



FH
[REDACTED]

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of



DECISION
Case #: CWK - 208407

PRELIMINARY RECITALS

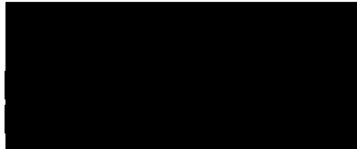
Pursuant to a petition filed on April 24, 2023, under Wis. Admin. Code § HA 3.03(1), to review a decision by the Fond Du Lac County Department of Social Services regarding CWK, a hearing was held on June 14, 2023, by telephone.

The issue for determination is whether the agency correctly denied petitioner's request for CLTS waiver program relocation services.

There appeared at that time the following persons:

PARTIES IN INTEREST:

Petitioner:



Petitioner's Representative:

Attorney Tim Hennigan
ABC for Health, Inc.
32 N Bassett St
Madison, WI 53703

Respondent:

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

By: Lindsay Nye

Fond Du Lac County Department of Social Services
50 N Portland St
Fond Du Lac, WI 54935

ADMINISTRATIVE LAW JUDGE:

Peter McCombs
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Dodge County. Petitioner is diagnosed with several debilitating [REDACTED] has been enrolled in the CLTS waiver program for several years.
2. Petitioner resided in an apartment located on [REDACTED] in [REDACTED], Wisconsin. The building and the apartment specifically, were not well suited to accommodate petitioner's wheelchair or crutches. As a result, petitioner was forced to crawl around her apartment in order to navigate her surroundings.
3. Due, in part, to the living conditions at the [REDACTED] apartment, petitioner was in a state of such pain and mental anguish that she confined herself in a single corner of the apartment and suffered from suicidal ideation. Ex. P-D.
4. Due, in part, to the living conditions at the [REDACTED] [REDACTED] apartment, petitioner experienced a mental health crisis resulting in a series of intensive treatment programs, beginning with a 2-week institutionalization at [REDACTED] in November of 2022. Exhibit P- H; *see also* Ex. P-I.
5. After her stay at [REDACTED], and despite warnings from her medical providers that returning to the [REDACTED] apartment would be unsafe, petitioner briefly returned to the apartment while her mother continued searching for new housing.
6. Concerned about her daughter's safety and mental health, petitioner's mother decided to pursue a short-term solution by moving with her daughter into a [REDACTED] [REDACTED] while petitioner continued treatment for her mental health crisis.
7. On, December 27, 2022, petitioner's mother signed a lease for a new apartment [REDACTED] [REDACTED] apartment) that could accommodate petitioner's adaptive and ambulatory needs. Ex. P-F.
8. On January 11, 2023, petitioner's mother requested funding for relocation services from the respondent pursuant to § 4.6.25 of the CLTS Medicaid Home and Community-Based Services (HCBS) Waiver Manual for the CLTS Waiver Program (CLTS Manual), excerpted in Exhibit P-J.
9. On February 16, 2023, the respondent denied the relocation services request by way of a Notice of Adverse Action (NOA). The respondent stated that the Bureau of Children's Services "had determined that the requested service does not fit within the CLTS Coordination of Benefits Policy." Exhibit P-B.
10. Petitioner renewed the relocation services funding request with additional documentation, and was again denied on March 10, 2023. Exhibit P-A.
11. Petitioner's mother ultimately paid for the cost of moving out of pocket. Exhibit P-H.
12. On April 24, 2023, petitioner filed an appeal of the denial of her request for relocation services funding.

DISCUSSION

The CLTS program started in Wisconsin on January 1, 2004. Supported with MA funds, the CLTS program serves persons under the age of 22 who have a developmental disability, physical disability, or a severe emotional disturbance. The Wisconsin Department of Health Services released the Medicaid Home and Community-Based Services (HCBS) Waiver Manual for the CLTS Waiver Program (Manual) to assist in administering the CLTS program. See, online at <https://www.dhs.wisconsin.gov/waivermanual/index.htm>.

There is no dispute that the petitioner is eligible for the CLTS program. The issue is whether the agency correctly denied petitioner's request for relocation services funding. The Manual defines what encompasses relocation services, and the limitations on the funding, as follows:

4.6.25.1 Definition

Relocation services assist with preparations for the participant's relocation to a safe and accessible community living arrangement.

This service includes supports and essential items needed to establish a community living arrangement for children or youth who are relocating from an institution, foster home or who are moving out of the family home to a less restrictive or independent setting.

