



FH
[REDACTED]

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

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

DECISION
Case #: CWK - 213700

PRELIMINARY RECITALS

Pursuant to a petition filed on June 7, 2024, under Wis. Admin. Code § HA 3.03(1), to review a decision by the Manitowoc County Department of Human Services regarding CWK, a hearing was held on July 23, 2024, by telephone.

The issue for determination is whether the agency correctly denied Petitioner's request for [REDACTED] under the service code of Empowerment and Self Determination Supports.

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: Lisa Reindl

Manitowoc County Department of Human Services
4319 Expo Drive
Manitowoc, WI 54220

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 dyslexia.
2. On February 1, 2024, [REDACTED] was approved as a provider for Petitioner for services twice per week from February 1, 2024, through June 30, 2024, through children's long-term support (CLTS). The service code used for the CLTS funding was Empowerment and Self Determination Supports. The established goals for this service were: 1) Identify and learn the meaning behind community signage; 2) learn different coping skills with stress/unhappiness/anxiety that comes with learning differently than others; 3) learn to advocate for needs within each environment.
3. The county agency followed up with [REDACTED] several times regarding Petitioner's goals and the progress on those goals being met. During one such conversation, on April 25, 2024, the agency discovered that Petitioner had a second set of goals with [REDACTED]. The agency requested this second set of goals.
4. On May 3, 2024, the agency received this second set of goals from [REDACTED]. An email from [REDACTED] noted that Petitioner had started with auditory discrimination goals but has moved on to other goals that were more academically related.
5. On May 13, 2024, the agency reached out to the Department of Health Services to review the stated goals as submitted by [REDACTED] for Petitioner. Upon review, the agency determined that the functional goals for Petitioner would be more appropriately coded as Daily Living Skills, which would omit academic based goals as those goals were being met elsewhere.
6. On June 7, 2024, the agency spoke with the provider who declined to switch the codes for services. Changing the service code would result in a significant rate difference.
7. On June 7, 2024, the agency sent a notice to Petitioner informing him that his request for [REDACTED] [REDACTED] under the service code Empowerment and Self Determination Supports was denied because the services to be provided are an overlap of academic supports. Reading, writing, educational tasks were provided by the Department of Public Instruction. Petitioner was informed that he could change the code to Daily Living Skills Services for delivery of functional goals by [REDACTED].
8. Petitioner filed an appeal of the June 7, 2024, notice. Petitioner's mother appeared at the hearing on his behalf. Petitioner's mother testified that [REDACTED] provides academic resources to children that are having academic challenges, such as children with dyslexia, as well as services related to functional struggles.
9. The agency representative testified during the hearing that [REDACTED] was initially approved in February 2024 because the goals were more functional goals as opposed to academic goals, but now it appears that [REDACTED]'s goals for Petitioner were more academic related, which is already covered through other services.
10. Petitioner's mother testified during the hearing that education is part of Empowerment and Self Determination Supports in the CLTS handbook.
11. An agency representative clarified during the hearing that the education referenced in the Empowerment and Self Determination Supports is referencing training for family members or

parents on a short-term basis. This is not meant to include long-term academic training/education for a participant, especially when that participant is receiving academic assistance in school.

12. Petitioner’s mother testified that Petitioner’s school does not provide the comprehensive academic support that he receives at ██████████, where he receives one on one instruction. Petitioner’s mother believes that ██████████’s services can fall under both Empowerment and Self Determination Supports or Daily Living Skills Services.

DISCUSSION

The overall purpose of Wisconsin’s Children’s Long-Term Support (CLTS) Waiver Program is to provide necessary supports and services to children from birth through age 21 in Wisconsin with significant disabilities who meet functional, Medicaid financial and non-financial requirements, and reside in allowable living situations within the community to prevent placement in an institutional setting. The CLTS Waiver Program is a component of Wisconsin’s support system for children with disabilities. The CLTS Waiver Program delivers services to enrolled children and their families to ensure the children’s health, safety and welfare needs in an inclusive home and community setting.

The Department of Health Services (DHS) enters into contractual agreements with Wisconsin's county departments to act as the local agency responsible for operating the CLTS Waiver Program, which includes determining applicants’ program eligibility, authorizing covered waiver supports and services, conducting annual recertifications, and operating other long-term support programs that assist in meeting the needs of children and their families.

