



FH
[REDACTED]

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

DECISION
Case #: CWK - 209490

PRELIMINARY RECITALS

Pursuant to a petition filed July 24, 2023, under Wis. Admin. Code, §HA 3.03(1), to review a decision by the Outagamie County Health and Human Services to deny requested items under the Children's Long-Term Support (CLTS) program, a hearing was held on September 13, 2023, by telephone. A hearing set for September 5, 2023 was rescheduled at the agency's request.

The issue for determination is whether the agency correctly denied a request for kayaks for use by petitioner and a parent.

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

Respondent:

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

By: Atty. Dawn Shaha
Outagamie County Health and Human Services
320 S Walnut St
Appleton, WI 54911-5985

ADMINISTRATIVE LAW JUDGE:

Brian C. Schneider
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a [REDACTED] resident of Outagamie County.

2. Petitioner is eligible for the CLTS program, with Outagamie County HHS as the program administrator. He has a number of diagnoses including autism, ADHD, allergies, anxiety, and issues with mobility. He resides with his parents.
3. On June 5, 2023, petitioner’s mother requested CLTS coverage of a pair of kayaks along with a tow rope to be used by petitioner and his father for health and wellness as well as to build family relationships. By a notice dated July 19, 2023, the agency denied the request because petitioner has other health and wellness services available and due to safety concerns.

DISCUSSION

The CLTS program started on January 1, 2004 after the federal Department of Health and Human Services informed the state department that federal MA funding would no longer be available for in-home autism services. The department utilizes a Medicaid Home and Community-Based Services Waivers Manual (“the Manual”) that became effective with the start of the CLTS program.

The Manual, at §4.6.17.1, defines Health and Wellness services as those to maintain or improve the health, well-being, socialization, or inclusion of the participant with family and peers in the community. Such services must meet a clearly defined outcome and cannot be duplicative of other services. See §4.6.17.5. They cannot be harmful and cannot be primarily for recreational purposes. §4.6.17.4.

Petitioner’s mother testified that when petitioner went to a camp this past summer, he and his father bonded through kayaking together. The kayaking also served as a source of exercise for petitioner. Thus the family decided that regular use of the water craft would be beneficial for petitioner’s family relationship as well as physical well-being. The agency worker testified, on the other hand, that petitioner has a number of health and wellness services in place, and that putting him in a water craft could be dangerous considering his medical conditions and wandering behaviors.

The family lives in downtown Appleton. When asked, petitioner’s mother surmised they would use the kayaks on Lake Winnebago, which is at least a two-mile trip from the home (it is unclear how far the nearest park for launching the kayaks is from the home, but any use of the boats would entail hauling them by vehicle). Thus I immediately question how often the kayaks would even be used, especially considering that a Wisconsin kayak season might last for about 3-4 months a year. Furthermore, Lake Winnebago is not a serene north woods lake like at the camp.

I have personal knowledge of the use of kayaks. First, they are difficult to maneuver, even for a healthy person, much less a healthy person working in tandem with a disabled person. Second, while they are a fun diversion, they rarely get used regularly. If used at all, their primary purpose is recreational. My younger brother bought a two-seat kayak in 1994 as a wedding gift for his future wife; they used it exactly zero times. My eldest son bought a blow-up kayak in 2019 to row around the waterways of Madison with his girlfriend; they used it twice and it now sits uninflated in a large bag in my basement. For those reasons alone, that is why taxpayer money should not be used to fund what it, basically, a rarely used diversion. I thus agree with the agency that there are plenty of health and wellness services available to petitioner, and the denial of the request for purchase of kayaks was reasonable.

CONCLUSIONS OF LAW

The requested purchase of kayaks by the CLTS program does not meet the goal of petitioner’s health and wellness.

THEREFORE, it is

ORDERED

That the petition for review is hereby 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

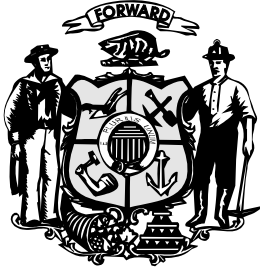
You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Health Services, 1 West Wilson Street, Room 651, **and** on those identified in this decision 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 15th day of September, 2023



\s _____
Brian C. Schneider
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 September 15, 2023.

Outagamie County Department of Human Services
Bureau of Long-Term Support

