to choose services to meet needs and achieve desired outcomes and that changing the code for the services provided to child care would not allow them to achieve desired outcomes. A pediatric nurse practitioner who has a long-term relationship with Petitioner and his family also appeared at the hearing and testified that an agency worker had advised her that there is no exhaustive list of what respite care can be used for but that examples of appropriate uses are allowing caregivers time for socialization, self-care, receiving their own medical care, etc. She argued that working outside of one’s home, particularly when one’s children have the types of profound health problems and care needs as Petitioner and his brother, constitutes a form of self-care and allows socialization. This is undoubtedly true but does not change the fact that the care being sought in this case falls squarely under the definition of child care that is set forth in the *CLTS Waiver Manual*.

CONCLUSIONS OF LAW

The agency properly terminated 38 hours per week of respite care for Petitioner based on a finding that the type of care he requires falls under the definition of child care that is set forth in the CLTS Waiver Manual and in the CMS-approved CLTS Waiver application.

THEREFORE, it is

ORDERED

Petitioner’s 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.

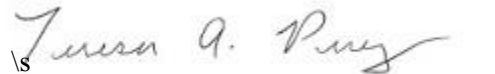
The process for requesting a rehearing may be found at Wis. Stat. § 227.49. A copy of the statutes may be found online or at your local library or courthouse.

APPEAL TO COURT

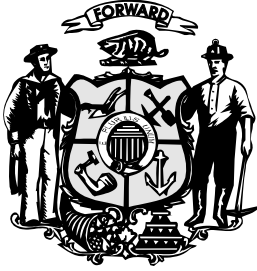
You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Health Services, 1 West Wilson Street, Room 651, **and** on those identified in this decision 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 13th day of June, 2023



Teresa A. Perez
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 13, 2023.

Brown County Human Services
Bureau of Long-Term Support

