



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

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In the Matter of



**DECISION**  
Case #: CWK - 212235

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**PRELIMINARY RECITALS**

Pursuant to a petition filed on February 20, 2024, under Wis. Admin. Code § HA 3.03(1), to review a decision by the Chippewa County Department of Human Services regarding Medical Assistance (MA), a hearing was held on April 17, 2024, by telephone.

The issue for determination is whether the agency correctly terminated Children's Long Term Support benefits effective January 12, 2024.

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: Kyra Secraw

Chippewa County Department of Human Services  
711 N. Bridge Street  
Chippewa Falls, WI 54729-1877

**ADMINISTRATIVE LAW JUDGE:**

Beth Whitaker  
Division of Hearings and Appeals

**FINDINGS OF FACT**

1. Petitioner (CARES # [REDACTED]) is a ten year old resident of Chippewa County.

2. Petitioner’s presenting diagnoses include attention deficit disorder, attention deficit hyperactivity disorder, autism and pervasive developmental disorder.
3. Petitioner resides in the community with his grandmother and guardian, [REDACTED].
4. Sometime in 2020 or earlier, petitioner was found eligible for CLTS. .
5. Petitioner attends school at [REDACTED]
6. based on an Evaluation Team Meeting on January 9, 2023 for a reevaluation, petitioner has an Individualized Educational Program (IEP).
7. Between November 20, 2023 and December 14, 2023, a Children’s Long Term Support Functional Screen Report was completed for petitioner by screener Jacquelin Gundlach.
8. On December 20, 2023, the agency sent the Functional Screen results to the Department of Health Services for review.
9. On December 20, 2023, Department of Health Services employee Katie Dill discussed the screen with an employee of the agency and asked questions including whether petitioner used language to communicate fifty percent of the time.
10. The functional screen documented that on November 27, 2023, petitioner’s mental health continued to be well managed with medication and that for the screen behavioral treatment was “unchecked” because petitioner no longer received [REDACTED] services.
11. The functional screen documented that effective November 27, 2023 “none of the above behaviors apply” but did not describe the above behaviors.
12. The functional screen documented that effective November 27, 2023, petitioner no longer needed physical assistance with getting clothing on/off because [REDACTED] stated that he can dress and undress himself.
13. The functional screen documented that effective November 27, 2023, petitioner was independent in all ADLs other than bathing.
14. The functional screen documented that effective November 27, 2023, petitioner had improved communication skills and was able to be understood by family, peers and teacher.
15. The functional screen documented that effective November 27, 2023, petitioner received SLP in school for 20 minutes, six times per month, unchanged from November 3, 2020.
16. On December 20, 2023 the screen results were sent to IC. ??????
17. On January 4, 2024, the Chippewa County Human Services Department (“agency”) issued to petitioner’s representative a notice informing her that petitioner no longer meets the level of care requirements for the CLTS Medicaid waiver program.
18. On January 9, 2024, [REDACTED], Mentor, at [REDACTED] wrote that she had mentor sessions and has observed improvement but still requires counseling.
19. On January 8, 2024, [REDACTED], Equine Services Manager with [REDACTED] stated that petitioner had made progress but that she believe he would still benefit from services at [REDACTED].
20. On February 6, 2024, at a well child visit, [REDACTED] expressed concern that some support services were being discontinued and [REDACTED] documented that petitioner’s problem list/past medical history included trauma and stressor-related disorder and anxiety disorder.
21. On or about April 2024, petitioner began treatment at [REDACTED].

## 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), updated in October 2023. It can be found on 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>.

The Department seeks to end the petitioner's participation in the CLTS program because the computer program it uses indicates he no longer meets functional eligibility requirements. Petitioner's representative appealed that determination, stating that she believes petitioner needs the service that was terminated.

The January 4, 2024 notice explained that petitioner did not meet level of care criteria because his Functional Screen calculations found that he was not functionally eligible. The decision stated that it was based on documentation from [REDACTED], [REDACTED], personal interviews and home visits with [REDACTED] with petitioner present and documentation from [REDACTED].

The agency's sole witness at hearing, Jacquelin Gundlach, testified that she is the case manager and reviewed the results obtained by the lead screener Erica Ferrin to make sure it was accurate and determined that it was. She said that her agency transmitted the results to DHS and the result was confirmed. Her description of the review indicated that a meaningful review with factual questions was conducted. Gundlach said that the last screen performed for petitioner was in 2020 and that he has made significant improvements in communication and no longer needed or received 15 hours of in home mental health counseling through "[REDACTED]."

