



FH  
[REDACTED]

**STATE OF WISCONSIN**  
**Division of Hearings and Appeals**

---

In the Matter of

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

**DECISION**  
Case #: CWK - 215882

---

**PRELIMINARY RECITALS**

Pursuant to a petition filed on November 12, 2024, under Wis. Admin. Code § HA 3.03(1), to review a decision by the Eau Claire County Department of Human Services regarding CWK, a hearing was held on December 27, 2024, by telephone.

The issue for determination is whether the agency erred in its denial of the preferred provider for respite services under the CLTS program.

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: A. Gaetz

Eau Claire County Department of Human Services  
721 Oxford Avenue  
PO Box 840  
Eau Claire, WI 54702-0840

**ADMINISTRATIVE LAW JUDGE:**

John Tedesco  
Division of Hearings and Appeals

**FINDINGS OF FACT**

1. Petitioner (CARES # [REDACTED]) is a resident of Chippewa County.
2. Petitioner is enrolled in the CLTS program.
3. Previously, [REDACTED] and her husband [REDACTED] provided respite care for petitioner.
4. [REDACTED] and [REDACTED] were also licensed foster parents.
5. [REDACTED] is a sister of petitioner.
6. On 7/18/24 [REDACTED] observed what she believed was child pornography on [REDACTED]'s phone. She observed the beginning of a video that portrayed an adult with an erect penis and a 3-4 year old child in a room together. She did not watch the entire video.
7. On 7/23/24 [REDACTED] asked her husband to leave the home.
8. [REDACTED] reported the incident to Eau Claire County Alternate Care Unit that she had observed the video.
9. On 9/11/24 the County revoked [REDACTED]'s foster care license.
10. The CLTS program was informed of this report and the foster care license revocation on 9/24/24.
11. On the CLTS program issued a notice to petitioner notifying her that [REDACTED] would no longer be allowed as a respite provider.

## DISCUSSION

The CLTS program started on January 1, 2004 after the federal Department of Health and Human Services informed the state department (DHS) that federal MA funding would no longer be available for in-home autism services. The department drafted and released the Medicaid Home and Community-Based Waiver Manual for the CLTS Program (“the *Manual*”), with a current update as of May, 2024. It can be found on the internet at <https://www.dhs.wisconsin.gov/publications/p02256.pdf>. It does not appear that any changes in the update affect the issue in this matter.

The issue in this case is whether the agency correctly denied petitioner’s choice of respite provider because a member of that provider’s household was suspected of viewing child pornography. The record bears no evidence or argument that that person has been convicted of a crime or has any negative finding as a result of a background check.

The CLTS program keeps a registry of qualified providers. *Manual*, §4.1. The local County Waiver Agency (CWA) can access a provider’s status on the registry and can allow approval of a provider if she is qualified on the registry. *Manual*, §4.2.2. Determining a provider fully qualified is a bifurcated process involving both the DHS and the county agency. The *Manual* sets forth the role of each in the process:

### ***4.2.2 CWA Role and Responsibilities—Fully Qualify and Authorize Service Delivery***

*CWAs access a provider’s information, registration status, and initial qualification documentation via the CLTS Provider Registry.*

*CWAs complete the following activities to fully qualify a provider. CWAs may fully qualify a provider only for the service(s) that DHS has initially qualified them for and not for any other services.*

- *Check the provider’s registration status.*
- *If the provider’s registration is approved, review the provider’s information and initial qualification documentation to confirm it remains current.*
  - *If the provider’s initial qualification documentation is expired or no longer valid, CWAs must notify that provider to update their*

- registration. The CWA may not authorize services until the registration and initial qualification documentation has been updated via the online registration system.
- If the provider chooses not to or is unable to update their registration and qualification documentation, CWAs must notify DHS within 10 calendar days by emailing [DHSCLTSPProvider@dhs.wisconsin.gov](mailto:DHSCLTSPProvider@dhs.wisconsin.gov). Once notified, DHS will remove the provider from the Provider Directory.
  - Verify if child-specific training or other requirements, such as a caregiver background check, are necessary to fully meet the selected service description.
  - For agency providers, CWAs are responsible for verifying any certification, license, education, or experience that is required for rendering providers employed by the agency, to fully meet the selected service description. For rendering providers who are employed by provider agencies contracted by the CWA, CWAs can delegate this requirement through their contract with the agency and do not need to maintain documentation of rendering providers' certification, license, education, or experience on site.
  - If the provider is fully qualified, authorize the provider to deliver services. Refer to Section 4.5, Service Authorization.

Part of the county agency's responsibilities involve conducting a background check. If a new caregiver or a "sole proprietor" caregiver is suggested, the CWA must ensure that a background check is completed. *Manual*, §4.2.3. From the background check, a caregiver cannot be approved if there has been conviction of a "serious crime" or an offense deemed to be substantially related to the service to be provided. *Manual*, §4.2.3.1. If a participant requests approval a specific caregiver, and person's record shows no convictions, but does contain a negative finding, the negative finding must be reviewed with the participant. If the participant nevertheless wants to employ the provider after the review, the CWA must respect the choice unless there is compelling justification not to do so. *Manual*, §4.2.3.2.

