



FH
[REDACTED]

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

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

DECISION

Case #: CWK - 216266

PRELIMINARY RECITALS

Pursuant to a petition filed December 13, 2024, under Wis. Admin. Code, §HA 3.03(1), to review a decision by Columbia County Health & Human Services to discontinue the Children's Long-Term Support program (CLTS), a hearing was held on March 6, 2025, by telephone. Hearings set for January 29 and February 11, 2025 were rescheduled at the petitioner's request.

The issue for determination is whether petitioner no longer meets the level of care for CLTS eligibility.

PARTIES IN INTEREST:

Petitioner:

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

Petitioner's Representative:

Atty. Trevor C. Levenson
Halling & Cayo
320 E. Buffalo Street, Suite 700
Milwaukee, WI 53202

Respondent:

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

By: Asst. Corp. Counsel Hayden Knight
Columbia County Health & Human Services
PO Box 136
Portage, WI 53901

ADMINISTRATIVE LAW JUDGE:

Brian C. Schneider
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a 17-year-old resident of Columbia County.

2. Petitioner has been eligible for CLTS prior to the current action. Her eligibility was based on the psychiatric hospital level of care under the mental health target group. The only service being provided through CLTS has been respite care with [REDACTED]. She also received services through the Comprehensive Community Services (CCS), but those services ended in spring, 2024.
3. In November, 2024, the agency conducted a required annual functional screen to determine if petitioner still met the level of care requirement. After the screen was completed, petitioner was determined to no longer meet the level of care requirement. By a notice dated November 29, 2024, the agency informed petitioner's parent that CLTS would close December 13, 2024. The notice told the family that benefits would continue if an appeal was filed before the end date of December 13, 2024. This appeal was filed on December 13, so benefits were not continued.
4. The functional assessment was done on November 14, 2024. Petitioner, her mother, and [REDACTED] from [REDACTED] were present on petitioner's behalf.
5. The assessor noted mental health diagnoses of ADHD, depression, personality disorder, and trauma related disorder. She noted that petitioner needs more than outpatient counseling, that the mental health diagnoses have persisted for more than six months and are expected to last more than one year. Her current mental health services were psychiatric medication checks, counseling sessions with a psychologist or clinical social worker, and in-school supports. Services were more than three hours per week. It noted that petitioner did not exhibit disruptive behaviors on a daily basis, did not experience sleep related traumas at least four times per week, and that she was able to complete routine events.
6. The assessor noted that petitioner had no suicidal thoughts within the past twelve months. In fact petitioner had a suicidal episode in February, 2024, but none since.
7. The assessor noted the only high-risk behavior to be leaving home without permission or warning, but noted that petitioner intends to return home when she does so. She has threats of violence less than once per month. She has sexually inappropriate behavior less than once per month. Those reports were major changes from the November, 2023 assessment, when self-injurious behavior, aggressive and offensive behavior were listed.
8. Petitioner needs no assistance with activities of daily living (ADLs). She needs assistance with the instrumental ADLs (IADLs) communication, capacity for independent living, learning, and social competency.

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 drafted and released the Medicaid Home and Community-Based Waiver Manual for the CLTS Program ("the Manual"), with a current update as of October, 2023. It can be found on the internet at <https://www.dhs.wisconsin.gov/publications/p02256.pdf>.

The Manual provides that an individual must meet several eligibility criteria for these programs, one of which is level of care. Manual, §2.1. In addition, the child must be part of a waiver target group. Those groups include children with developmental disabilities, those with physical disabilities, and those with a mental health disability. Manual, §2.3.

The level of care criteria are the basis for the change in petitioner's status. They are found on the internet at <https://www.dhs.wisconsin.gov/publications/p03027.pdf>, most recently updated in May, 2022. As petitioner originally met the Mental Health level, I will review that level. As I noted at the hearing, I am reviewing the determination made by the agency in November, 2024.

To meet the Mental Health level of care, the child must (1) have a diagnosis that has persisted at least six months and is expected to persist for at least one year; (2) it must be diagnosed by a certified psychiatrist or psychologist using the DSM-IV classifications; (3) the child must be receiving services from at least two service systems including the juvenile system, child protective services, special education relating to emotional needs, substance abuse services, or the mental health system (or from one of the systems but for at least three hours per week); and (4) there must be severe psychiatric symptoms or dangerous behaviors as described in one of four standards. Level of Care Manual, beginning on p. 10. The child must be at risk of psychiatric hospitalization without appropriate home/community interventions.

Petitioner meets the first three criteria. The issue is whether there are severe psychiatric symptoms or dangerous behaviors. I note first that I have reviewed the 2024 functional screen and the responses from petitioner's mother and [REDACTED]. I find that the functional screen was substantially accurate concerning petitioner's *current* functioning. Much is made of a 2023 psychological evaluation, and a number of case notes were provided to substantiate petitioner's behaviors, but almost all of the case notes are from 2023. I thus will evaluate the fourth criterion.

