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[REDACTED]

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

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In the Matter of



**DECISION**  
Case #: CWK - 212281

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**PRELIMINARY RECITALS**

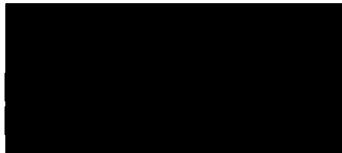
Pursuant to a petition filed on February 23, 2024, under Wis. Admin. Code § HA 3.03(1), to review a decision by the Chippewa County Department of Human Services regarding CWK, a hearing was held on April 15, 2024, by telephone. A hearing scheduled for April 3, 2024, was rescheduled at the petitioner's request.

The issue for determination is whether petitioner met the CLTS level of care requirement when her case was reassessed in January 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: Jessilyn Balsiger  
Chippewa County Department of Human Services  
711 N. Bridge Street  
Chippewa Falls, WI 54729-1877

**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 Chippewa County.
2. Petitioner was found eligible for the CLTS in 2020, meeting the Developmental Disability level of care. The primary diagnoses at that time were noted to be autism, ADHD, musculoskeletal disorder, and sensory disorder.
3. Following the end of the COVID-19 pandemic, the agency was required to conduct a redetermination of the petitioner's functional eligibility for the CLTS program in January 2024. To that end, the assessor spoke to petitioner and her mother, reviewed the past four years of medical records, and reviewed the petitioner's school IEP.
4. The assessor found that petitioner's presenting diagnoses were ADHD, autism, and musculoskeletal disorder. The petitioner was found to have a mental health diagnosis that persisted at least 6 months and expected to last one year or longer and in need of mental health services, clinical case management services, and in-school supports for emotional and behavioral problems. She was found not to exhibit disruptive behavior in a structured setting on a daily basis that required redirection from an adult every 3 minutes or more, not to experience nightmares or night terrors at least 4 times a week, and that she is able to complete routine events throughout the day. She was found to engaging in self-injurious behaviors (head-banging) less than once a month, aggressive or offense behavior (hitting, biting, and kicking) one to three days each month, and lacked behavioral controls (destruction of property) one to three days each month. Each behavior was noted to require the intervention of a medical/professional treatment and was expected to last 6 months or more. She was further found to be able to complete activities of daily living (bathing, dressing, eating, grooming, mobility, toileting, and transfers). As to activities of daily living, no significant impairment was found for communication, capacity for independent living, and learning. However, impairments were noted for social competency/self-direction, with the impairment expected to last at least one year. As of the time of the screen, the petitioner was in the 10<sup>th</sup> grade and has an individualized education plan (IEP) with the school. The assessor ran the functional screen, and petitioner was determined to no longer meet the level of care required for the CLTS program.
5. The agency issued the mother notice that CLTS would be ending February 23, 2024 as the petitioner no longer was functionally eligible. Benefits were continued pending this appeal.
6. The petitioner timely appealed

## DISCUSSION

The Department seeks to end the petitioner's participation in the CLTS program because the computer program it uses indicates she no longer meets functional eligibility requirements. The Department drafted and released the Medicaid Home and Community-Based Waiver Manual for the CLTS Program ("CLTS Manual"), with a current update as of May, 2024. It can be found online at <https://www.dhs.wisconsin.gov/publications/p02256.pdf>.

The CLTS Manual provides that eligibility criteria for the program includes meeting an institutional level of care. CLTS Manual, § 2.1. Moreover, the child must fall within at least one of three target groups: intellectual/developmental disabilities, physical disabilities, and mental health disability. CLTS Manual, §2.3. A child's functional eligibility for the CLTS must be determined once every 12 months. CLTS Manual, §2.4. That requirement was placed on hold during the COVID-19 pandemic. However, as the pandemic ended, so did the hold on the functional eligibility redetermination.

