



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of



DECISION

Case #: CWK - 207740

PRELIMINARY RECITALS

Pursuant to a petition filed on February 17, 2023, under Wis. Admin. Code § HA 3.03(1), to review a decision by the Lutheran Social Services of Wisconsin & Upper Michigan (LSS) regarding Medical Assistance (MA)/Children’s Long Term Support, hearings were held on April 11, 2023, April 19, 2023, and May 8, 2023.

The issues for determination are:

1. Whether LSS limited the Petitioner’s or his guardians’ access to his service and support coordinator (SSC);
2. If LSS limited the Petitioner’s or his guardians’ access to his SSC, is such limitation a reduction in services.

There appeared at that time the following persons:

PARTIES IN INTEREST:

Petitioner:



Petitioner's Representative:

Attorney Sara J. MacCarthy
Hall, Render, Killian, Heath & Lyman, PC
330 East Kilbourn Ave., Ste. 1250
Milwaukee, WI 53202

Respondent:

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

By: Attorney Sara MacCarthy
Lutheran Social Services of Wisconsin & Upper Michigan
CLTS Program Manager
3003 N. Richmond St.
Appleton, WI 53217

ADMINISTRATIVE LAW JUDGE:
 Debra Bursinger
 Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # ██████████) is a resident of Outagamie County.
2. Petitioner is a participant in the Children’s Long Term Support program (CLTS).
3. On November 7 and 9, 2022, the Petitioner’s guardians filed grievances with LSS via phone and email. See Exhibit P-13.
4. On November 29, 2022, Jill Chaffee, Vice President of Community-Based Services and Client Rights Specialist for LSS, issued a letter to the Petitioner’s guardian summarizing and responding to the grievances. See Exhibits R-7, R-21, and P-14. Ms. Chaffee’s letter included the following language:

“Resolution which supports the provision of CLTS and a positive working relationship:

- The SSC/Support and Service Coordinator will communicate with the family, not the manager, Erin Kraft. NOTE: Consultation and guidance between an SSC, the LSS CLTS team, a supervisor, and Outagamie County is expected and is best practice within CLTS. This will continue to occur.
- If the SSC/Support and Service Coordinator is unable to meet the requests of the family, another SSC/Support and Service Coordinator will be assigned. This will be done only once.
- Ongoing, regular communications with the family will be directed toward the assigned SSC/Support and Service Coordinator. The assigned SSC/Support and Service Coordinator will respond to all typical CLTS communication including, but not limited to: emails and phone calls during the weekly meeting. Exception: Participant incidents, grievances, etc.
- We will have one meeting per week. This will be a 30–60-minute telephone conversation. While the SSC/Support and Service Coordinator will lead the meeting, the LSS Manager will not be the point person for communication and decision making.
- LSS will provide home visits and care coordination, per regulation. Again, the SSC/Support and Service Coordinator will be joined by another LSS employee, potentially the manager.
- Clients and their families will be treated with dignity and respect.
- LSS expects that the SSC/Support and Service Coordinator will be treated with dignity and respect. If any party experiences the following: speaking in an angry or threatening manner, repeating themselves, raising their voice, or other hostility, the contact will be ended for that week.
- The weekly meeting will be structured in the following way:
 - Status updates.
 - Review of requests.
 - Any new requests. Requests will be accepted and reviewed during this meeting.
 - When the volume of emails is high, LSS employees are unable to provide immediate feedback to each email that is provided. Instead, LSS employees will maintain a running list of requests/concerns, which will be addressed during the weekly meeting.
- Exceptions may include, but are not limited to, incidents as outlined by CLTS Waiver.

5. On December 22, 2022, Tanna Spencer, LSS Support and Service Coordinator (SSC), sent an email to the Petitioner’s guardians to cancel their weekly phone call due to a planned vacation. See Exhibit P-22. Ms. Spencer informed the Petitioner’s guardians that they were free to send emails. She noted that not every interaction between them will be during the one scheduled phone call/week. She stated: “My interpretation is that the one phone call a week will be between 30-60 minutes just like we have been doing, not all communication being done within 30-60 minutes a week. That would not be realistic to have communication for just one hour per week over the phone. I encourage you to communicate with me via email as well.”
6. On January 1, 2023, LSS developed an ISP for the Petitioner (Exh. P-25). The ISP includes the following outcome:

Outcome #1: Petitioner and family will receive SSC . . . The parents will have access to the SSC as much and as often as the parents feel necessary via (contact including but not limited to) phone, email, in person, video conference, etc. at the time and date of the parents choosing for a duration necessary determined by the parents. The parents shall lead the meeting, and if necessary, at the parents discretion, provide an agenda. The Petitioner’s level of care requires up to daily contact as determined by the parents. There are no exceptions for the contact including caseload and internal processes.

