

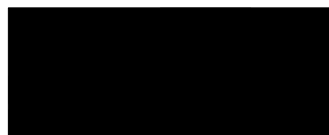


FH  
[REDACTED]

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

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In the Matter of



**DECISION**  
Case #: CWK - 212683

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**PRELIMINARY RECITALS**

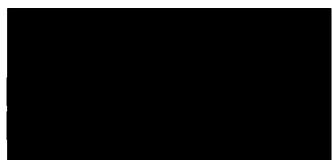
Pursuant to a petition filed on March 11, 2024, under Wis. Admin. Code § HA 3.03(1), to review a decision by the Milwaukee Enrollment Services regarding Medical Assistance (MA), a hearing was held on June 12, 2024, by telephone. The hearing was originally scheduled for April 24, 2024. At that time the parties agreed to continue the hearing to May 22, 2024. The petitioner failed to appear for the May 22, 2024 hearing. Her later request to reschedule the May 22, 2024 hearing was granted.

The issue for determination is whether the county agency correctly found that it was a conflict of interest for the petitioner to use [REDACTED] as a provider for his CLTS services.

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: Nancy Dumas  
Milwaukee Enrollment Services  
1220 W Vliet St  
Milwaukee, WI 53205

**ADMINISTRATIVE LAW JUDGE:**

Jason M. Grace  
Division of Hearings and Appeals

**FINDINGS OF FACT**

1. Petitioner (CARES # [REDACTED]) is a 16 year-old resident of Milwaukee County who lives with his mother. He is enrolled in the Children’s Long Term Support (CLTS) program.
2. The petitioner’s diagnoses include, but are not limited to, developmental delay, musculoskeletal disorder, cerebral palsy, seizure disorder, asthma, dysphagia, and brain developmental disorder.
3. The petitioner’s CLTS Individualized Service Plan includes respite and personal support services.
4. [REDACTED] is the petitioner’s current provider for his CLTS respite and personal support services. [REDACTED] is owned by the petitioner’s mother.
5. By notice dated February 23, 2024, the agency notified the petitioner that he is no longer able to use [REDACTED] to provide his CLTS respite and personal support services due to a suspected conflict of interest. The agency found the conflict of interest stems from the fact that the petitioner’s mother owns [REDACTED]. The notice indicated that services were not being denied but that [REDACTED] was being removed as the provider. The notice further indicated the services could be continued with other Respite and Personal Support providers and listed four such alternate providers.
6. The petitioner timely appealed.

**DISCUSSION**

The overall purpose of Wisconsin’s CLTS Waiver program is to provide necessary supports and services to children from birth through age 21 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 Waiver Manual for the CLTS Waiver program, (5/2024), (“CLTS Manual”), Chapter 1.

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.

In this case the county agency found that it was a conflict of interest for the petitioner to use [REDACTED] as a provider for CLTS personal support and respite services. The conflict stems from the fact that the petitioner’s mother owns [REDACTED]. The county agency is seeking to terminate the use of a specific provider, not the underlying services. The agency identified other providers in the area that the petitioner would be free to use for the respite and personal support services.

The petitioner used to live in Ozaukee County. During that time, he was using [REDACTED] as his provider for respite and personal support services through the CLTS program. It appears Ozaukee County implemented a work-around that involved compensating [REDACTED] at a reduced rate for the services provided to the petitioner. It would appear the thought was that the reduced rate would merely cover expenses for the care provided and not result in the mother deriving financial benefit or profit. The petitioner later moved back to Milwaukee County. It is Milwaukee County that found the prior work-around does not resolve the conflict of interest. Thus, it issued notice that it was removing [REDACTED] as a provider from the petitioner’s Individualized Service Plan effective April 30, 2024.

The petitioner’s mother requests that the Ozaukee County work-around be permitted to continue. She argued that that the family should have a choice of qualified providers. She confirmed that [REDACTED] is willing to be compensated at the reduced rate to provide services to her son. She argued that at the reduced rate [REDACTED] would not derive a financial profit from care provided to her son, and that absent financial profit there is no conflict of interest. The Milwaukee County agency disagrees. It indicates any amount of compensation paid to [REDACTED] to provide care for the petitioner creates a conflict of interest.