In this case, it is the level of care criteria that forms the basis for the change in status. Those criteria are found in the Institutional Levels of Care: Children’s Long-Term Support Programs in Wisconsin manual, (05/2022), (“LOC Manual”), which can be found online at <https://www.dhs.wisconsin.gov/publications/p03027.pdf>. While the petitioner originally met the Developmental Disabilities target group, each of the three target groups will be addressed below.

Development Disability Target Group

The Development Disability (DD) target group requires the child to have a permanent cognitive disability or related condition, substantial functional limitations, and a need for active treatment. A child must have a level of care similar to people placed in an intermediate care facility for children with intellectual disabilities (ICF/IID). LOC Manual, pg. 4.

The record demonstrates changes in the petitioner’s condition since she was found eligible for the CLTS program under the DD target group. The screen completed in 2020 indicated the petitioner needed assistance with the ADLs of bathing and grooming. That assistance was no longer needed by the time of the 2024 screen. Also, the 2020 screen noted the need for assistance with IADLs of communication (does not follow 3-step instructions that are not routine or 2 single step instructions that are not routine) and Learning (two or more grade levels behind in two academic subjects). In the 2024 screen, the petitioner was no longer found to exhibit the delays needed to be found to have a substantial limitation in either.

To meet the level of care for the DD target group the child must meet **all three** of the following criteria:

1. The child has a diagnosis of a **Cognitive Disability or a related condition**.
2. The child demonstrates **Substantial Functional Limitations in three or more** of the following areas: self-care, understanding and use of language, learning, social competency/self direction, mobility, and capacity for independent living (money management and food preparation) that are expected to last a year or longer.
3. The child has the **Need for Active Treatment**.

LOC Manual, pg. 4.

The petitioner meets the first criterion (Cognitive Disability or a related condition) as she has autism. Id at pg. 5.

Criterion 2 requires a Substantial Functional Limitation. To that end, a child needs limitation in at least **three** of the following six areas:

- Learning:** Substantial learning impairments can be measured by one of the following:
- A 30% ... or greater delay in aggregate intellectual functioning based on valid, standardized and norm-referenced measures or other valid demonstrations of learning limitations compared to their age group.
  - A score of at least 2 ... standard deviations below the mean on valid, standardized and norm/criterion-referenced measures of aggregate intellectual functioning.

- Communication:** A substantial functional limitation in communication is defined as:
- A 30% ... or greater delay, or
  - A score of at least 2 ... standard deviations below the mean on norm/criterion-referenced measures of BOTH expressive and receptive communication functioning

**Social Competency/Self-Direction:** Social Competency and Self Direction consists of:

- Self-awareness (aware of how one’s actions affect others).
- Social awareness (understanding of and appropriate reaction to others).
- Self-management (ability to regulate oneself emotionally with others/environment).
- Relationship management (being able to initiate and reciprocate in relationships).
- Responsible decision making (having the skills to make good choices).

**Mobility/Transfers:**

- **Mobility:** Mobility is the ability to move between locations in the living environment. This includes the home, school, and community. Mobility includes walking, crawling, or using equipment to get around.
- **Transfers:** The physical ability to move between surfaces (for example, from bed to wheelchair, walker or standing position). This excludes transfers into the bathtub/shower and on/off the toilet; those are captured in bathing and toileting.

**Capacity for Independent Living:**

- **Meal preparation:** The ability to make simple meals for oneself. Examples include soup, frozen dinner, macaroni and cheese, sandwich, or a bowl of cereal.
- **Money Management:** The ability to manage one’s own basic financial matters. Examples include making purchases at a store, writing a check, using a credit card, and paying bills.

**Activities of Daily Living:** One of the following requirements must be met:

- For children 5 years of age or older, such a degree of deficit must be evidenced in at least **two** of the following activities of daily living categories:
  - o Bathing or Grooming
  - o Dressing or Toileting
  - o Eating

LOC Manual, pg. 5 – 8.