Under the current criteria the severe symptom criterion includes several standards in descending order. The first standard is that the child will be found to have severe symptoms if she has one of three symptoms either currently, within the past three months, or twice within the past year: psychosis, violence, or anorexia/bulimia. *Id.*, p. 13. Psychotic symptoms are delusions, hallucinations and/or loss of contact with reality. Violence is defined as acts that endanger another person's life, and that cause the victim to require inpatient admission to a hospital. Petitioner does not meet those standards.

A fourth severe symptom is suicidality, defined as a serious suicide attempt or significant suicidal ideation or plan, at least once in the past twelve months. The result must be direct, daily interventions to avoid institutionalization. *Id.*, p. 14. Notably, petitioner's suicidal ideation from February, 2024 did not even come up during the November screening. A review of the case note from February 6, 2024, petitioner's Exhibit O, shows that petitioner discussed possible self-harm at a [REDACTED]. By the end of the contact the crisis appeared to be over, and no intense therapy or other intervention was initiated. Thus, even if the incident had been noted in the functional screening, it did not rise to the level of a severe psychiatric symptom.

The next standard under the severe symptom criterion is that the child have frequent and intense problems in two of the following four behaviors: (1) High-risk behaviors such as running away, substance abuse, dangerous sexual contact, use of inhalants, (2) self-injurious behaviors such as head banging against hard surfaces, cutting/burning oneself, biting oneself severely, tearing at or out body parts, inserting harmful objects into body orifices, (3) aggressive/offensive behavior toward others such as verbal abuse, hitting/biting/kicking, masturbating in public, urinating on another or smearing feces, serious threats of violence, sexually inappropriate behavior, animal abuse, (4) lack of behavioral controls such as destruction of property, stealing/burglary, obsessions interfering with daily life. *Id.*, page 15.

Such behaviors must occur regularly, at least once per month and require professional treatment. Petitioner does not meet any of those behaviors at the required intensity. While she leaves home without telling anyone, it is acknowledged that she is not running away but intends to return home. Much is made of her sexualized behavior, but the only instance in 2024 is one in June, 2024 where she shared inappropriate text

messages with a boy. It does not appear that the incident resulted in professional intervention other than a reminder to be vigilant about petitioner's use of technology.

The next standard is that the child has one of the four behaviors in the second standard, plus a significant deficit in social skills or school/work issues. While petitioner might have deficits in social skills and school, she still, currently, does not meet the standard for any of the four dangerous behaviors.

The final standard requires the child to meet one dangerous behavior or one deficit in social or school/work skills, plus have a "rare and extreme circumstance" such as daily extreme disruptive behaviors, severe nightmares or night terrors four times per week, or being unable to complete routine events daily due to an obsession. Level of Care Manual, page 19. Again, petitioner's current mental/emotional problems are not at those levels.

Petitioner made three arguments. First, she argued that the agency did not screen petitioner for Developmental Delay. The agency representative responded that there was no diagnosis of developmental delay offered during the screening, only evidence that petitioner was seen for possible developmental delay. It now appears that there has been a diagnosis, and petitioner's representatives can request a new screen on that issue. Second, she argued that they failed to account for the suicidal incident in early 2024. I have already discussed that issue. Third, she argues that the screener failed to account for the services that petitioner receives as being a basis for the better reports of her functioning. No doubt services have been important, but the most intensive services, CCS, were discontinued in April, 2024. Petitioner has been functioning at a much better level with only school supports and some outpatient counseling (I note that nowhere in the record could I find any description of how often petitioner has been seeing a psychologist/social worker therapist, so it does not appear to be a regular, ongoing intervention). While petitioner still attended respite, the agency correctly noted that respite is not an active, direct treatment device; it is a means to give the family members a break from each other. It is obvious that petitioner had severe symptomology in the past, but the whole point of CLTS is to help the person overcome the symptomology. Petitioner still has issues, but they do not rise to the level as in the past. I cannot find an error in the screener's determinations on that basis.

I conclude that the November, 2024 functional screen accurately determined that petitioner no longer met the psychiatric hospital level of care necessary for CLTS eligibility.

CONCLUSIONS OF LAW

The agency accurately determined that petitioner did not meet the psychiatric hospital level of care when it did an annual functional screen in November, 2024.

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

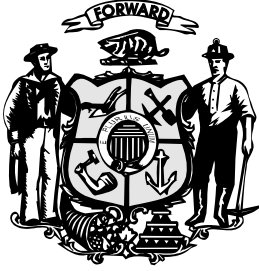
You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Health Services, 1 West Wilson Street, Room 651, **and** on those identified in this decision 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 12th day of March, 2025

\s

Brian C. Schneider
Administrative Law Judge
Division of Hearings and Appeals



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The preceding decision was sent to the following parties on March 12, 2025.

Columbia County Health & Human Services
Bureau of Long-Term Support
Attorney Trevor Levenson



Attorney Hayden Knight