Relocation services may include the purchase of the following, as necessary, to prepare the selected living arrangement for occupancy by the participant:

- Household furnishings not otherwise included in a rental agreement, if applicable
- Phone(s)
- Cooking and/or serving utensils
- Basic cleaning equipment
- Household supplies
- Security deposit
- Utility connection costs
- Phone installation charges
- Moving the child's or youth's personal belongings to the new living arrangement
- General cleaning and household organization services related to the relocation

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4.6.25.3 Service Limitations

- Relocation services are limited to items and products and do not include services delivered by caregivers (persons who have regular, direct contact with the participant). Page 127 of 210
- This service excludes funding for physical alterations of a person's home to address accessibility. (Refer to the home modifications benefit.)
- This service may not duplicate any service that is provided under another waiver service category.
- The CLTS Waiver Program is the payer of last resort and is not a source of funding for any service that would otherwise be responsibility of another public or private entity. The following programs and services must be considered prior to using waiver funding and, where applicable, be incorporated into a comprehensive plan for participants:

- o Public benefits, energy assistance, or other poverty-related services
- o Court-ordered, juvenile justice, or child protective services, including protective placement and guardianship or legal services
- o Any goods or services covered by a third party, including private insurance or Medicaid, such as:
 - ♣ Early and Periodic Screening, Diagnostic and Treatment (EPSDT) benefit (known in Wisconsin as HealthCheck Other Services), which provides comprehensive and preventive health care services for children under age 21 who are enrolled in Medicaid or the Medicaid state plan services.
 - ♣ Mental health services that are otherwise available.
- o Educational or other services funded by the Department of Public Instruction or Individuals with Disabilities Education Act.
- o Prevocational or other services offered through the Department of Workforce Development, Division of Vocational Rehabilitation.

4.6.25.4 Service Exclusions

This service excludes the purchase of food, the payment of rent, or the purchase of devices or services used primarily for leisure or recreation.

Manual, § 4.6.25

The agency’s March 10, 2023 denial notice sets forth four reasons for the CLTS relocation services denial: (1) The [REDACTED] apartment was “already...a safe and accessible home”; (2) no records show the [REDACTED] apartment was the reason for petitioner’s institutionalization; (3) the family could have moved in earlier in 2023; and (4) petitioner’s move is not the type that relocation services are intended to cover. At hearing, the respondent’s representative noted that, had the family not temporarily relocated to the [REDACTED], the request for relocation services would have been approved.

The petitioner, through testimony at hearing, her legal brief and her supporting documentation has successfully rebutted the agency’s denial here. I concur entirely with petitioner’s attorney that the family’s request matches the standard set by the Manual at §4.6.25. Specifically, at the time of the relocation services request, petitioner did not have a safe and accessible community living arrangement. See Exhibits PE – P-I.

Petitioner sought reimbursement for services such as moving petitioner’s possessions to the new apartment and general cleaning associated with the move. To ensure compliance with Chapter 4.6.25, petitioner’s mother asked the moving companies to separate the costs related to petitioner’s belongings specifically. Exhibit P- H. Petitioner established that her housing relocation reflected the need for her to find more safe and accessible accommodations.

While she had to temporarily stay at the [REDACTED] in order to safeguard her health and the progress that she had made up to that point, the mere semantics involved here should not disqualify her from eligibility for relocation services. She relocated from an institution to a new home. I do not consider her stay at the [REDACTED] to constitute a separate “move” since there was never any intent (or even a possibility) that such a move was anything more than a temporary situation dictated by petitioner’s mental health crisis treatment and her medical providers’ opinions that her [REDACTED] apartment was a contributing factor.

This matter will be remanded to the respondent to approve petitioner’s request for relocation services.

CONCLUSIONS OF LAW

The respondent incorrectly denied petitioner’s request for relocation services funding pursuant to HCBS Waiver Manual for the CLTS Waiver Program §4.6.25.

THEREFORE, it is ORDERED

That this matter is remanded to the respondent to approve petitioner’s request for relocation services funding of her move to her present Madison Street apartment. The respondent shall comply with this Order within 10 days following issuance of this Decision.

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

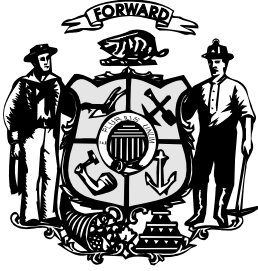
You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Health Services, 1 West Wilson Street, Room 651, **and** on those identified in this decision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



\s _____
Peter McCombs
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

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

Telephone: (608) 266-7709
FAX: (608) 264-9885
email: DHAmail@wisconsin.gov
Internet: <http://dha.state.wi.us>

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

Fond Du Lac County Department of Social Services
Bureau of Long-Term Support
Attorney Tim Hennigan

