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[REDACTED]

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

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

DECISION
Case #: CWK - 210810

PRELIMINARY RECITALS

Pursuant to a petition filed on October 26, 2023, under Wis. Admin. Code § HA 3.03(1), to review a decision by the Winnebago County Department of Human Services regarding CWK, a hearing was held on December 5, 2023, by telephone.

The issue for determination is whether the agency correctly denied a request for antimicrobial paint in general spaces of the Petitioner's home.

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: Beth Roberts

Winnebago County Department of Human Services
220 Washington Ave.
PO Box 2187
Oshkosh, WI 54903-2187

ADMINISTRATIVE LAW JUDGE:

Debra Bursinger
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # ██████████) is a resident of Winnebago County. He resides at home with his family. His diagnoses include autism, anxiety disorder, episodic mood disorder, aggression, and MRSA.
2. The Petitioner submitted a request to the CLTS program for antimicrobial paint for the home to assist with preventing the spread of MRSA.
3. On October 20, 2023, the agency issued a notice to the Petitioner informing him that the request for antimicrobial paint was approved in areas of the home that are “highly susceptible to smearing of bodily fluid, which would include the bathrooms, 2nd floor hallway outside of his bathroom and the participant's bedroom.” The request for paint in other areas of the home was denied.
4. On October 26, 2023, an appeal was filed on behalf of the Petitioner with the Division of Hearings and Appeals.

DISCUSSION

The CLTS program started in Wisconsin on January 1, 2004. Supported with MA funds, the CLTS program serves persons under the age of 22 who have a developmental disability, physical disability, or a severe emotional disturbance. The Wisconsin Department of Health Services released the Medicaid Home and Community-Based Services Waivers Manual (Manual) to assist in administering the CLTS program. See, online at <https://www.dhs.wisconsin.gov/waivermanual/index.htm>.

There is no dispute that the Petitioner is eligible for the CLTS program. The issue is whether the agency has correctly denied the Petitioner’s request for antimicrobial paint throughout the Petitioner’s home. The Petitioner has requested the paint to assist in preventing the spread of MRSA in the home. MRSA is a potentially dangerous type of staph bacteria that is resistant to certain antibiotics and may cause skin and other infections. *See* MRSA Fact Sheet (Petitioner’s exhibits). MRSA is spread by having direct contact with another person’s infection, sharing personal items that have touched infected skin, or touching surfaces or items contaminated with MRSA.

Before a program participant can receive an allowable service or good from the CLTS program, a service authorization is required. The support and service coordinator and the participant must work collaboratively to determine which supports, services, and environmental modifications will benefit the participant, build on the participant’s strengths, and maximize the participant’s independence and community participation. CLTS Waiver Manual (Manual) § 4.5.

Allowable services for the CLTS program include home modifications that “maximize a participant’s independent functioning in their home through services to assess the need for, arrange for, and provide modifications and/or improvements to the home.” § 4.6.18.1. The CLTS Manual defines “home modifications” as follows:

Home modifications are generally permanent fixtures and/or changes to the physical structure of the home. This service may be used to ensure safe, accessible means of entry and exit to the home, and otherwise provide safe access to rooms, facilities, or equipment within the home or adjacent buildings that are part of the residence.”

Id.

A list of allowable home modifications in the Manual includes “wall protection.” Id. The list of allowable modifications in the Manual is not all-inclusive. However, home modifications do not include “adaptations, improvements, repairs, or replacements within a participant’s home that are of general utility and not of direct medical or remedial benefit to them and in some way related to their disability.” Manual § 4.6.18.4.

Other allowable services include “Participant and Family Directed Goods and Services” which are defined as “services, supports, supplies or goods that address or enhance the participant’s opportunity to meet a long-term support outcome, but are not otherwise provided through another CLTS Waiver Program service or the Medicaid state plan.” Manual § 4.6.21. Such goods or services must:

- Decrease the need for other Medicaid services
- Promote inclusion in the community
- Promote the independence of the participant
- Fulfill a medical, social, or functional need (based on unique cultural approaches) or
- Increase the participant’s safety in the home environment.

Id.

