



FH
[REDACTED]

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

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

DECISION
Case #: CWK - 210812

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 replacement of windows in the Petitioner's parents' bedroom and bathroom.

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 # [REDACTED]) 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 has a history of exiting the home through the windows of his and his siblings' bedrooms to access the roof.
3. The Petitioner requested replacement of all 2nd floor windows including in the parents' bedroom and bathroom with tempered glass and window locks to prevent the Petitioner from exiting the windows to access the roof. The agency agreed to replace the windows in the Petitioner's bedroom and his siblings' bedrooms. The agency also agreed to replace current doors in the home with solid wood doors due to Petitioner's behavior in damaging the doors. The parents' bedroom has a keypad to lock the door and limit access to the bedroom and bathroom.
4. On October 23, 2023, the agency issued a notice to the Petitioner informing him that the agency approved the replacement of doors to the parents' bedroom but denied the replacement of windows in the parents' bedroom and bathroom.
5. On October 26, 2023, an appeal was filed 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 correctly denied a request to replace windows in the parents' bedroom and bathroom.

It is undisputed that the Petitioner has a history of exiting certain windows on the second floor of his home to access the roof. The windows in these rooms have access to the roof overhang. The agency agreed to replace windows in the Petitioner's bedroom and his siblings' bedrooms with tempered glass windows that do not fully open. The agency also agreed to replace the doors in the home with solid wood doors due to damage the Petitioner has caused to the doors. The door to the parents' bedroom and bathroom will be replaced with a solid wood door with a keypad to lock the door.

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 windows are items that the program is required to provide.

The agency denied the request to replace windows in the parents' bedroom and bathroom because the Petitioner does not have a history of exiting these windows. The windows do not have access to the overhang that would allow the Petitioner to climb on the roof. The agency noted that it agreed to replace the doors to the parents' bedroom with a solid wood door and there is a keypad that allows the parents to lock the room. Because there is no demonstrated pattern of trying to exit the parents' bedroom and bathroom windows and because access to the rooms can be restricted, the agency denied the request to replace the windows.

The Petitioner's mother testified at the hearing that going on the roof is attention-seeking behavior for the Petitioner. The replacement of windows in the Petitioner's bedroom and his siblings' bedrooms with tempered glass that does not fully open will prevent him from being able to exit through the windows. She is concerned that he will seek other windows to exit. She concedes that the door can be locked but they do not lock the door at night when they are in the room for safety reasons. She fears that he will enter, and they will not hear him. She noted that the windows in their bedroom and bathroom do not have access to an overhang and lead directly to a concrete slab on the ground. Further, they do not have tempered glass and there is a risk that the Petitioner will break the windows and cut himself. She stated that there are alarms on the windows.

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.

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.

Though the Petitioner's ISP was not provided, the ISP generally includes an outcome for the participant to remain safe and healthy within the home. The agency has already concluded that it will replace certain windows and doors based on the Petitioner's history of damaging doors and exiting certain windows to access the roof. While I recognize the Petitioner's family's concern that he may attempt to exit the windows in the parents' bedroom and bathroom if the other windows cannot be exited, there is no demonstrated history of him attempting to exit those windows. There is also evidence that access to the rooms can be restricted when the parents are not in the room. In addition, there are window alarms should he attempt to exit.

At this point, there is no evidence that replacing the windows in the parents' bedroom and bathroom will increase the Petitioner's safety in the home or fulfill a medical need. Therefore, I conclude the agency correctly denied the request to replace the windows in the parents' bedroom and bathroom. I note that a

new request can be made, and the agency can re-visit the issue if the Petitioner's behavior changes and there are attempts to exit the windows in the parents' bedroom and bathroom.

CONCLUSIONS OF LAW

The agency correctly denied the Petitioner's request to replace the windows in the parents' bedroom and bathroom.

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.

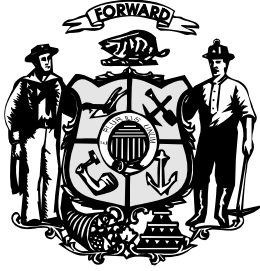
APPEAL TO COURT

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