*The Manual* goes into great detail about the county agency's role in this process. All of these duties pertain to verification of training and certifications and making sure paperwork that has been relied upon is not expired. The manual enumerates each of the duties and responsibilities of the county agency in making its determination. Notably, the *Manual* does not call for, or even mention, a step in the process that would call for the county to make a subjective determination of fitness, character, or judgment of the provider aside from conducting a background check.

Such a step in the CLTS provider approval process, or with regard to qualifications of a respite provider is also not mentioned in the *Manual* section dedicated to the specific qualifications of a respite provider. See *Manual* at Section 4.6.26. There is no general approval of fitness that a county must "check-off" on a respite provider. Had DHS intended to grant such authority to the counties then it certainly would know how to do so. To analogize, the Department of Children and Families requires that day-care providers be "fit and qualified" which is defined in the Administrative Code:

- (11) "Fit and qualified" means displaying the capacity to successfully nurture and care for children and may include consideration of any of the following:
- (a) Abuse of alcohol or drugs.

- (b) A history of a civil or criminal conviction or administrative rule violation that is substantially related to the care of children, as determined under s. [DCF 13.05](#).*
- (c) Exercise of unsound judgment.*
- (d) A history of civil or criminal offenses or any other action that demonstrates an inability to manage the activities of a center.*

Wis. Admin Code DCF Section 250.03.

Similarly, the county's exhibits cite Wis. Admin. Code DCF 56.05(1)(a)1 shows similar considerations in the approval of foster parents:

*A person licensed to operate a foster home shall be a responsible, mature individual who is fit and qualified, exercises sound judgment, displays the capacity to successfully nurture foster children...*

Notably, however, DHS includes no such requirement in any CLTS guidance that authorizes the CLTS agency make such a determination of fitness, character, or sound judgment regarding respite providers.

This now brings us to the actual case at hand. Here the county agency did not determine that the proposed respite provider had a conviction of some serious crime that barred them from being a caregiver or provider. Nor did the agency conduct an analysis applying the factors in *Wis. Admin. Code* DHS 12.06 to determine whether a non-barring conviction, or convictions, are substantially related to client care. Instead, the question before me is whether the county has some overarching authority, not mentioned in the waiver, statute, the Administrative Code or the *Manual* to deny a chosen provider based not on information from a background check but from a report from a third party. I find that the county had no such authority and that the county in this case did not correctly deny the chosen respite provider.

The county's only argument to support its action is that the program gives broad authority to counties to ensure safety of members. *See, e.g. Manual* at Section 9.2. But that section says nothing about qualifying providers. This section instead provides certain steps and processes for counties to follow toward the goal of ensuring safety: collaboration among stakeholders, training and education, identifying vulnerable children and youth, and mandatory reporting.

Free choice of provider is a guiding policy consideration in the CLTS program. The waiver, and the CMS and DHS guidance that interprets it, allows only the most limited controls on that choice related to background checks, training, and approval of documentation.

A recent Final Decision by the DHS Secretary-Designee sheds light on the issue as well. In case number CWK-210726, dated March 15, 2024, a decision denying choice of a respite care provider following a background check by the county agency was reversed. In pointing out that a parent can employ a respite provider even if the provider fails the county's background check (and does not have a conviction of a "serious crime" under Wis. Stat., §48.685(1)(c), the decision reads:

*Nevertheless, individual choice of provider is the main tenant (sic) of the CLTS program. The CLTS manual clearly states that if the participant wants to employ a provider despite negative [background check] findings, in the absence of a conviction, the participant's choice must be respected "unless there is compelling justification not to do so." Manual, §4.2.3.2. While "compelling justification" is not defined, clearly the "compelling justification" must be more than a mere disagreement with the CWA regarding the severity of the negative findings.*

And, the determination in this case was not even based on findings that arose from a background check. There were no barring offense convictions, no convictions that were substantially related to client care, and not even any “negative findings.” Clearly the CMS and DHS, and the waiver, intends to put substantial authority in the hands of the parent/caretaker. If DHS would like more vetting by the counties then DHS knows how to include appropriate language in the code. In this case the county did not present any persuasive argument that the county has the authority to be gatekeeper of CLTS providers aside from the process called for in *The Manual*. In this case, based on the hearing record, the agency erred in its denial of the chosen provider.

### CONCLUSIONS OF LAW

The agency erred in its termination of [REDACTED] from being an approved respite provider under the CLTS program.

**THEREFORE, it is**

**ORDERED**

That this matter be remanded to the agency with instruction reverse the termination of [REDACTED] as an approved respite provider for petitioner. This action must be completed within 10 days 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, 5<sup>th</sup> 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.

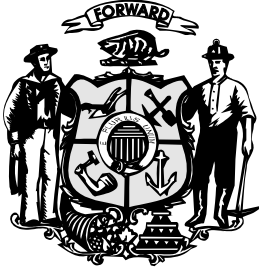
### **APPEAL TO COURT**

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 3rd day of February, 2025

\s\_\_\_\_\_  
John Tedesco  
Administrative Law Judge  
Division of Hearings and Appeals



**State of Wisconsin\DIVISION OF HEARINGS AND APPEALS**

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

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

The preceding decision was sent to the following parties on February 3, 2025.

Eau Claire County Department of Human Services  
Bureau of Long-Term Support  
[REDACTED]