7. On January 10, 2023, a Notice of Action was issued by Tanna Spencer of LSS to the Petitioner’s guardians. See Exhibit P-9. It states as follows, in pertinent part:

“LSS has determined the need to structure the provision of service coordination to best manage the ongoing needs of the youth and family.

The “Resolution which supports the provision of CLTS and a positive working relationship” as provides below (verbatim from the grievance findings document) outlines the structure.”

The Notice then includes the language noted in Finding of Fact #4. The Notice goes on to state as follows:

“The reason(s) for this structure are indicated below:

1. This structure was requested because the SC serves more than 40 families. The responsibility of the SC is to provide the necessary services to all of those families. With the volume of emails and phone calls from this family, it hinders the SC’s ability to serve other families. It is reasonable to set the limit as it does not limit access to email or phone, but creates a meeting structure to be as efficient as possible while serving all families on the SC’s caseload.
2. The structure request has been made to ensure clear communication. When the SC receives requests and has numerous families to serve (40-50 families), it is possible to have a misunderstanding, have follow up questions, or not obtain the necessary detail to make decisions. We appreciate email communication and phone calls and want to address those communications all at one time to prevent errors and/or misunderstandings regarding requests.
3. One-hour per week of meeting time has historically met the need.
4. The volume of emails and phone calls has been up to 10 per day. Our SC is unable to respond to every email/phone call as quickly as all parties would like. The communication must be prioritized and reasonable.
5. Weekly meetings is more meeting time that received by any other family currently being served by the program.

6. The structure allows for emergencies, incidents, etc.

7. LSS is not provided releases of information and therefore communication must go through the family. Because the SC is not authorized to directly communicate, the provision of service coordination requires even more clarity to meet program requirements and provide the services. A weekly meeting makes sense for this to occur.

This structure has been in place since _____, it was re-stated in the grievance findings document dated: 11/29/2022.”

8. On January 13, 2023, Jill Chaffee issued “Amendment to Client’s Rights Response dated 11/29/22” to the Petitioner’s guardians. See Exhibits P-8 and R-19. The Amendment states as follows, in pertinent part:

“It is my understanding that the four of you (Tanna, Erin, _____, and _____) have worked together and agreed to alternative ways to communicate and meet the needs of your family. As a result of those changes, this document shall serve as an amendment to the ‘Resolution which supports the provision of CLTS and a positive working relationship.’ Here is what you and the LSS SSC and manager have agreed to:

- Ongoing emails and phone calls with your LSS Support and Service Coordinator (LSS-SSC). These may be sent at any time. Whenever possible, the emails and phone calls will identify the priority of the issue so that the LSS-SSC can follow up within reasonable timelines and also meet the needs of others on the caseload.
- Meetings will be modified to 9:30 – 11:00. This is an additional one-half hour to discuss _____’s needs.

Please know that our intention has been and continues to be working with you to meet the needs of your family.

The intent of the parameters was structure, not limitation.”

9. On January 9, 2023 and January 11, 2023, the Petitioner filed appeals of the grievance findings with Outagamie County.
10. On January 27, 2023, Mary Dorn of Outagamie County issued the County’s grievance findings. See Exhibit P-18. The letter indicates the grievance issues that remained unresolved included the Petitioner’s guardians “not being provided access to the CLTS Support and Service Coordinator.”

Ms. Dorn’s findings regarding the grievance were stated as follows:

“Grievance #1: You and your children _____ and _____ who are enrolled in the Children’s Long Term Support (CLTS) Program are not being provided access to the CLTS Support and Service Coordinator.

I have determined the following to be true: Initially when your grievance was reviewed, weekly meeting times were established. A letter dated January 13, 2023 from Jill Chaffee, Client Rights Specialist with Lutheran Social Services, adjusted and clarified the original grievance response letter dated November 29, 2022 and adjusted the originally planned weekly access to your Support and Service Coordinator to include not only a weekly meeting but also to include phone and email access to your Support and Service Coordinator.

I have concluded that the program level review decision regarding your complaint about having adequate access to the Support and Service Coordinator is unfounded.

