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

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In the Matter of

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██████████████████  
██████████████████  
██████████████████

**DECISION**

Case #: CWK - 202311

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**PRELIMINARY RECITALS**

Pursuant to a petition filed on June 11, 2021, under Wis. Admin. Code § HA 3.03(1), to review a decision by the Waukesha County Health and Human Services regarding CWK, a hearing was held on August 4, 2021, by telephone.

The issue for determination is whether the agency correctly denied the Petitioner's request for a Carroll CS7 Hi-Low Hospital Bed.

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: ██████████  
Waukesha County Health and Human Services  
514 Riverview Avenue  
Waukesha, WI 53188

**ADMINISTRATIVE LAW JUDGE:**

Debra Bursinger  
Division of Hearings and Appeals

**FINDINGS OF FACT**

1. Petitioner is a resident of Waukesha County. He is a minor child. He has a seizure disorder that causes him to have seizures several times/day and night. He frequently falls out of bed during the night when he has a seizure. He currently uses a hospital bed that can be lowered but it does not lower to the floor.
2. Petitioner requested the Carroll CS7 Hi-Low Hospital Bed because it can be lowered to the floor and raised enough to allow caregivers to provide cares to him.
3. Petitioner’s request for the Carroll CS7 Hi-Low Hospital Bed has been denied by DMS.

**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. The only issue is whether the waiver program was correct to deny the bed that the Petitioner has requested. The agency does not deny that the requested bed would be appropriate for the Petitioner. The agency contends that it is not able to approve the request because, as the payor of last resort, the program must have denials from MA, HealthCheck, and any pertinent private insurer before it can approve funding for the bed. In this case, it is undisputed that MA will cover a bed for the Petitioner but not this particular bed. In such cases, HealthCheck can review the request. It is likely that the bed would be approved through HealthCheck. However, the MA reimbursement rates are so low that DME providers will not submit the request to HealthCheck because they would have to provide the equipment at a loss. The agency representative testified that the agency’s hands are tied because it cannot force providers to submit to HealthCheck, but it cannot approve the bed without a denial from HealthCheck.

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; 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

4.4.3 Requirement to Use Medicaid

**All Medicaid benefits, including HealthCheck and HealthCheck Other Services, available to a participant must be accessed before waiver funding may be used for acute and primary services available through Medicaid.**

HealthCheck is the Wisconsin Medicaid term for a comprehensive, preventative health checkup for children under the age of 21 through the federal Early and Periodic Screening, Diagnosis, and Treatment (EPSDT) benefit. HealthCheck “Other Services” is the Wisconsin Medicaid term for the federal requirement for states to cover all medically necessary services a child may need to correct, improve, or maintain their physical and mental health coverable under the federal Medicaid program, whether or not the needed service is routinely covered by Wisconsin Medicaid. Qualified providers can access HealthCheck “Other Services” by submitting a prior authorization request.

4.6.1.3 Service Limitations

- Adaptive aids are limited to items and products and do not include services delivered by caregivers (persons who have regular, direct contact with the participant).
- **This service includes the purchase of adaptive aids that have been denied funding through the Medicaid state plan as well as items or devices in excess of the quantity approved under the Medicaid state plan, when applicable.**
- Payment to replace or upgrade the same adaptive aid is only allowable through the Children’s Long-Term Support (CLTS) Waiver Program if it is determined that the item or device has exhausted its useful life or has been rendered unsafe or unusable due to damage or defect.
- The components of the adaptive aids services that may be delivered by remote waiver services are limited to those outlined in DMS Numbered Memo 2021-02, Remote Waiver Services for the Children’s Long-Term Support Waiver Program and Children’s Community Options Program.
- Items costing in excess of \$2,000 require a DHS tiered notification and review process.

CLTS Waiver Manual (emphasis added), <https://www.dhs.wisconsin.gov/publications/p02256.pdf>

Waukesha County asserts that it is required to adhere to the Waiver manual which mandates a MA/HealthCheck denial for the CLTS Waiver to purchase the requested bed.

An administrative law judge does not possess equitable authority and is required to apply the laws and policies of an agency as written. This is an unfortunate case that reflects the flaws in our healthcare system. It seems that no one disputes that this bed is medically necessary for the Petitioner. But because of funding policies, the MA agency and CLTS waiver agency are unable to proceed with approving the request. I must conclude, reluctantly, that I have no authority to remedy the situation and that the agency has correctly denied the request because it is required to have denials from MA/HealthCheck to process the request.

**CONCLUSIONS OF LAW**

The agency correctly denied the Petitioner’s request for a Carroll CS7 Hi-Low Hospital Bed.

**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 5<sup>th</sup> Floor, 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.

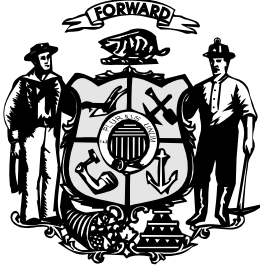
## **APPEAL TO COURT**

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 7th day of September, 2021

\s \_\_\_\_\_  
Debra Bursinger  
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 September 7, 2021.

Waukesha County Health and Human Services  
Bureau of Long-Term Support