



FH

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

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

DECISION

Case #: CWK - 215379

PRELIMINARY RECITALS

Pursuant to a petition filed on October 7, 2024, under Wis. Admin. Code § HA 3.03(1), to review a decision by the Waukesha County Health and Human Services regarding the Children's Long Term Support (CLTS) Program, a hearing was held on November 14, 2024, by telephone.

The issue for determination is whether the CLTS program correctly denied petitioner's request for CBO baby adapted bodysuits (onesies).

There appeared at that time the following persons:

PARTIES IN INTEREST:

Petitioner:

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

Respondent:

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

By: Vickie Smith

Waukesha County Health and Human Services
514 Riverview Avenue
Waukesha, WI 53188

ADMINISTRATIVE LAW JUDGE:

Kelly Cochrane
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner is a resident of Waukesha County and has been enrolled in the CLTS program. He is now 8 years old and his diagnoses include Rubinstein-Taybi Syndrome, autism and severe intellectual developmental disorder.
2. Petitioner uses diapers full-time to support his developmental needs. He has a history of inappropriate diaper-related behavior, including fecal smearing.
3. In June 2024 petitioner requested the CLTS fund his onesies to maximize his integration within the community, manage a medical or physical condition, and enhance his independence, peer interaction, and level of social inclusion..
4. On July 11, 2024, the agency issued a notice to petitioner advising that the onesies were denied because the onesies were considered restrictive measures. The notice specifically states: The CLTS waiver program is unable to purchase a bodysuit for use to restrict [REDACTED] from taking off his diaper or limiting his general easy access to his private areas as a typically developing youth would have.

DISCUSSION

The Medicaid Home and Community Based Waiver (HCBW) programs were authorized by Congress in 1981 and began in Wisconsin in 1983 with the Community Integration Program. The CLTS program started on January 1, 2004, after the federal Department of Health and Human Services informed the State of Wisconsin that federal MA funding would no longer be available for in-home autism services. The state Department of Health Services (DHS) has developed a manual to set forth its policies for the CLTS program as required by the federal Centers for Medicare & Medicaid Services (CMS). The Medicaid Home and Community-Based Services (HCBS) Waiver Manual for the CLTS Waiver Program (*Manual*) can be found on the internet at <https://www.dhs.wisconsin.gov/publications/p02256.pdf>. The approved Waiver (*Waiver*) can be found at <https://www.dhs.wisconsin.gov/clts/waiver/clts-1915c-renewal.pdf>.

The 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 determining applicants' program eligibility, authorizing covered waiver supports and services, conducting annual recertifications, and operating other long-term support programs that assist in meeting the needs of children and their families. The county waiver agency authorizes family-centered services and supports based on the assessed need of each child and his or her family to ensure continued health, safety, inclusion in the community and ability to reside in the least restrictive setting. In accordance with 42 CFR § 441.301(b)(1)(i), a participant centered service plan (of care) is developed for each participant employing the procedures specified in Appendix D. All waiver services are furnished pursuant to the service plan. 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. The service plan is subject to the approval of the Medicaid agency. See *Waiver*, § 6; see also *Manual*, § 4.5.

In compliance with federal direction, the DHS has sole state-wide authority in all Medicaid waiver policy and program administration. See *Manual* § 1.2. County waiver agencies may not change or disapprove any administrative decision of the DHS or otherwise substitute their judgment with respect to the application of policies, procedures, rules, and regulations issued by DHS. *Id.*

This appeal was created because petitioner is requesting his onesies to be funded by the CLTS program, and the request was denied. Petitioner describes a need for the onesies to maximize his integration within the community, manage a medical or physical condition, and enhance his independence, peer interaction, and level of social inclusion. There is no dispute that petitioner's disabilities and impairments are described as severe, requiring "very substantial support" and he is followed by the Complex Care Program at Children's Wisconsin. He has a history of inappropriate diaper-related behavior, including fecal smearing. This is described as behavior that disrupts daily routines, contributes to hygiene issues, and leads to his social isolation at school and within the community. The onesies were recommended as a low-cost solution to deter the behavior. His treating nurse, stated, "[REDACTED] uses onesie clothing to help prevent him from being able to unhook his diaper or pull up. The purpose of the onesie is to keep his diaper or pull up secure to prevent leaking and skin breakdown. This is not a restraint." See Exhibit D. Petitioner's pediatric urology doctor stated, "As a result of his stool and urinary incontinence, [REDACTED] requires pull-ups. Due to his developmental delays, he often will attempt to take off his clothing and his pull-up. The family has found that if [REDACTED] wears a onesie, this prevents him from taking off his pull-ups. It is very reasonable for [REDACTED] to wear a onesie to help prevent him from taking off his pull-up. This should not be considered a restraint." See Exhibit F. The requested onesie is described as:

CBO Baby creates adaptive clothing for children with disabilities. (Exhibit I). The requested item is a bodysuit designed specifically for older children with developmental and adaptive needs for such an item. CBO Baby specifically manufactures larger-sized bodysuits for children who use diapers at older ages due to developmental delays, as well as for children with sensory challenges with traditional clothing. (*Id.*). CBO's bodysuit includes three snap buttons located between the two leg openings.

