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

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In the Matter of

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

**DECISION**

Case #: CWK - 216983

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**PRELIMINARY RECITALS**

Pursuant to a petition filed on February 7, 2025, under Wis. Admin. Code § HA 3.03(1), to review a decision by the Dane County Department of Human Services regarding the Children's Long Term Support Waiver / Medical Assistance (MA), a hearing was held on March 20, 2025, by telephone.

The issue for determination is whether the agency properly denied Petitioner's request for Children's Long Term Support Waiver funding for two three-week programs at Children's Theater of Madison.

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: Angela Radloff

Dane County Department of Human Services  
1819 Aberg Avenue  
Suite D  
Madison, WI 53704-6343

**ADMINISTRATIVE LAW JUDGE:**

Teresa A. Perez  
Division of Hearings and Appeals

## **FINDINGS OF FACT**

1. Petitioner is a ■-year old resident of Dane County who is eligible for Children's Long Term Support ("CLTS") Waiver Program and the Children's Community Options Program ("CCOP")
2. On January 21, 2025, Petitioner submitted a request with the CLTS / CCOP agency ("the agency") for funding of two three-week programs at the Children's Theater of Madison ("CTM") as well as a camp at MATC.
3. On January 23, 2025, CLTS / CCOP staff sent Petitioner an e-mail which stated, in part, "CLTS is able to fund the MATC camp and only one of the CTM camps so let me know which one you would like CLTS to fund." On January 31, 2025, CLTS / CCOP staff sent another e-mail which stated, in part, "[My supervisor] has stated that she will only approve funding one of the two CTM camps . . . Please let me know which camp you would prefer for CLTS to fund . . ."
4. On January 30, 2025, Petitioner clarified in writing that she was requesting coverage for the CTM camps as a form of child care.
5. On February 5, 2025, CLTS / CCOP staff sent an e-mail that one of the three week camp CTM would be covered by CCOP and stating that CTM is a "recreational program and not childcare." The February 5, 2025 e-mail did not specifically reference Petitioner's request for CLTS funding of the CTM programs.
6. The agency failed to issue a written notice of decision or written explanation of appeal rights to Petitioner regarding her request for funding of the two sessions at CTM.
7. On February 7, 2025, Petitioner filed an appeal with the Division of Hearings and Appeals regarding the agency's failure to authorize CLTS funds for the requested CTM camps under the benefit category child care.

## **DISCUSSION**

Petitioner seeks CLTS funding of child care services for a child over the age of twelve years and contended that the two three-week programs offered by Children's Theater of Madison for which she has requested funding constitute child care services given her personal circumstances. The agency argued that CTM programming constitutes recreation rather than child care and that it cannot therefore be funded by CLTS. The agency agreed to fund one three-week session at CTM using CCOP funding.

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 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.

Effective January 1, 2016, the Children's Community Options Program (CCOP) was created under authority of Wis. Stat. § 46.272. The purpose of CCOP is to provide a coordinated approach to supporting families who have a child with a disability. CCOP funds are designated for the purpose of purchasing goods and services that respond to assessed needs and desired outcomes, as identified in each participant's child and family-centered individual service plan (ISP).

The Department of Health Services ("Department") has published procedures for administration of the CCOP program. The procedure document states:

CCOP is the funding of last resort. In order to maximize the use of federal funds, Home and Community-Based Services (HCBS) Medicaid Waiver Program funding must be used before CCOP for children who are functionally and financially eligible for Wisconsin's Children's Long-Term Support (CLTS) Waiver Program. This requirement is often referred to as the "waiver mandate."

*CCOP Procedures Guide*, Preface.

There is no dispute that CCOP funding is unavailable for child care. And, there is no dispute that the agency failed to provide Petitioner a written notice regarding its decision to deny CLTS funding for both of the three-week sessions at CTM. CLTS program policy plainly requires agencies to provide written notice of any decision to deny a requested service. CLTS Manual, §8.2.2.

