



FH
[REDACTED]

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

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

DECISION
Case #: CWK - 210573

PRELIMINARY RECITALS

Pursuant to a petition filed on September 30, 2023, under Wis. Admin. Code § HA 3.03(1), to review a decision by the Milwaukee Enrollment Services regarding CWK, a hearing was held on December 20, 2023, by telephone.

The issue for determination is whether the agency has properly denied petitioner's request for funding for respite care from 9/15/23 to 9/23/23.

There appeared at that time the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]

Respondent:

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

By: M. Gritzmacher
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 resident of Milwaukee County.

2. Petitioner is enrolled in the Children’s Long-Term Supports (“CLTS”) waiver program.
3. He is currently 8 years old.
4. Petitioner has the diagnosis of Autism Spectrum Disorder.
5. Petitioner needs supervision at all times.
6. Petitioner currently receives 80 hours of funded respite hours.
7. On or around 9/15/23 petitioner’s mother suffered a death in the family. She left town placing petitioner in the care of another person.
8. Petitioner’s mother sent the program an e-mail requesting respite hours to cover her absence from 9/15/23 to 9/23/23 due to a need to travel out of town on short notice.
9. The agency denied the request by Notice of Action dated 9/19/23.
10. Petitioner filed a timely appeal.

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 denied petitioner’s request for funding for respite care from 9/15/23 to 9/23/23 when petitioner’s mother travelled out of town on short notice after a death in her family.

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.

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 agency argued at hearing that the need for the absence was not related to petitioner’s disability and that the need for emergency child care is something that all parents are required to arrange simply as part of their parenting duties. The agency initially argued that some prior approval is required for respite care but ultimately backed away from that argument when pressed to provide a rule requiring that.

Petitioner’s mother argued that this was an emergency and she had little choice but to leave town on short notice. She argued that it is her prerogative as to what she does with her respite time and that there is no requirement in the CLTS Manual that the need to leave be related to petitioner’s disability. She also argued that the need for a caregiver was required because petitioner could not travel with her due to his disability.

I agree with the agency’s position and believe they have demonstrated by a preponderance of evidence that the denial was correct. The need for care for the petitioner was because of a death in the family. Petitioner had a last-minute trip she was required to take. The trip or absence had nothing to do with giving petitioner’s mother a break from her caregiver duties. It was related to her having other obligations which she elected to prioritize. This was a situation necessitating child care not respite care. While it is understandable that petitioner’s mother wanted to travel to be with family and attend to funeral needs for her relative, the need for a substitute caregiver was not to “eas[e] the daily stress and care demands.” Petitioner’s argument that respite should be authorized because petitioner could not travel with her due to his disability is not persuasive. There are many circumstances all parents face in which the accompaniment and presence of their child is not appropriate. Parents need to adapt to the obligations of parenting. This often means arranging or funding unplanned child care. I see no reason why this child-care need, brought about by a personal family issue, should fall on a state-funded public benefit program. There may be other sources of funding for this child-care need. But, I fail to see that this need fits appropriately withing CLTS respite hours.

CONCLUSIONS OF LAW

The agency did not err in its denial of the respite funding sought for petitioner’s mother’s overnight travel from 9/15/23 to 9/23/23.

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).

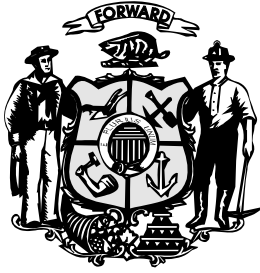
The process for Circuit Court Appeals may be found at Wis. Stat. §§ 227.52 and 227.53. A copy of the statutes may be found online or at your local library or courthouse.

Given under my hand at the City of Madison,
Wisconsin, this 9th day of January, 2024



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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 January 9, 2024.

Milwaukee Enrollment Services
Bureau of Long-Term Support

