



FH
[REDACTED]

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of



DECISION
Case #: CWK - 212876

PRELIMINARY RECITALS

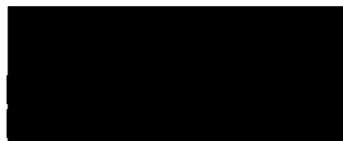
Pursuant to a petition filed on April 2, 2024, under Wis. Admin. Code § HA 3.03(1), to review a decision by the Winnebago County Department of Human Services regarding CWK, a hearing was held on June 19, 2024, by video. A hearing was initially held in this case on May 22, 2024. However, a second hearing was required to be held due to the number of witnesses seeking to testify as well as the length of the testimony.

The issue for determination is whether the agency correctly denied Petitioner's request for replacement of kitchen cabinetry.

There appeared at that time the following persons:

PARTIES IN INTEREST:

Petitioner:



Petitioner's Representative:



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:

Nicole Bjork
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Winnebago County. Petitioner's diagnoses include autism spectrum disorder, ADHD, epilepsy, separation anxiety disorder, general anxiety disorder, social anxiety disorder, sensory processing disorder, executive functioning deficits, and post traumatic stress disorder.
2. On April 2, 2024, the agency sent a notice to Petitioner informing him that a request he made for replacement of kitchen cabinetry was denied. The sole reason for denying the request was that the request did not fit within the service definition.
3. Petitioner filed a timely appeal of the notice denying the replacement of kitchen cabinetry and that is the issue in this case.
4. During the hearing, Petitioner's mother testified that modifications to the kitchen cabinetry were requested for safety reasons and so that Petitioner could access necessary items. Petitioner's mother noted that Petitioner destroyed the cabinets in the kitchen and has done so for years, requiring the constant replacement of the cabinetry. Now, they are requesting that the kitchen cabinets be made from a solid wood that is durable enough to withstand Petitioner's constant stimming behaviors, kicking and pushing of cabinets, and materials being broken and thrown. Petitioner's mother further noted that the most recent cabinets were of quality materials, but that Petitioner had no difficulty destroying them. She noted the doors in the home were replaced with solid wood and those were the only doors that Petitioner was not able to break through and destroy. Therefore, she is requesting cabinetry made of the same/similar wood. Additionally, Petitioner's room walls have been reinforced due to his stimming and destructive behavior. Due to the current cabinetry, Petitioner is no longer able to use the kitchen because the area is dangerous for him. In the current kitchen state, Petitioner is able to access to substances that he ingests which should not be ingested in large quantities (spices and other baking materials), as well as access to the microwave which he has already caused a fire with. Furthermore, Petitioner climbs on top of the cabinets and has gotten stuck under the sink cabinet.
5. Petitioner's mother further testified about the numerous safety locks and features that the family has tried but were all ineffective with Petitioner because Petitioner will simply break through the side or front of the cabinetry and locks have no effect. Petitioner's parents have tried numerous materials, locks, and devices over the years.
6. Petitioner submitted numerous letters from providers regarding his behavioral issues as well as the need for durable kitchen cabinetry.
7. Petitioners submitted a detailed quote from [REDACTED] for the kitchen cabinetry.
8. [REDACTED] is an ABA behavior intervention specialist that worked with Petitioner for years. She testified that she was in his home almost daily for 4 ½ years until he aged out. [REDACTED] noted that Petitioner has extreme meltdowns and behavior issues, to the extent that she had the police department as a contact in her phone. She has seen him break through doors and locks during his meltdowns and noted that he is incredibly strong during those times because he is in fight or flight mode. Since Petitioner has aged out, [REDACTED] is still part of his team but does not work with Petitioner directly. She is now a parent trainer and provides guidance to his parents. [REDACTED] noted that it is important for Petitioner to have access to items that he needs (plates, silverware, kitchen items) in order to promote his independence. Further, [REDACTED] noted that

seeing destroyed cabinets in itself is a trigger for Petitioner because he would feel incredible remorse seeing the damage and that alone would cause him to dysregulate.

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.

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.

In this case, Petitioner is seeking new kitchen cabinets made of a durable material. The sole reason the agency provided in the notice for denying this request was that the request did not meet the definition. However, during the hearing, the agency representative did not elaborate on how kitchen cabinetry would not meet the definition of home modification. The definition above states that home modifications are generally permanent fixtures, which kitchen cabinetry would be. The definition then states the 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.” Emphasis added. The definition does not state that home modifications **must** be used to ensure safe entry and exits, but that they may be used to ensure safe entry and exits, meaning entering and exiting a room meets the definition of a home modification but is not the only definition.

Furthermore, Petitioner’s request does meet the definition for home modification because Petitioner is currently unable to access his kitchen without durable kitchen cabinetry due to the hazards posed in the kitchen without such cabinetry. Petitioner has gotten stuck under the kitchen sink in the cabinets. Petitioner has completely destroyed most of the cabinets that were in the kitchen. Petitioner has grabbed items and ingested them which should not be ingested in large quantities (spices, sugar, baking ingredients). Petitioner has started a fire in the microwave. In short, the kitchen in the current state poses a significant hazard for Petitioner’s safety and well-being. Since Petitioner is unable to access his kitchen in its current state, new cabinetry does meet the definition of home modification.

The notice denying the request for kitchen cabinetry only provided that one reason, which is then what I must base my decision on. However, during the hearing, the agency representative also argued that the kitchen cabinets were not the most cost-effective solution. Even though that argument was not part of the notice of denial and thus does not need to be considered in this decision, I will address that concern.

First, cost-effectiveness is not listed in the definition of home modifications as something the agency must consider. While the agency asserted during the hearing that cost-effectiveness is a required criterion, no authority was offered to establish that argument. However, it is plausible to believe that cost-effectiveness is a requirement for authorizing expenditure of public funds in this case.

With respect to cost-effectiveness, the agency representative noted that Petitioner could try various locks or increase the height of the cabinets to prevent him from climbing on top of the cabinets. However, Petitioner's mother noted that extending the cabinets would only prevent him from climbing on top of the cabinetry but does not address the numerous other safety concerns. Furthermore, Petitioner's mother testified in detail about the numerous locks that they have tried to keep Petitioner safe. However, Petitioner broke through every lock and, more importantly, no lock will prevent Petitioner from busting through the sides or the material of the cabinetry. Petitioner's mother noted they have replaced the cabinetry numerous times and she even visited group homes to see what cabinets they use since their population includes residents with similar issues. She found the group homes were using commercial grade cabinets. Thus, even when considering cost-effectiveness, no alternative was presented that would be cost-effective and would prevent Petitioner from destroying the cabinetry.

Petitioner's mother credibly testified that she has tried everything to create a safe kitchen atmosphere for her son. She is at her wits end and thoroughly demonstrated why Petitioner requires solid wood cabinetry in the kitchen and why all other alternatives have failed.

CONCLUSIONS OF LAW

The agency incorrectly denied Petitioner's request for durable kitchen cabinetry.

THEREFORE, it is **ORDERED**

That this matter is remanded to the agency to take all administrative steps necessary to rescind its denial of Petitioner's request for kitchen cabinetry and to revise its records to reflect that the request is approved. These actions shall be completed within 10 days of the date of this decision.

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

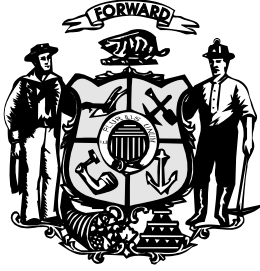
You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Health Services, 1 West Wilson Street, Room 651, **and** on those identified in this decision 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 15th day of July, 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 July 15, 2024.

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

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