



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of



DECISION
Case #: CWK - 214809

PRELIMINARY RECITALS

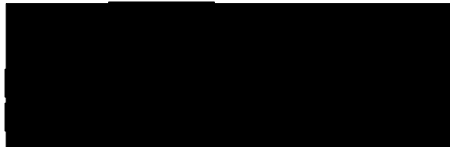
Pursuant to a petition filed on August 19, 2024, under Wis. Admin. Code § HA 3.03(1), to review a decision by the Lutheran Social Services of Wisconsin & Upper Michigan regarding CWK, a hearing was held on October 2, 2024, by telephone.

The issue for determination is whether the agency correctly denied Petitioner's request for CLTS to fund speech therapy specifically provided by [REDACTED].

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: Alyssa D'Angelo
Lutheran Social Services of Wisconsin & Upper Michigan
CLTS Program Manager
3003 N. Richmond St.
Appleton, WI 53217

ADMINISTRATIVE LAW JUDGE:

Nicole Bjork
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner is a resident of Ozaukee County and has been receiving speech therapy through [REDACTED], which is covered by his insurance. Petitioner also has apraxia, which only certain speech therapists will treat. He had been seeing therapist [REDACTED] at [REDACTED]. However, in July 2024, [REDACTED] left [REDACTED] to practice in the [REDACTED]. She still treated private clients in addition to her new role at the school. However, [REDACTED] only accepts private pay and does not accept any insurance.
2. Petitioner requested that CLTS fund his speech therapy with [REDACTED] since insurance no longer covers therapy through her given her departure from [REDACTED].
3. On August 29, 2024, the agency sent Petitioner a notice informing him that his request for CLTS to fund speech therapy provided by [REDACTED] was denied. The agency noted that CLTS is the funding source of last resort and per CLTS policy, private insurance and Medicaid must be explored and exhausted first. Petitioner has coverage for speech therapy through [REDACTED]. Since Petitioner has coverage for speech therapy, those funds need to be utilized.
4. Petitioner appealed the denial. Petitioner’s mother testified on his behalf during the hearing. She noted that Petitioner has had sessions with therapists at [REDACTED], and she believes that he could make progress there. However, [REDACTED] currently only has two therapists, and it is extremely difficult to book an appointment there. Petitioner’s mother also explored other therapists that treat patients with apraxia, which is a rare condition. Of the therapists she explored, one does not take her insurance, one is no longer in practice, two will not treat patients with apraxia, and she has Petitioner on a waitlist at [REDACTED]. Petitioner’s mother noted that she understands the agency’s position, but noted how difficult it is to make an appointment with [REDACTED].

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 Petitioner is eligible for the CLTS program. The only issue is whether the waiver program was correct to deny funding that Petitioner requested for speech therapy specifically provided by [REDACTED]. The agency does not deny that the requested speech therapy is appropriate for Petitioner. The agency contends that it is not able to approve the request because, as the payor of last resort, all MA benefits and insurance available to a participant must be accessed before waiver funding may be used.

In this case, Petitioner’s insurance covers speech therapy through [REDACTED], where Petitioner has been receiving therapy. The problem is that the therapist Petitioner has been seeing left [REDACTED] and now only accepts private pay. [REDACTED] has two other speech therapists, also covered by Petitioner’s insurance. However, Petitioner’s mother noted that it is difficult to make an appointment with them since there are only two of them.

The agency representative noted that since Petitioner’s insurance covers speech therapy, CLTS cannot fund speech therapy with [REDACTED]. The agency cites the following policies from the CLTS waiver manual in support of its position:

4.4.2 Coordination of Benefits

The following programs must be considered prior to using CLTS Waiver Program funding and, where applicable, be incorporated into a comprehensive service plan for participants:

- Medicaid (e.g., HealthCheck and HealthCheck “Other services,” Comprehensive Community Services [CCS], and other Medicaid-funded programs)
- Other county programs (e.g., developmental disabilities programs; social services; child welfare services; poverty related public benefits, juvenile court, legal, and corrections-related services)
 - School-based and educational service
 - Prevocational or vocational programs through the Department of Workforce Development, Division of Vocational Rehabilitation

Refer to the Children's Community Options Program (CCOP) Procedures Guide (P-01780) for information about coordinating the use of the CLTS Waiver Program and CCOP.

Medicaid Home and Community-Based Services (HCBS) Waiver Manual for the CLTS Waiver Program, <https://dhs.wisconsin.gov/publications/p02256.pdf>.

Petitioner’s mother provided credible testimony regarding a lack of local speech therapy providers who treat apraxia and take their insurance. However, [REDACTED] does meet those requirements. While a reasonable equitable argument was made that the CLTS program should cover Petitioner’s speech therapy with [REDACTED] because she is easier to schedule appointments with, there was no legal basis cited that would allow for such coverage by CLTS. No exceptions were cited, and I do not have the authority to create an exception. The relevant regulations are clear that CLTS is to be the payor of last resort and there is no dispute that Petitioner’s insurance covers speech therapy for him through [REDACTED].

An administrative law judge does not possess equitable authority and is required to apply the laws and policies of an agency as written. It seems that no one disputes that speech therapy is medically necessary for the Petitioner. But because of funding policies, the CLTS waiver agency is unable to grant the requested funding. I have no authority to address the fairness of the agency’s decision and conclude that the agency has correctly denied the request because all MA benefits and insurance available to a participant must be accessed before waiver funding may be used.

CONCLUSIONS OF LAW

The agency correctly denied Petitioner’s request for funding of his speech therapy with [REDACTED].

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.

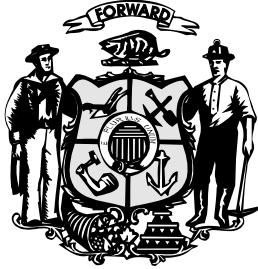
APPEAL TO COURT

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 31st day of October, 2024

\s _____
Nicole Bjork
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 October 31, 2024.

Lutheran Social Services of Wisconsin & Upper Michigan
Bureau of Long-Term Support