The record demonstrates that the petitioner has substantial limitations in the above areas of Social Competency/Self-Direction. And while she does have limitations in the areas of Learning and Communication, the record does not demonstrate it is to the degree required to be found substantial, as set forth above. LOC Manual, pg. 5. The record also demonstrates that the petitioner does not have a limitation in either of the two areas of Mobility/Transfers or Activities of Daily Living. In order for the limitation for Activities of Daily Living to be considered a substantial limitation, it requires hands-on assistance. Here, the record only demonstrates a need for verbal cueing.

As the record indicates that the petitioner has only a substantial limitation (as defined above) in only one of the six above areas, she does not meet the second criterion for the DD level of care. Thus, the petitioner does not meet the DD level of care required for the CLTS program.

Mental Health Target Group

The Mental Health Disability target group requires the child to meet a psychiatric hospital level of care. CLTS Manual, § 2.3.3. That level of care requires:

The child with a Psychiatric Hospital–Mental Health Level of Care has a long-term, severe mental health condition diagnosed by a licensed psychologist or psychiatrist,

Licensed Clinical Social Worker, or Licensed Professional Counselor (including Licensed Marriage and Family Therapist). In addition, this child demonstrates persistent behaviors that are dangerous to themselves or others and requires ongoing therapeutic support in order to live in the community. *The intensity and frequency of the required ongoing therapeutic support must be so substantial that without it the child is at risk of inpatient psychiatric hospitalization.*

LOC Manual, pg. 10.

To meet the Psychiatric Hospital-Mental Health level of care, **all four** of the following criteria must be met:

1. The child has a **Diagnosis** of a mental health condition.
2. The child's mental health diagnosis or related symptoms are expected to persist for a specific **Duration** of time.
3. The child is in need of **Involvement with Service Systems** related to mental health support.
4. The child exhibits **Severe Symptomology** or **Dangerous Behaviors** that require interventions at a specific intensity and frequency, and without this direct, community-based intervention, the child is at risk for institutionalization within a psychiatric hospital.

Id.

In this case, the petitioner meets the first criterion (Diagnosis) because she has autism and ADHD. Id, pgs. 10-11. She meets the second criterion (Duration) as she has had this diagnosis and related symptoms for over six months and it can be expected to last for at least another year. Id, pg. 11-12. She meets the third criterion (Involvement with Service Systems) because she had an IEP at the time of the screen and requires mental health services. Id., pgs. 12-13. At issue is whether she exhibits Severe Symptomology or Dangerous Behaviors to meet the fourth criterion.

There are four standards for meeting Severe Symptomology and three for meeting Dangerous Behaviors. LOC Manual, pgs. 13-21. A child must meet at least one of the seven standards as defined in the intensity, frequency, and duration for the fourth criterion to be met. Id. pg. 13.

Severe Symptomology involves psychotic symptoms, suicidality, violence, or anorexia/bulimia. Id. pgs. 13 -14. The record does not demonstrate that the petitioner has psychotic, suicidality, or anorexia/bulimia symptoms. The record indicates the petitioner had engaged in destruction of property and hits, bites, and kicks others. However, that conduct does not meet the violence standard as it requires that those acts endanger the lives of others or require the victims to receive inpatient admission to a hospital. Id., pg. 14.

The next way of meeting the fourth criterion is under one of the three standards for Dangerous Behavior. Id, pgs.15-21. The first standard under the Dangerous Behavior criterion (Standard V) is that the child have frequent and intense problems in two of the following four behavior categories: (1) High-Risk Behaviors as demonstrated by running away, substance abuse, and dangerous sexual contact; (2) Self-Injurious Behaviors involving head banging against hard surfaces, cutting/burning oneself, biting oneself severely, tearing at or out body parts, and inserting harmful objects into body orifices; (3) Aggressive/Offensive Behavior toward others involving serious threats of violence, hitting/biting/kicking, sexually inappropriate behavior, masturbating in public, urinating on another or smearing feces, and animal abuse; and, (4) Lack of Behavioral Controls involving destruction of property or stealing/burglary. Id., pgs. 15-16.

