



FH
[REDACTED]

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

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

DECISION
Case #: CWK - 218372

PRELIMINARY RECITALS

Pursuant to a petition filed on May 22, 2025, under Wis. Admin. Code § HA 3.03(1), to review a decision by the Eau Claire County Department of Human Services regarding Medical Assistance (MA), a hearing was held on July 9, 2025, by telephone.

The issue for determination is whether the petitioner has demonstrated that the agency erred in finding her functionally ineligible for the Children's Long Term Support Waiver (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: Paige Dutter

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

ADMINISTRATIVE LAW JUDGE:

Jason M. Grace
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a 12 year-old resident of Eau Claire County.
2. The petitioner's primary medical diagnoses are attention-deficit disorder (ADD) and attention-deficit hyperactivity disorder (ADHD).
3. Petitioner was enrolled in the CLTS program in 2024. At that time she was found to meet the Mental Health Disability level of care for the program.
4. The agency was required to conduct an annual redetermination of the petitioner's functional eligibility for the CLTS program. A functional screen was completed in April 2025, and the agency determined that the petitioner was no longer functionally eligible for the CLTS program.
5. The petitioner was informed she was being disenrolled from the CLTS program. The petitioner timely appealed.

DISCUSSION

The CLTS program is one of Wisconsin's Home and Community-Based Services (HCBS) Medicaid Waiver programs, federally authorized under §1915(c) of the Social Security Act. The agency has drafted and released the Medicaid Home and Community-Based Services (HCBS) Waiver Manual for the CLTS Waiver Program (CLTS Manual). It can be found online at <https://www.dhs.wisconsin.gov/publications/p02256.pdf>.

To be functionally eligible for the CLTS program, the applicant must have a qualifying level of care (LOC) for at least one of three target groups: developmental disability (DD), physical disability (PD), or mental health disability (MHD). The LOCs are more fully fleshed out in the Institutional Levels of Care: Children's Long Term Support Programs in Wisconsin Guidelines (LOC Guidelines) at <https://www.dhs.wisconsin.gov/publications/p03027.pdf> and as stated in the Waiver itself at <https://www.dhs.wisconsin.gov/clts/waiver/clts-1915c-renewal.pdf>.

A child's functional eligibility for the CLTS must be determined once every 12 months. CLTS Manual, §2.4.

Per the agency, the petitioner's screen in April 2025 indicated that she was no longer functionally eligible for the CLTS program. She had been previously found functionally eligible under the MHD target group.

The MHD target group requires the child to meet a psychiatric hospital LOC. CLTS Manual, § 2.3.3. To meet the Psychiatric Hospital-MDH LOC, all four of the following criteria must be met:

1. The child has a Diagnosis of a mental health condition.
2. The child's mental health diagnosis or related symptoms are expected to persist for a specific Duration of time.
3. The child is in need of Involvement with Service Systems related to mental health support.
4. The child exhibits Severe Symptomology or Dangerous Behaviors that require interventions at a specific intensity and frequency, and without this direct, community-based intervention, the child is at risk for institutionalization within a psychiatric hospital.

LOC Guidelines, pg. 10.

In this case, the 2025 functional screen found that the petitioner continues to meet the first three criterion for the MHD target group: she has a qualifying mental health diagnosis, the diagnosis has persisted at least six months and is expected to continue for at least one year, and has the required level of involvement with service systems related to mental health support. See Exhibits C and F. However, the screen found she no longer met the 4th criterion, requiring severe symptomology or dangerous behaviors.

The 4th criterion is broken down to four standards for meeting Severe Symptomology and three for meeting Dangerous Behaviors. LOC Manual, pgs. 13-21.

The Severe Symptomology standard involves psychotic symptoms, suicidality, violence, or anorexia/bulimia. Id. pgs. 13 -14. The record does not demonstrate that the petitioner has psychotic symptoms, suicidality, or anorexia/bulimia. As to the violence standard, the record does indicate that she hits, kicks, and punches others. However, that conduct does not meet the violence standard as it requires:

... acts that endanger the lives of others and cause victim(s) to require inpatient admission to a hospital. Additional definitions include the use of a weapon against another person (e.g., gun, knife, chains, or baseball bat), acts of arson (purposeful fire setting) or bomb threats.

Id. Thus, the petitioner does not meet Standard I through IV under the fourth criterion.