The reason your grievance was determined to be unfounded is that you now will have the necessary access to the Support and Service Coordinator.”

11. On February 17, 2023, the Petitioner’s guardians filed an appeal with the Division of Hearings and Appeals.
12. On February 21, 2023, Ms. Spencer signed a Notice of Decision to the Petitioner’s parents/guardians informing them that “The CLTS Waiver has determined your service request for contact with your service coordinator will be limited as of the date shown above.” The Effective Date on the Notice is March 8, 2023. See Exhibit P-11.

The Notice further states as follows: “This decision has been made for the reason(s) indicated below:

1. This decision has been made in accordance that the contact with your service coordinator be timely, functional, and able to meet the needs of your child. Communication/contact regarding your child will also meet the minimum requirement set by DHS and outlined in the CLTS Waiver Manual, Chapter 4.6.29.2. Minimum direct contact with the family is required every three months and in-person contact every 6 months (with the participant).

Additionally, the Participant Rights and Responsibilities Notification, F-20985, Section C.4, indicates that: You have a right to have help from a Support and Service Coordinator after you receive services. You have a right to meet with this person as often as you feel is necessary.

2. The reason(s) we are taking this action is because Lutheran Social Services believes that the current agreed upon communication structure between family/guardian and CLTS Support and Service Coordinator meet the needs of the program and the participant.

Previously, in a Client’s Rights Response letter dated 11/29/2022, Lutheran Social Services outlined the following communication plan which supports the provision of CLTS Services:

- Ongoing, regular communications with the family will be directed toward the assigned Support/Service Coordinator (SSC). The assigned SSC will respond to all typical CLTS communication including but not limited to emails and phone calls during the weekly meeting. Exception: Participant incidents, grievances, etc.
- We will have one meeting per week. This will be 30-60 minutes telephone conversation. While the SSC will lead the meeting, the LSS Manager will not be the point person for communication and decision making.

While not in writing, prior to 11/29/22 the previous communication structure with the family included a weekly telephone call discussing questions, concerns, follow up, and needs, usually on a Tuesday, with the family’s assigned Service Coordinator.

On 1/13/2023, a phone call with both parents, and LSS Manager, Erin Kraft, and LSS Service Coordinator, Tanna Spencer, occurred. Parents indicated a need for additional time, 30 minutes, during the weekly meeting. Summary of the discussion yielded the amendment to the Client’s Rights Response, and a letter sent to family on 1/17/2023:

- Ongoing emails and phone calls with your LSS Support and Service Coordinator (LSSSSC). These may be sent at any time. Whenever possible, the

emails and phone calls will identify the priority of the issue so that the LSS-SSC can follow up within reasonable timelines and also meet the needs of others on the caseload.

- Meetings will be modified to 9:30 – 11:00. This is an additional one-half hour to discuss needs.

3. It is our belief that the current agreed upon communication structure is sufficient to meet the needs of the participant and continues to meet, at minimum, the CLTS requirements for contact and service provision. We believe that this structure does not limit family engagement, rather offers a structured approach for consistent communication, including email/phone follow up and weekly meetings.”

DISCUSSION

The Medicaid Home and Community Based Waiver (HCBW) programs were authorized in the Social Security Act by Congress in 1981 and began in Wisconsin in 1983 with the Community Integration Program. The CLTS program started on January 1, 2004 under the § 1915(c) waiver of the Social Security Act. The Department of Health Services (DHS) developed a Medicaid Home and Community-Based Waivers Manual (Manual) for the CLTS program.

The Petitioner’s guardians filed an appeal with DHA when their grievance regarding access to the Petitioner’s Support and Service Coordinator (SSC) with LSS was determined to be “unfounded” by Outagamie County. Specifically, the Petitioner’s guardians assert that LSS’ structured communication plan as outlined in Findings of Facts #4, 5, 6, 7, 8 and 12 above violates their rights to meet with the SSC “as often as they feel necessary” as noted in the Participant Rights and Responsibilities (Exh. P - 4).

LSS asserts that its communication plan is not a limitation or reduction of services to the Petitioner. Rather, it argues that the communication plan was a way to provide parameters and structure to communicating with the Petitioner and his guardians in order to provide an effective way to meet the Petitioner’s needs. It further asserts that the plan has been in place informally for a lengthy period of time, but it was not reduced to writing until November 2022.