[REDACTED] testified that she believes petitioner requires continued therapy, specifically trauma-based therapy. She provided letters from providers who express agreement that various services are still needed by petitioner. [REDACTED] submitted evidence from a physician and therapists to support her position that petitioner has a trauma-related diagnosis and requires trauma therapy. She submitted evidence of opinions of a physician and therapists to this effect. She also submitted a January 2024 IEP. The documentary evidence was created after the most recent screen was conducted. The therapy that petitioner is currently engaged in began after the decision was made to disenroll him in the CLTS program. Petitioner is not entitled to have a rescreen performed with new evidence less than one year after the last screen. There was no description of what information was relied on by the agency, therefore it is difficult to dismiss [REDACTED]'s claim that relevant information was not considered, particularly since the trauma/PTSD issues discussed by [REDACTED] in January 2024 are not new concerns, rather they pre-date the 2023 functional screen. In the end, however, [REDACTED] did not present anything specific that was available at the time. [REDACTED] testified that the information that was used to complete the functional screen was factually correct.

Assuming hypothetically that all relevant medical records and other documentary evidence of petitioner's level of function was entered into the functional screen tool, the question to be answered then is whether those facts support the agency's conclusion that petitioner no longer meets the legal standard for functional eligibility for the CLTS program. Gundlach testified at hearing that she did not know what legal standard was used to determine whether petitioner met a required level of care because the county agency does not know the algorithm used to calculate the functional screen results. Gundlach testified to her position that the functional screen used in this case is used for every child in the waiver program and "goes off the child's age" and that therefore he agency is bound by the results of the functional screen.

The agency did not show that it followed the instructions for completing the screen and in fact did not present evidence of what those instructions were. The agency representative acknowledged that written instructions exist and offered to provide a copy of those after the hearing, but did not do so. The agency did not disclose what facts were used to complete the screen. The agency did not state what legal standard for the required level of care was applied. The Waiver document itself and the document entitled

Institutional Levels of Care: Children’s Long-Term Support Programs in Wisconsin contain the details of how CLTS Levels of Care are defined. In order to correctly determine that petitioner is no longer functionally eligible for CLTS, the agency must take the facts it gathers and apply the correct legal standard for functional eligibility to the facts. It is insufficient to show that a functional screen was completed. It is insufficient to show that petitioner’s function has improved since the last functional screen was completed. For example, Gundlach testified that petitioner at one time received 15 hours per month of in-home services through “██████.” She did not state what ██████ is or how it is relevant to the legal definition of any of the levels of care that qualify a child for CLTS. This record does not even contain evidence of which of the LOC standards petitioner previously met to be determined eligible for CLTS, whenever that determination was made, which is not known from this record.

The current screen contains a section entitled Mental Health/Substance Abuse, in which the screener found that petitioner had a mental health diagnose that persisted for six months and was expected to last for one year. Regarding symptoms, the screener noted “No symptoms apply” and stated that services and supports would not be needed for more than three hours per week. The screen stated that petitioner did not exhibit disruptive behaviors requiring redirection from an adult at a frequency of every 3 minutes or more often and has been demonstrated for six months. ██████ testified that petitioner does have symptoms of childhood trauma and PTSD, stating that his speech difficulties are related to trauma-based fear of adults. She said he is in trauma therapy now and that in the past had difficulty finding available services during the COVID-19 pandemic. ██████ indirectly raised questions about whether the agency adequately considered petitioner’s trauma history and accurately determined that he had no symptoms. These questions cannot be answered based on this record, which contains very little information about what evidence was input for the functional screen. As stated above, even assuming the agency relied on complete and correct facts, based on the hearing record I have no basis for finding that any legal standard for level of care determination was applied to the facts.

At one time, apparently in 2020 or earlier, the agency found that petitioner was functionally eligible for CLTS based on some level of care standard. In December 2023, the agency documented changes that it concluded warranted disenrollment. Without evidence of what facts or law were used to make the earlier eligibility determination and whether the current facts was evaluated under the appropriate standard, I cannot find that the agency correctly acted to disenroll petitioner from CLTS. Simply stating that a functional screen was done and an algorithm made an eligibility determination is not sufficient. It is certainly possible that petitioner needs some services but still does not meet the legal criteria for CLTS functional eligibility, however, based on this record I must find that the agency failed to establish a legal basis for its determination that petitioner is not functionally eligible for CLTS effective January 12, 2024.

### CONCLUSIONS OF LAW

The agency failed to establish a legal basis for its determination that petitioner is no longer functionally eligible for CLTS.

**THEREFORE, it is**

**ORDERED**

That the matter is remanded to the agency to rescind its action finding petitioner ineligible for the Children’s Long Term Support program effective January 12, 2024 and to take steps to continue petitioner’s enrollment in that program. The agency shall complete this action within 10 days.

## 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

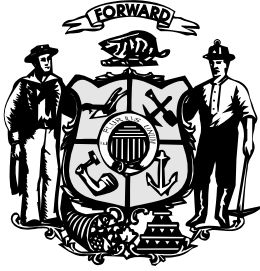
You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Health Services, 1 West Wilson Street, Room 651, **and** on those identified in this decision 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 17th day of May, 2024



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Beth Whitaker  
Administrative Law Judge  
Division of Hearings and Appeals



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The preceding decision was sent to the following parties on May 17, 2024.

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

