



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of



DECISION
Case #: CWK - 211734

PRELIMINARY RECITALS

Pursuant to a petition filed on January 9, 2024, under Wis. Admin. Code § HA 3.03(1), to review a decision by the Dunn County Department of Human Services regarding Medical Assistance (MA), a hearing was held on March 27, 2024, by telephone.

The issue for determination is whether the agency correctly disenrolled petitioner from the Children's Long Term Support Program.

There appeared at that time the following persons:

PARTIES IN INTEREST:

Petitioner:



Respondent:

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

By: Laura Bundy

Dunn County Department of Human Services
808 Main Street
PO Box 470
Menomonie, WI 54751

ADMINISTRATIVE LAW JUDGE:

Beth Whitaker
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES #) is a 9 year old resident of Dunn County.
2. Petitioner was found eligible for the Children’s Long Term Support program in the Severe Emotional Disability/Mental Health target group.
3. Petitioner’s diagnoses include obsessive compulsive disorder, autism spectrum disorder and attention deficit disorder.
4. On November 20, 2023, [REDACTED], DO met with petitioner’s parents regarding medications.
5. On November 20, 2023, [REDACTED] treatment plan for petitioner was increase fluoxetine, increase Strattera, continued speech/language therapy, continue occupational therapy, applied behavioral analysis, continued social communication supports and social groups and noted no recent change in psychosocial functioning and recommended behavioral activation strategies.
6. On December 23, 2023, the county agency mailed to petitioner or his family a Written Notice of Adverse Action, informing him of service termination effective January 12, 2024, because “[REDACTED] was not found to be functionally eligible for the CLTS-Waiver program upon Functional Screen completion. [REDACTED] does not demonstrate substantial functional impairments in behaviors, activities of daily living skills or instrumental activities of daily living skills. [REDACTED] does not require in-school supports or frequent or complex medical care.”
7. On December 29, 2023, the Department of Health Services (Department) issued to petitioner a notice informing him that enrollment in the Children’s Long Term Support Program would end on January 12, 2024 “due to Not Functionally Eligible.” (Petitioner’s Exhibit 1)

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 (Manual). It can be found online at <https://www.dhs.wisconsin.gov/publications/p02256.pdf>. To be functionally eligible for the 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>.

In this case, petitioner, by his father [REDACTED], appeals the agency’s disenrollment of petitioner from CLTS effective January 12, 2024. Laura Bunday, Dunn County Support and Service Coordinator, testified that on December 23, 2023 the county agency completed a functional screen which “came back not eligible.” When questioned she described the process in slightly more detail, stating that they spoke to petitioner’s parents, reviewed unspecified medical records and talked to a school psychologist. She testified that they compared the screen to the previous year’s screen. The agency did not provide documentary evidence of the 2023 screen or the previous year’s screen. The agency did not provide evidence of the information contained in the medical records it reviewed or the content of the information provided by the school psychologist, beyond stating that there was a reduction in petitioner’s behaviors. Bundy did not describe what behaviors, the extent of reduction or the source of the information about behavior reduction. Bundy stated that they conducted an internal peer review of the screen results the same day the screen was conducted and also had it reviewed and approved by someone at the Department of Health Services that day. The agency did not establish that it communicated with or obtained records from Dr. [REDACTED], petitioner’s psychiatrist.

Petitioner’s father [REDACTED] testified that he does not know the content of the functional screen completed in December 2023. He testified credibly that he did not receive a copy of it. He stated

that he filed a request for hearing so that he could understand the reason for the denial of enrollment. He reasonably asked whether he could get a copy of the screen questionnaires for 2022 and 2023 so that he could determine whether he believed information relied upon by the agency was correct. In general, he testified to no change in petitioner’s diagnoses, functioning or behavior. He testified that Dr. ██████ diagnosed petitioner with autism spectrum disorder. He provided medical records supporting his testimony, specifically ██████ notes dated July 13, 2020. ██████ testified that petitioner’s primary treatment provider related to his CLTS eligibility is a psychiatrist, Dr. ██████. He provided medical records to support this, including ██████ notes from July 3, 2023 and November 20, 2023. The July 2023 note documents diagnoses of obsessive compulsive disorder and attention deficit disorder combined type, as well as autism spectrum disorder. A review of these notes indicates no changes in petitioner’s general condition or more specifically his psychosocial functioning level or anything else that would indicate a reduction in “behaviors.” ██████ testified that there has been no recent change in petitioner’s functional abilities or his need for services related to that.

The agency did not provide a copy of the Disenrollment Notice regarding the action that is appealed. That notice is contained in this record only because petitioner’s representative provided it with his appeal. The information contained in the notice about the reason for disenrollment is that the petitioner’s enrollment would end “due to Not Functionally Eligible.” Even after the hearing, neither the petitioner nor the Administrative Law Judge have been given any meaningful understanding of what the factual basis for disenrollment was. The agency’s position, articulated by Bundy, is that she is trained and certified to perform functional screens and therefore the results she obtained are correct; and that the Department has a duty to confirm the results and did so, therefore its confirmation is correct. This position is consistent with the written case summary submitted as the agency’s only evidence in this case, in which Bundy documents that on February 8, 2024 she informed ██████ that “the functional screen was completed by a certified screener and results confirmed by the State.” If a legal right to appeal the agency’s determination has any meaning whatsoever, the agency must provide enough information for a fact-finder to scrutinize its basis for the appealed action. That was not provided in this case.

To be eligible for CLTS, the petitioner must meet an institutional level of care as determine by a specific screening tool, the Functional Eligibility Screen for Children’s Long-Term Support Programs (F-00367). The agency did not show by a preponderance of the evidence that the specific functional screen required by the rules was performed at all or that it was performed correctly. The agency at some point determined that petitioner was eligible for CLTS through January 11, 2024. All documentary evidence in this records as well as ██████ testimony is that there has been no change in petitioner’s behaviors that would account for the disenrollment. I have no credible evidence to the contrary. The agency failed to show a change in petitioner’s condition that would result in loss of functional eligibility. I cannot find that the agency correctly disenrolled petitioner from the CLTS program effective January 12, 2024.

CONCLUSIONS OF LAW

Disenrollment of a child from the CLTS program for lack of functional eligibility must be based on the Functional Eligibility Screen for Children’s Long Term Support Programs (F-00367). The agency did not present credible evidence that this was done at all or that, if it was done, the information it was based on was complete and correct. The agency failed to show that its action to disenroll petitioner from CLTS was correct.

THEREFORE, it is

ORDERED

That this matter is remanded to the agency to rescind the disenrollment of petitioner and continue his enrollment in the CLTS program. This action shall be taken within ten days of the date of this notice.

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).

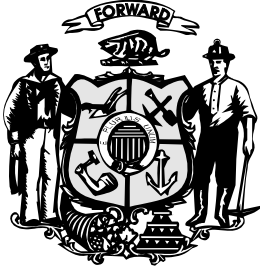
The process for Circuit Court Appeals may be found at Wis. Stat. §§ 227.52 and 227.53. A copy of the statutes may be found online or at your local library or courthouse.

Given under my hand at the City of Madison,
Wisconsin, this 26th day of April, 2024



\s _____

Beth Whitaker
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 26, 2024.

Dunn County Department of Human Services
Bureau of Long-Term Support