The § 1915(c) waiver states as follows, in pertinent part:

The § 1915(c) waiver permits DHS to provide an array of home and community-based services and supports to enable children from birth up to 22 years of age, who would otherwise require institutionalization, to remain in their home and community under the care of the family or guardians. . .

Wisconsin’s locally-contracted waiver agencies are responsible for completing the § 1915 (c) waiver eligibility determination, level of care evaluation and reevaluations, Individual Service Plan (ISP) assessments, and authorizing and monitoring waiver services. . . DHS provides administrative oversight of the waiver program. . .

All waiver services are prior authorized by designated locally-contracted waiver agencies and delivered to participants by qualified waiver providers. The Individual Service Plan (ISP) is developed by the Support and Service Coordinator (SSC) in partnership with the child, as age appropriate, and the family or guardian. The SSC gathers current, comprehensive information about the child/youth to determine which services, supports, and environmental modifications will benefit the child, build on the child’s strengths, and maximize the child’s independence and community participation. All approved waiver services and supports, as well as other non-waiver funded services must be included in the ISP. . .

In 2020, over 13,000 children were enrolled in the waiver program at any time in the year, with an average monthly enrollment of 11,000 participants. . .

The primary responsibility of the Support and Service Coordinator is promoting the child’s health, safety, welfare and inclusion in their home and community, which is accomplished through a broad range of activities, including: 1) General activities 2) Service plan development and execution 3) Programmatic and developmental transitions and 4) Cross-system coordination

Support and Service Coordinators facilitate and coordinate access to all services and -supports, both formal and informal, which are needed by the child and family to meet their identified outcomes. **This includes managing, coordinating and monitoring the comprehensive person-centered plan, as well as informal supports, consistent with the child and family’s identified outcomes, in a planned, coordinated, and cost-effective manner.** The Support and Service Coordinator assures that services are delivered in accordance with waiver program requirements and the child’s identified outcomes.

Support and Service Coordinators assess the family’s needs so they may adequately support the child in the home or other community setting. The Support and Service Coordinator facilitates establishing and maintaining the child and family’s individualized support system. Services provided to children include assuring effective implementation of the child and family’s support plan; developing, implementing, and updating the family-centered transition plan; and coordinating across systems to meet the identified outcomes.

Social Security Act § 1915(c) (emphasis added).

The rights of individuals receiving services from the Department of Health Services and its agents are set forth in Wis. Stat. § 51.61 and Wis. Admin. Code § DHS 94. Under those regulations, individuals have a right to receive prompt and adequate treatment, rehabilitation, and educational services appropriate for his or her condition, as required by applicable law, program manuals, and guidelines. Wis. Stat. § 51.61(1)(f) and Wis. Admin. Code § DHS 94.08. See also LSS Client Bill of Rights (Exhibit P-2) and DHS brochure “Client Rights and the Grievance Procedure for Community Services 09/2016” (Exhibit P-3). Those laws, manuals and guidelines further give individuals the right to participate in the planning of care and treatment. Wis. Stat. § 51.61(1)(fm), Wis. Admin. Code § 94.09(1), LSS Client Bill of Rights and DHS brochure “Client Right and the Grievance Procedure for Community Services 09/2016.”

DHS has developed a Participant Rights and Responsibilities Notification in accordance with the Medicaid Home and Community-Based Services (HCBS) Waiver Manual for the Children’s Long Term Support (CLTS) Waiver Program, Ch. 8. See Exh P-4. That Notification states, in pertinent part:

“Section B

...

2. You have the right to be part of the planning process and share your opinions and preferences. You have the right to invite friends, relatives, or anyone else you choose to be a part of this process. You have a right to lead these meetings and to have them occur at a time and place that is convenient for you and the people you wish to have present, except for one meeting annually which must occur in the home.

...

4. You have the right to be informed in writing of whether an item or service request has been authorized or denied within 14 calendar days of request. This decision may be extended an additional 14 calendar days; and you have the right to be informed about the extension of timeframe.

Section C

...

4. You have a right to have help from a support and service coordinator after you receive services. You have a right to meet with this person as often as you feel necessary. Your support and service coordinator is responsible to assure that you receive the services that are in your plan, that they are of high quality and the services work well together.”

DHS Participant Rights and Responsibilities Notification (11/2020) (Exh. P-4).

Based on the evidence and arguments presented, I conclude that LSS did not limit or reduce the Petitioner’s or his guardians’ access to the SSC and therefore did not reduce any of the Petitioner’s services.