The county waiver agency authorizes family-centered services and supports based on the assessed need of each child and his or her family to ensure continued health, safety, inclusion in the community and ability to reside in the least restrictive setting. In accordance with 42 CFR §441.301(b)(1)(i), a participant centered service plan (of care) is developed for each participant employing the procedures specified in Appendix D. All waiver services are furnished pursuant to the service plan. The service plan describes: (a) the waiver services that are furnished to the participant, their projected frequency and the type of provider that furnishes each service and (b) the other services (regardless of funding source, including state plan services) and informal supports that complement waiver services in meeting the needs of the participant. The service plan is subject to the approval of the Medicaid agency. Application for 1915(c) HCBS Waiver, January 1, 2022, Section 6.

Petitioner’s mother testified at hearing and acknowledged that ██████████ provides academic services to her son, who has dyslexia. Her opinion is that academic services can be included in the Empowerment and Self-Determination Supports code because education is one of the services specifically detailed in the definition. However, that viewpoint takes the entirety of the description out of context. The Medicaid Home and Community-Based Services (HCBS) Waiver Manual for the CLTS Waiver Program with respect to Empowerment and Self-Determination Supports states:

Empowerment and Self-Determination Supports

4.6.13.1 Definition:

Empowerment and self-determination supports help the participant acquire skills to exercise control and responsibility over their other supportive services. Exercising control and responsibility over supportive services helps the participant and their family build an interdependent care network within their community and promotes self-determination. This service includes education, training,

and events that help the participant and family develop self-advocacy skills, exercise civil rights, and acquire the skills needed manage their supportive services. Education and training may be provided for the participant and/or their parent(s), unpaid caregiver(s), and/or legal representative(s).

The Medicaid Home and Community-Based Services (HCBS) Waiver Manual for the CLTS Waiver Program § 4.6.13.1.

Thus, the stated definition of this coded area is to help the participant acquire skills to exercise control and responsibility over other support services. The stated goal is not to enhance academics. Further, while education and training are mentioned in the definition, the education and training are limited to that training that would help the participant and family develop self-advocacy skills, exercise civil rights, and acquire skills needed to manage their support services. Clearly, this is not referencing academic education to assist with learning to read or other school subjects.

Further, the HCBS waiver manual details explicitly what is not included under Empowerment and Self-Determination Supports. In the Service Limitations section, it states in pertinent part:

The CLTS Waiver Program is the payer of last resort and is not a source of funding for any service that would otherwise be the responsibility of another public or private entity. The following programs and services must be considered prior to using waiver funding and, where applicable, be incorporated into a comprehensive plan for participants:

- o Public benefits, energy assistance, or other poverty-related services.
- o Court-ordered, juvenile justice, or child protective services, including protective placement and guardianship or legal services.
- o Any goods or services covered by a third party, including private insurance or Medicaid, such as:
 - * Early and Periodic Screening, Diagnostic and Treatment (EPSDT) benefit (known in Wisconsin as HealthCheck Other Services), which provides comprehensive and preventive health care services for children under age 21 who are enrolled in Medicaid or the Medicaid State Plan services.
 - *Mental health services that are otherwise available.
- o ***Educational or other services funded by the Department of Public Instruction or Individuals with Disabilities Education Act.***
- o Prevocational or other services offered through the Department of Workforce Development, Division of Vocational Rehabilitation.

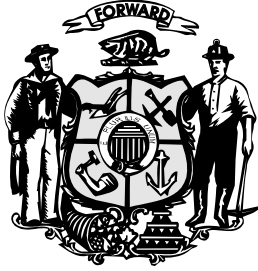
The Medicaid Home and Community-Based Services (HCBS) Waiver Manual for the CLTS Waiver Program § 4.6.13.3 (Emphasis added).

Thus, any educational services funded by the Department of Public Instruction cannot also be covered under Empowerment and Self-Determination Supports. There is no dispute that Petitioner receives services in school to assist him with his diagnoses, including dyslexia. However, Petitioner’s mother argued that that support in school is not as effective as the support he receives at [REDACTED], where he receives one on one support. I have no doubt that Petitioner receives better support and services at [REDACTED]

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 30th day of August, 2024

\s _____
Nicole Bjork
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

Brian Hayes, Administrator
Suite 201
5005 University Avenue
Madison, WI 53705-5400

Telephone: (608) 266-3096
FAX: (608) 264-9885
email: DHAMail@wisconsin.gov
Internet: <http://dha.state.wi.us>

The preceding decision was sent to the following parties on August 30, 2024.

Manitowoc County Department of Human Services
Bureau of Long-Term Support
DHSCCLTS@dhs.wisconsin.gov