The agency allowed the Petitioner’s request for antimicrobial paint in areas of the home that it asserts are most prone to contamination by the Petitioner, including the bathrooms, the hallway outside the Petitioner’s bathroom, and the Petitioner’s bedroom. The agency asserts that it has been reported by the Petitioner’s family that the Petitioner is compliant with hand washing and the Petitioner’s mother sanitizes items that the Petitioner touches. The agency asserts that antimicrobial paint helps in prevention of contamination, but it does not eliminate the risk of contamination. Areas that the Petitioner touches will still require cleaning and sanitizing. The agency further noted that there is no specific provision of services that allow for antimicrobial paint and that the paint does not technically meet the definition of “home modification.” It did decide, however, to allow the requested paint for the areas of the home it feels are most prone to contamination.

The Petitioner’s mother testified that the Petitioner has had MRSA for approximately ten years. He has flare-ups approximately two times each year. During flare-ups, certain areas of the home are restricted access for the Petitioner. The Petitioner likes to run his hands along the walls because he likes the texture. She follows him everywhere and sanitizes everything that he touches. She recognizes that antimicrobial paint is not a replacement for cleaning and sanitizing, but she stated that the paint makes the cleaning process easier and quicker. Because it is very effective in eliminating MRSA bacteria after contamination, she does not have to follow the Petitioner and can go back to clean surfaces later. She concedes that the Petitioner will wash hands when asked to do so but he will not independently initiate handwashing. She feels it is important to cover all areas of the home and especially high-traffic, common areas of the home with antimicrobial paint to help prevent the spread of MRSA.

The burden of proof when a service or good is requested and denied lies with the requestor of the service or good. Thus, in this case, that burden is on the Petitioner and his representatives to demonstrate that the requested antimicrobial paint in all areas of the home is an item that the program is required to provide.

I concur with the agency’s analysis that antimicrobial paint does not neatly fit within the definition of home modifications in the Manual. Though the Manual references “wall protection,” it is referencing items that protect walls from damage or repairs to walls. This conclusion is based on the definition which states that “modifications” are changes to the physical structure of the home that are generally permanent fixtures and help to provide access to parts of the home for the participant. Paint does not change the physical structure and is generally not considered a permanent fixture. Further, the Manual notes that

home modifications are those improvements that help to maximize a participant’s independent functioning in the home. Paint does not impact the Petitioner’s functioning in the home.

I reviewed other classifications of allowable goods and services in the program that might allow antimicrobial paint. The paint could also potentially be allowed as a “directed good or service.” Directed goods or services must meet a long-term support outcome and decrease the need for other MA services, promote inclusion in the community, promote the participant’s independence, fulfill a medical/social/functional need, or increase the participant’s safety in the home. Though the Petitioner’s ISP was not provided to me, generally ISPs include an outcome for the participant to remain safe and healthy within the home.

It is my understanding that the antimicrobial paint is primarily meant to prevent other family members from becoming infected by the Petitioner. It is not clear to me that the paint will be a direct medical benefit to the Petitioner or increase his safety or independence. Also, the paint is not a replacement for sanitizing the surfaces that the Petitioner touches. It reduces the risk but does not eliminate the risk of contamination.

The agency reasonably compromised on the Petitioner’s request to allow the antimicrobial paint in the areas that are most likely to be contaminated by the Petitioner. I affirm that the agency correctly denied the request for antimicrobial paint throughout the Petitioner’s home because it is not an allowable service.

CONCLUSIONS OF LAW

The agency correctly denied the request for antimicrobial paint throughout the Petitioner’s home.

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.

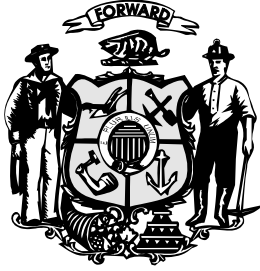
APPEAL TO COURT

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 Milwaukee,
Wisconsin, this 9th day of January, 2024

\s _____
Debra Bursinger
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 January 9, 2024.

Winnebago County Department of Human Services
Bureau of Long-Term Support
DHSCLOTS@dhs.wisconsin.gov