The bodysuit buttons are described as "reinforced snaps." Notably, the "reinforcing" nature of the snaps qualifies the sewing technique of the snap to the cloth, not the strength of the snap-to-snap, itself. Additional fabric is added around the snap to help prevent the fastener from being ripped out after only a few uses. (Exhibit K). As such, a "reinforced snap" does not indicate that it has any increased difficulty in "unsnapping" or pulling it open.

See Exhibit Q.

The agency explained that the onesie is considered a restrictive measure because the onesie will limit petitioner's access to his body. Under the *Waiver* the DHS is the:

entity responsible for overseeing the use of restraints and ensuring that safeguards concerning their use are followed. DHS reviews each application for the use of a mechanical restraint, as well as the behavior support plan or medical support plan, in conjunction with DHS policy and guidelines to verify that all elements of the application and support plan are met before approval.

Waiver, p. 296. As part of the safeguards promised under the *Waiver*, DHS does not allow for the use of personal restraints, drugs used as restraints, or seclusion in a locked or unlocked room. *Id.* DHS does allow the use of mechanical restraints, including protective equipment, in very limited situations. *Id.*

The *Manual* describes restrictive measures as:

... any type of manual restraint, isolation, seclusion, protective equipment, or mechanical restraint for behavioral purposes or medical purposes. Children and youth who are receiving services for mental illness, developmental disabilities, alcoholism, or drug

dependency and enrolled in the CLTS Waiver Program are covered by the provisions in Wis. Stat. § 51.61 and have the right to be free of restraints, including the intentional and unreasonable confinement of an individual in a locked room, involuntary separation of a child from their living area, use of physical restraining devices on a child, or the provision of unnecessary or excessive medication to a child. It does not include the use of these methods or devices in entities regulated by DHS if the methods or devices are used in conformance with state and federal standards governing confinement and restraint.

Manual § 9.4.

As for protective equipment, the *Manual* states:

Protective equipment includes devices that do not restrict movement but do **limit access to one's body** and are applied to any part of a child or youth's body **for the purpose of preventing** tissue damage or **other physical harm** that may result from their behavior. Protective equipment may include but is not limited to the following:

- Helmets
- Gloves or mitts
- Goggles
- Pads worn on the body
- Clothing designed or modified to restrict access to a body part

For more information about restrictive measures eligible for DHS approval and the conditions under which those measures would be considered for approval, refer to the Instructions and Requirements for the Use of Protective Equipment and Mechanical Restraints in Children's Long Term Support Programs (P-02616).

Manual § 9.4.5 (emphasis added).

Petitioner's advocates have described the onesie as a needed barrier for everyone's safety, as a means to prevent harm, needed to prevent his hand getting in his diaper, needed to prevent him from being able to unhook his diaper or pull up, as a deterrent, and as a means to slow him down from getting into his diaper. It is clear why his advocates would want to use this option. However, I must agree that the onesie limits his access to his body for the purpose of preventing harm. It therefore acts as protective equipment, which is considered a restrictive measure that must be specifically approved through the route described in § 9.4.5 above. If the onesie did not serve such a limiting purpose, it would just be another piece of regular clothing.

It is a well-established principle that a moving party, meaning the party that wants to change the status quo, generally has the burden of proof, especially in administrative proceedings. *State v. Hanson*, 295 N.W.2d 209, 98 Wis. 2d 80 (Wis. App. 1980). In this case, it is the petitioner who is requesting that the program fund the service/item. The petitioner has the burden of proof to show that the service requested a covered service. I cannot find that he has done so on this record. This is not meant to diminish the challenges petitioner faces, but to say that the evidence must support a finding in his favor by a preponderance of the evidence.

I add, assuming petitioner finds this decision unfair, that it is the long-standing position of the Division of Hearings & Appeals that the Division's hearing examiners lack the authority to render a decision on equitable arguments. See, Wisconsin Socialist Workers 1976 Campaign Committee v. McCann, 433

F.Supp. 540, 545 (E.D. Wis.1977). This office must limit its review to the law as set forth in statutes, federal regulations, and administrative code provisions.

CONCLUSIONS OF LAW

Petitioner has not met his burden to show that the agency erred in its denial of the onesies.

THEREFORE, it is **ORDERED**

The petition for review herein 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.

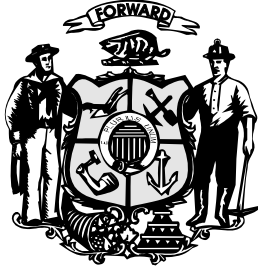
APPEAL TO COURT

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 12th day of December, 2024

\s _____
Kelly Cochrane
Administrative Law Judge
Division of Hearings and Appeals



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The preceding decision was sent to the following parties on December 12, 2024.

Waukesha County Health and Human Services
Bureau of Long-Term Support
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