The record does not demonstrate that the petitioner has engaged in High Risk Behaviors. It does demonstrate that she has engaged in the remaining three behaviors: Self-Injurious Behaviors (head-

banging); Aggressive or Offensive Behaviors Toward Others (hitting, biting, and kicking); and Lack of Behavioral Controls (destruction of Property). However, the record does not demonstrate that she meets the frequency requirement for each of those behaviors to meet each of those standards. To do so, those behaviors must occur at least four days a week. *Id.*, pgs. 15- 17. The record does not demonstrate that those behaviors occur at the required frequency in this case.

The next standard (Standard VI) is that the child has one of the four behavior categories noted above (High-Risk Behaviors, Self-Injurious Behaviors, Aggressive/Offensive Behavior, and Lack of Behavioral Controls) AND Substantial Social Competency Impairment. *Id.* at pgs. 17-18. As the petitioner did not meet any of the four behavior categories for Standard V, she does not meet this standard.

The final standard (Standard VII) requires a showing of Rare and Extreme Circumstances AND Dangerous Behavior or Substantial Social Competency Impairment. *Id.* at pgs. 19-20. Rare and Extreme Circumstances require one of the following three specific circumstances:

- o Extreme disruptive behaviors when the child is in structured settings that have been demonstrated **daily** for the past **six months** and that require **constant** (every few minutes) redirection from an adult. Disruptive behaviors may include sliding around a room in a chair, screaming out inappropriate words or phrases, or sitting in the center of a room and refusing to move.
- o Severe nightmares or night terrors at least **four times a week** for the past **six months**. These nightmares or night terrors are characterized by repeated episodes of intense anxiety.
- o Being unable to complete routine events (e.g., hygiene tasks, leaving the house, walking on certain pavements, or sharing community equipment with others) throughout the day, **every day**, for the past **six months** due to an obsession. An obsession is a thought, fear, idea, image, or words that a child cannot get out of their mind. It does not include self-stimulating or compulsive behaviors. The child experiencing the obsession must be aware of it but be unable to control their thought patterns.

*Id.*, pg. 19.

The record does not indicate that the petitioner has severe nightmares or night terrors or unable to complete routine events every day due to an obsession. While it was indicated she engages in disruptive behavior in a structured setting, it was not shown to meet the frequency or intervention needed. Specifically, it was not indicated the disruptions were daily, requiring constant (every few minutes) redirection by an adult. Based on the record before me, the petitioner does not meet the Mental Health level of care required for the CLTS program.

Physical Disabilities Target Group

Physical Disabilities target group requires the child to meet a nursing home or hospital level of care. CLTS Manual, § 2.3.2.

To meet the Physical Disability nursing home level of care, the following two criteria are required:

1. The child has a Diagnosis of a medical/physical condition resulting in needs requiring long term care services; and

2. The child requires Skilled Nursing Interventions and/or has Substantial Functional Limitations requiring hands-on assistance from others throughout their day.

LOC Manual, pg. 21.

For Criterion 2 above, the petitioner would need to meet one of two Standards. She does not meet Standard 1 as she does not need Skilled Nursing/Therapeutic Interventions that are set forth. Skilled Nursing Interventions involve: IV access, tracheostomy care, oxygen, total parenteral nutrition, tube feeding, dialysis, respiratory treatments, or wound or special skin care. Id, pg. 22. Additional Skilled Nursing/Therapeutic Interventions that may meet this requirement involve: bowel or ostomy, urinary catheter, and physical, occupational, or speech therapy. Id. To meet the physical, occupational, and speech therapy requirement, the child must be involved in 6 or more sessions per week with professional therapists. That frequency was not met in this case.