The Petitioner’s guardians rely primarily on the statement contained in the Participant’s Rights and Responsibilities Notification that states they “have a right to meet with [the SSC] as often as [they] feel necessary” to argue that the LSS communication plan is a reduction of service because it restricts their right to meet with or have access to the SSC as often as they feel is necessary.

The Participant’s Rights and Responsibilities Notification was developed by DHS in response to the requirements of the 1915(c) waiver. It is not law but rather a guideline or procedure developed in accordance with the law. There is no requirement in the § 1915(c) waiver, in Wis. Statutes § 51.61 or in Wis. Admin. Code § DHS Chapter 94 that specifies a participant right to meet with an SSC as often as the participant feels is necessary. The waiver sets forth the SSC’s duties and responsibilities to facilitate and coordinate services to meet a participant’s identified needs in accordance with waiver requirements and to do so in a manner that is “planned, coordinated and cost-effective.”

It is not feasible or reasonable to expect an SSC to be able to “meet” with a participant as often as some participants might feel is necessary. This is a very subjective standard. Some participants might want to meet with their SSC with a duration or frequency that would not allow the SSC to deliver services to the participant as well as all other participants in a “planned, coordinated, and cost-effective” manner.

The communication plan developed by LSS in this case does not limit the Petitioner’s or his guardian’s access to the SSC. The Petitioner and his guardians can call or email the SSC at any time with questions or concerns. The SSC is required by law to respond to questions and concerns within a certain timeframe. If the SSC is not timely responding to the participant, the participant has the right to file a grievance. In addition to Petitioner and his guardians being able to call or email the SSC at any time, the SSC established a weekly scheduled call with the Petitioner’s guardians in recognition of the fact that the Petitioner requires a high level of care. The SSC is not required to establish weekly scheduled calls, but a regularly scheduled call ensures that there is specific time set aside every week to devote to discussion of the Petitioner’s needs. This does not mean that the Petitioner and his guardians cannot call, email, or meet with the SSC at other times during the week, as needs arise and as time allows.

There is evidence that the communication plan between the Petitioner’s guardians and the SSC, which includes a scheduled weekly call has been in place for a period of time before it was reduced to writing. The Petitioner’s guardians testified that the calls were initially established to address a backlog of issues and requests. If there are specific requests or items that were not addressed by the SSC in the time required by the waiver mandates, the Petitioner has the right to file a grievance regarding those items. However, there is no evidence provided that limited access of the Petitioner to the SSC is the reason for any backlog. In fact, the case notes as well as other evidence presented demonstrate that there is regular and frequent contact between the Petitioner’s guardians and the SSC via phone, email, and meetings.

There was testimony that discussions between the LSS employees (including the SSC) and Petitioner’s guardians have been less than respectful. The SSC is required to provide services in a “planned, coordinated, and cost-effective” manner. If certain types of communications between the parties are not allowing for the effective and coordinated provision of services, the SSC not only has a right but has the duty to find alternative ways of communicating in order to provide the level of service needed by the Petitioner. A scheduled weekly call is not a right or a requirement and if it is not an effective way of providing service, the SSC is not required to continue it. Discontinuing a weekly call is not a reduction in service as long as the Petitioner and his guardians continue to have access to the SSC as needed to provide services identified in the Petitioner’s ISP in accordance with the waiver mandates.

CONCLUSIONS OF LAW

LSS did not limit or reduce the Petitioner’s or his guardians’ access to the SSC; therefore, there was not a reduction in services.

THEREFORE, it is **ORDERED**

That the 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.

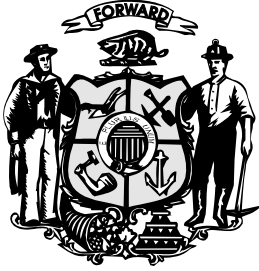
APPEAL TO COURT

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 Milwaukee,
Wisconsin, this 9th day of June, 2023

\s _____
Debra Bursinger
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin \DIVISION OF HEARINGS AND APPEALS

Brian Hayes, Administrator
Suite 201
5005 University Avenue
Madison, WI 53705-5400

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

The preceding decision was sent to the following parties on June 9, 2023.

Lutheran Social Services of Wisconsin & Upper Michigan
Bureau of Long-Term Support
Attorney Sara MacCarthy
DHSCLTS@dhs.wisconsin.gov