As Petitioner correctly noted, a decision to authorize or deny an item of service must be made within 14 calendar days of the request. At hearing, the agency's representative testified that the agency did not provide a written notice because Petitioner filed an appeal before it had a chance to do so. First, the evidence in the record demonstrated that Petitioner did not file an appeal until February 7, 2025 which was more than 14 days after her January 21, 2025 service request. Second, even if Petitioner had filed an appeal prior to the end of that 14-day period, the agency would still have been required to provide written notice.

Written notice is fundamental to an individual's due process rights in part because it must include information regarding how to file an appeal but also because it must include the agency's rationale for denying the service and citations to the relevant law. Although the agency violated program policy by failing to provide written notice of its denial of Petitioner's request for CLTS authorization of CTM programming, failure to provide written notice does not automatically mean that the individual is entitled to authorization for the requested service. The next question is thus whether Petitioner has demonstrated that she is entitled to CLTS coverage for the requested service.

CLTS policy includes the following definition of child care:

Child care services ensure the participant's exceptional physical, emotional, behavioral, or personal care needs are met during times when their family members are working, pursuing education and employment goals, or participating in training to strengthen the family's capacity to care for the participant . . .

During the process of determining the appropriate child care service, county waiver agencies (CWAs) and families are encouraged to explore options for community child care settings, as children can benefit from the opportunity to socialize and build friendships through group in home child care and care provided by a child care agency. . .

### **Children 12 Years of Age and Older**

For a participant age 12 or older, the total cost of child care may be included. The total cost of child care is available when the participant has aged out of their traditional child care settings (typically available up to age 12), but due to a disability the participant continues to require care or supervision. Examples include school and community-based settings in which children of that age typically participate (for example, after school programs, 4-H clubs, or family residence).

Petitioner's mother, who appeared at hearing for Petitioner, persuasively argued that her daughter requires child care despite having aged out of a typical child care setting and that whether or not CTM considers itself a child care provider is not dispositive as to whether CLTS may fund programming that CTM offers. Petitioner observed that 4-H clubs, which are specifically contemplated as an appropriate setting for child care in the policy above, are not child care providers.

The agency did not dispute Petitioner's assertion that she requires child care and did not effectively rebut her argument that the Children's Theater of Madison is an appropriate setting for her to receive care or supervision, given her particular circumstances and needs.. I found Petitioner's comparison of 4-H to CTM to be apt and the agency did not endeavor to articulate why one of those settings would be considered to be an appropriate provider for child care services to children over 12 years of age and one would not.

For the reasons set forth above and based in the evidence in this hearing record, I am remanding this matter to the agency and ordering that the request for CLTS funding of two three-week sessions at Children's Theater of Madison be granted.

### **CONCLUSIONS OF LAW**

- (1) The agency violated Department policy by not issuing written notice of its decision to deny Petitioner's request for CLTS funding of programming at Children's Theater of Madison as a means for her to receive child care.
- (2) Petitioner presented sufficient evidence to establish that she requires child care despite being over the age of twelve years and that Children's Theater of Madison is an appropriate setting to receive such care.
- (3) The agency did not properly deny Petitioner's January 2025 request for CLTS funding of two three-week programs at Children's Theater of Madison.

**THEREFORE, it is**

### **ORDERED**

That the matter is remanded to the agency to authorize CLTS funding for two three-week programs at Children's Theater of Madison, as requested by Petitioner on January 21, 2025, and that it send her written confirmation of that authorization within ten days of the date 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.

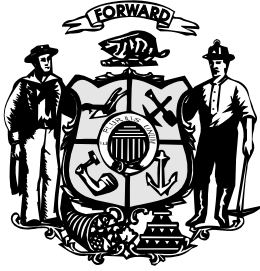
## APPEAL TO COURT

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 28th day of April, 2025

\s \_\_\_\_\_  
Teresa A. Perez  
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 April 28, 2025.

Dane Cty. Dept. of Human Services  
Bureau of Long-Term Support  
[REDACTED]