To meet Standard 2 for Criterion 2, the petitioner would need to have Substantial Functional Limitations. Id at pg. 24. To meet this requirement the child must require daily direct hands on assistance with **at least four** of the following seven specific areas:

- **Learning:** A 30% ... or greater delay or a score of at least 2 ... standard deviations below the mean based on valid, standardized and norm referenced or criterion-based measures of aggregate intellectual functioning.
- **Communication:** A substantial functional limitation in communication is defined as a 30% ... or greater delay or a standard score of at least 2 ... standard deviations below the mean on valid, standardized and norm referenced or criterion-based measures of both expressive and receptive communication functioning.
- **Bathing:** Refer to Module 6.7. This module describes the degree of deficit required in bathing to meet a substantial functional limitation based on the child's age.
- **Grooming or Dressing:** Refer to Module 6.8 and 6.9. This module describes the degree of deficit required in grooming or dressing to meet a substantial functional limitation based on the child's age.
- **Eating:** Refer to Module 6.10. This module describes the degree of deficit required in eating to meet a substantial functional limitation based on the child's age.
- **Toileting:** Refer to Module 6.11. This module describes the degree of deficit required in toileting to meet a substantial functional limitation based on the child's age.
- **Mobility:** Refer to Module 6.12. This module describes the degree of deficit required in mobility to meet a substantial functional limitation based on the child's age. The inability to run or to move long distances or between environments related to stamina or ease of movement is not a mobility deficit.

Note: Minor to moderate global delays in several of the seven areas listed above does not meet the Substantial Functional Limitation for Criterion 2: Skilled Nursing Interventions and/or Substantial Functional Limitations. A significant delay in an area not listed above, such as a behavioral concern or the inability to participate in extra-curricular activities, also does not meet the required Substantial Functional Limitation.

LOC Manual, pgs. 24-25.

In this case, petitioner does not require hands-on assistance with mobility, toileting, eating, grooming/dressing, or bathing. This only leaves the areas of learning and communication. As noted above, an individual must meet at least four of the specific areas listed above to have a Substantial Functional

Limitation under Standard 2. Thus, the petitioner does not meet the Physical Disability nursing home level of care.

To meet the Physical Disability hospital level of care, a child must meet **all three** of the following criteria:

1. The child needs **Frequent and Complex Medical Care** that require the use of equipment to prevent life-threatening situations.
2. The child's complex skilled medical interventions are expected to persist for a specific **Duration** of time.
3. The child's overall health condition must require **Continuous Assessment of an Unstable and Life-Threatening Condition**.

LOC Manual, pg. 26.

Criterion 1 requires skilled medical care multiple times a day, with complex skilled medical inventions involving one of the following: tracheostomy care, ventilator care, IV access, oxygen, total parenteral nutrition, rehabilitation program for brain injury or coma, dialysis. Id. The petitioner does not meet this requirement. As such, she does not meet the Physical Disabilities target group under hospital level of care.

Based on the record, the agency correctly found that the petitioner no longer met the CLTS level of care requirement when her case was reassessed in January 2024.

Finally, I would note that the petitioner may pursue a new CLTS application at any time.

### CONCLUSIONS OF LAW

The agency correctly determined that petitioner does not meet the CLTS level of care when it reassessed her in January 2024.

**THEREFORE, it is ORDERED**

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, 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

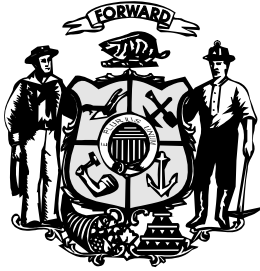
You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Health Services, 1 West Wilson Street, Room 651, **and** on those identified in this decision 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 20th day of May, 2024



\s \_\_\_\_\_  
Jason M. Grace  
Administrative Law Judge  
Division of Hearings and Appeals



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The preceding decision was sent to the following parties on May 20, 2024.

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