I would note CLTS policy prohibits payments “... to a parent or a primary caregiver in the participant’s household ....., except in certain circumstances for the transportation service.” CLTS Waiver Manual, § 4.1.1. The county agency did not base its action on grounds that payments to [REDACTED] for the petitioner’s CLTS services violates the prohibition on payments to a parent. It apparently draws a distinction between payments made to a parent directly and payments made to a business owned by a parent. As this was not used as a basis for the county agency’s current action, I make no findings whether this provision provides a bar to the petitioner’s use of [REDACTED] as a CLTS provider.

CLTS policy requires that program participants be given a choice of qualified service providers. CLTS Waiver Manual, §4.3.1. A qualified provider is:

... an individual or entity that has been jointly qualified by DHS and the CWA as outlined in Section 4.2. These providers are listed in the statewide public CLTS Provider Directory. This directory is the sole directory of registered and qualified CLTS Waiver Program providers and may be accessed by participants. CWAs may not maintain or disseminate separate, county-specific provider directory information.

CLTS Waiver Manual, §4.3.1.

As of the hearing, [REDACTED] is listed on the statewide public CLTS Provider Directory. Listed services for [REDACTED] in the directory include personal support and respite care. There is no evidence [REDACTED] is not a qualified provider for those services.

The CLTS Manual provides the following guidance regarding conflicts of interest:

**4.3.3 Conflict of Interest**

A conflict of interest is present whenever a person or entity involved in operating any part of the CLTS Waiver Program has an interest in or the potential to benefit from a particular decision, outcome, or expenditure. A single individual, agency, or entity occupying several roles often signals conflict of interest may be present.

The only services the CWA [county waiver agency] may deliver to a CLTS Waiver Program participant, in addition to support and service coordination, are:

- Allowable services provided through foster care.
- Purchased products and supplies from third-party entities and vendors (typically web-based vendors) for which the CWA receives no benefit from the vendor.
- Prepayment for waiver allowable services from subcontractors where the CWA makes the payment to the vendor.

To mitigate conflicts of interest when providing these services, the CWA must administratively separate the function and individual responsible for developing the ISP from the direct service functions for allowable services provided through foster care or products and supplies purchased from third-party entities and vendors.

*The CWA must have a written policy or plan to address conflicts of interest.* If resolving the conflict is not feasible, the CWA must take action to minimize the effect(s) of the conflict. These efforts are subject to DHS review.

These requirements apply to CWAs and their subcontracted case management agencies.

CLTS Waiver Manual, § 4.3.3 (*emphasis added*).

I find that the county agency has not demonstrated it acted consistent with the requirements of the CLTS program in issuing the February 23, 2024, notice of action. It placed the cart before the horse. CLTS policy requires the county agency to create a written conflict of interest policy to identify and determine how to address conflicts of interest. There was no showing that such a written policy or plan has been created by the county agency. Thus, it was not demonstrated that the county agency’s finding of a conflict of interest comports with such written policy or the resulting action of removing [REDACTED] as a provider is the appropriate response consistent with that policy. Nor was there a showing that the county agency obtained guidance from the Department in how to address the issue involved in this case. The county agency based its action on the grounds that a conflict of interest exists but did not comply with CLTS program requirements that it have a written policy or plan to address such conflicts of interest.

I am therefore remanding the matter back to the agency to rescind the February 23, 2024, notice of action. I would note that this Decision does not bar the county agency from issuing a similar notice of action in the future upon demonstration of a written CLTS conflict of interest policy or plan (or upon a directive from the Department) and finding that the continued use of [REDACTED] violates that policy. If such occurs, a new notice of action would need to be issued to the petitioner with appeal rights.

**CONCLUSIONS OF LAW**

The county agency has not demonstrated it complied with CLTS policy prior to terminating the petitioner’s use of [REDACTED] as a provider for his CLTS services.

**THEREFORE, it is**

**ORDERED**

That this matter is remanded to the respondent to take the following action: within 10 days of the date of this Decision, the respondent shall take all administrative steps to rescind the February 23, 2024, notice of action that sought to remove [REDACTED] from the petitioner’s Individualized Service Plan due to a suspected conflict of interest.

## 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

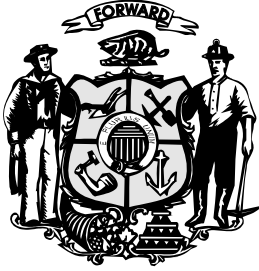
You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Health Services, 1 West Wilson Street, Room 651, **and** on those identified in this decision 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 11th day of July, 2024



\s \_\_\_\_\_  
Jason M. Grace  
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 July 11, 2024.

Milwaukee Enrollment Services  
Bureau of Long-Term Support