The next way of meeting the fourth criterion is under one of the three standards for Dangerous Behavior. Id, pgs.15-21. The first standard under the Dangerous Behavior criterion (Standard V) is that the child have frequent and intense problems in two of the following four behavior categories: (1) High-Risk Behaviors as demonstrated by running away, substance abuse, and dangerous sexual contact; (2) Self-Injurious Behaviors involving head banging against hard surfaces, cutting/burning oneself, biting oneself severely, tearing at or out body parts, and inserting harmful objects into body orifices; (3) Aggressive/Offensive Behavior toward others involving serious threats of violence, hitting/biting/kicking, sexually inappropriate behavior, masturbating in public, inappropriate elimination, and animal abuse; and, (4) Lack of Behavioral Controls involving destruction of property or stealing/burglary. Id., pgs. 15-16.

The record does not demonstrate that the petitioner has High Risk Behaviors or Self-Injurious Behavior, as defined above. It does indicate that she has Aggressive/Offensive Behavior toward others as she hits, kicks, and punches others. The 2025 functional screen found that Lack of Behavioral Control involving theft was no longer present. However, testimony from the petitioner's parents indicated that such behavior continued. I find the record supports a finding that petitioner engages in the behaviors of Aggressive/Offensive Behavior toward others and Lack of Control Behavior. The problem is the record does not indicate those behaviors meet the frequency requirement of occurring at least 4 days a week. See Id and Exhibit C (for frequency of behaviors) Thus Standard V has not been met.

The next standard (Standard VI) is that the child has one of the four behavior categories noted above (High-Risk Behaviors, Self-Injurious Behaviors, Aggressive/Offensive Behavior, and Lack of Behavioral Controls) AND Substantial Social Competency Impairment. Id. at pgs. 17-18. While the petitioner has 2 of those behaviors, the record does not support the required frequency of those behaviors, i.e. occurring at least 4 times a week, being met. The current functional screen also does not support a finding of substantial social competency impairment. Thus, the petitioner does not meet Standard VI.

The final standard (Standard VII) requires a showing of Rare and Extreme Circumstances AND Dangerous Behavior OR Substantial Social Competency Impairment. Id. at pgs. 19-20. Rare and Extreme Circumstances require one of the following three specific circumstances:

- o Extreme disruptive behaviors when the child is in structured settings that have been demonstrated **daily** for the past **six months** and that require **constant** (every few minutes) redirection from an adult. Disruptive behaviors may include sliding around a room in a chair, screaming out inappropriate words or phrases, or sitting in the center of a room and refusing to move.
- o Severe nightmares or night terrors at least **four times a week** for the past **six months**. These nightmares or night terrors are characterized by repeated episodes of intense anxiety.
- o Being unable to complete routine events (e.g., hygiene tasks, leaving the house, walking on certain pavements, or sharing community equipment with others) throughout the day, **every day**, for the past **six months** due to an obsession. An obsession is a thought, fear, idea, image, or words that a child cannot get out of their mind. It does not include self-stimulating or compulsive behaviors. The child experiencing the obsession must be aware of it but be unable to control their thought patterns.

Id, pg. 19.

The record does not indicate that the petitioner has severe nightmares or night terrors or is unable to complete routine events every day due to an obsession. While it was indicated she engages in disruptive behavior, i.e., inappropriate elimination, temper outbursts, and hit/kick/punch others, it was not shown to occur at the frequency required, i.e., daily, for the standard. Thus, Standard VII has not been met.

Based on the record, I must conclude that the agency's determination as to the petitioner no longer meeting the Psychiatric Hospital-MDH level of care was correct. As noted by the agency, the record does not demonstrate that petitioner meets the fourth criterion involving Severe Symptomology or Dangerous Behaviors at the frequency and intensity required.

The petitioner clearly has challenges, and I do not mean to diminish those challenges in any way. It is also clear her parents want what is best for her. However, the evidence in this record does not show that she requires at this time the kind of interventions that would allow her to meet the levels of care for the CLTS program.

Finally, if the petitioner's conditions or deficits should worsen, or if the petitioner develops better documentary evidence, then she may always re-apply for the CLTS program.

CONCLUSIONS OF LAW

The petitioner has failed to demonstrate that the agency erred in finding her functionally ineligible for the Children's Long Term Support Waiver program.

THEREFORE, it is

ORDERED

That the petitioner's 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.

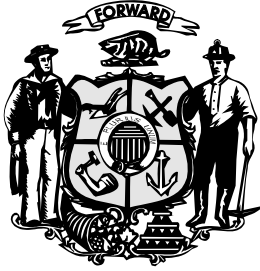
APPEAL TO COURT

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 11th day of August, 2025

\s _____
Jason M. Grace
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 August 11, 2025.

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