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[REDACTED]

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

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

DECISION
Case #: CWK - 206164

PRELIMINARY RECITALS

Pursuant to a petition filed on September 1, 2022, under Wis. Admin. Code § HA 3.03(1), to review a decision by the Outagamie County Department of Human Services regarding Medical Assistance (MA), hearings were held on October 25, 2022 and November 9, 2022, by telephone.

The issue for determination is whether the CLTS agency correctly denied the Petitioner's request for a gazebo/canopy.

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: Casey Vullings

Outagamie County Department of Human Services
320 S Walnut St
Appleton, WI 54911-5985

ADMINISTRATIVE LAW JUDGE:

Debra Bursinger
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Outagamie County. He lives with family. His primary diagnosis is autism. He has sensory issues regarding insects and sun sensitivity.
2. The relevant outcomes in the Petitioner's ISP include the following: to receive supportive resources to assist with daily living skill independence; to remain safe while in and around his home; to have access to adaptive aids to help with keeping him calm and in the home; to self-regulate; to identify when he is feeling upset and use tools and strategies to independently regulate his body and emotions; to have access to health and wellness activities to focus on living a healthy lifestyle.
3. The CLTS agency approved the purchase of a sensory therapy swing/hammock in May 2022. This item is in the Petitioner's backyard.
4. On June 1, 2022, the Petitioner's parent submitted a request to the agency for a gazebo/canopy to use with the sensory hammock, citing the Petitioner's sensitivity to sun and bugs as the reason for needing the gazebo/canopy.
5. On June 21, 2022, the agency informed the Petitioner's parent during a phone call that the request for a gazebo/canopy would be denied, that the agency could not find any case notes to indicate the previous support coordinator had approved the item, and that a denial letter would be issued.
6. On August 9, 2022, the CLTS agency denied the Petitioner's request for a gazebo on the grounds that it is not a necessary item to maintain the Petitioner's health, manage a medical or physical condition, or improve functioning; and the item is not adaptive or specialized in nature relating to specific disability related needs.
7. On September 1, 2022, an appeal was filed on behalf of the Petitioner with the Division of Hearings and Appeals.

DISCUSSION

The goal of the CLTS Waiver Program is to support children with substantial needs, as well as their parents/guardians, by delivering services to assure the child'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.

In this case, there is no dispute that the Petitioner is eligible for the CLTS waiver services. The issue is whether the requested gazebo/canopy is an item that can be covered by the program.

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 is developed for each participant employing a person-center approach, with the participant or a representative having a participatory role in developing the plan and services. All waiver supports and services are furnished pursuant to the service plan.

The agency’s support and service coordinator are required to work with participants collaboratively to determine which supports, services and environmental modifications will “benefit the participant, build on the participant’s strengths, and maximize the participant’s independence and community participation.” CLTS Waiver Manual, § 4.5. Specialized medical and therapeutic supplies are covered by the program if they are needed to maintain the participant’s health, manage a medical or physical condition, improve functioning, or enhance independence. CLTS Waiver Manual, § 4.6.28.1.

Allowable items may include the following (items listed are illustrative examples and not an exhaustive list):

- Items and aids designed to augment a professional therapy or treatment plan.
- Items and aids to support environmental regulation assessed as necessary for the participant’s condition.
- Adaptive aids

Examples of adaptive aids include (items listed are illustrative examples and not an exhaustive list):

- Accessible computer keyboards
- Adaptive accessories
- Adaptive bikes or tricycles
- Adaptive door handles and locks
- Adaptive security systems
- Control switches and pneumatic devices including sip and puff controls
- Electronic control panels
- Environmental control units
- Hygiene and meal preparation aids
- Over the bed tables
- Scald-preventing showerhead
- Specialized clothing
- Standing boards or frames
- Talking alarm clocks

Id.

At the hearing, the agency representatives testified that, at the time of the request for the gazebo/canopy, there was no medical documentation of the Petitioner having a sensitivity to sun or insects. The representatives noted that there have been items approved for the Petitioner in the past which would expose him to sun and insects and no mention was made of having sun or insect sensitivity, including a sailing class, a pool membership, and an adaptive tricycle. The agency contends the gazebo/canopy is an item of convenience rather than medical need.

The Petitioner’s parents assert that the gazebo/canopy was approved by the previous support coordinator before she went on a leave of absence in June 2022. The agency representatives testified that the support coordinator’s notes do not indicate any discussions about, or approval of, the item. Neither party called the previous support coordinator to testify.

The Petitioner’s parents further testified that the current support coordinator did not request any medical documentation or other information prior to denying the gazebo/canopy. They provided letters from two of the Petitioner’s physicians documenting a sensitivity to sun and insects. The Petitioner’s parents also note that the Petitioner’s extreme sensory issues are well-documented.

I conclude the agency did not correctly deny the Petitioner’s request for a gazebo/canopy. The agency is required to engage in a collaborative process with the Petitioner and his parents to determine the supports

and services to be included in his service plan. The Petitioner’s parent made a request on June 1, 2022 for the gazebo and provided reasons why she felt it was necessary for the Petitioner to have the item. The Petitioner’s email to the support coordinator indicates that the Petitioner’s sensory issues make it difficult for him to use the sensory swing, and specifically noted his sensitivity to the sun and bugs. There are no further notes regarding the agency discussing this request with the Petitioner’s parent until June 21, 2022 when the agency informed the parent that the request would be denied. There is no evidence that the agency engaged in any type of collaboration to determine the appropriateness of the request or whether it was an item that met coverage criteria.

The evidence indicates that the agency is aware of the Petitioner’s sensory issues. The Petitioner has a documented history of sensitive skin. Further, there is a documented history of the Petitioner’s need for sensory items to help calm him and a documented history of his elopement risk.

The agency testified that the lack of medical documentation of sensitivity to sun and bugs was a factor in its decision, but the Petitioner’s parent supplied medical documentation to the agency. The Petitioner’s parent correctly noted that the agency did not request this type of documentation before it decided to deny the request.

I conclude, based on the evidence presented, that the agency did not follow its procedures for considering the Petitioner’s request for a gazebo/canopy before denying the request. I further conclude that the evidence demonstrates that the requested gazebo/canopy is an item that will support environmental regulation necessary for the Petitioner’s condition, enhance independence, improve his functioning, and assist in managing his conditions.

CONCLUSIONS OF LAW

The agency did not correctly deny the Petitioner’s request for a gazebo/canopy.

THEREFORE, it is ORDERED

That this matter is remanded to the agency to rescind its denial of the Petitioner’s request for a gazebo/canopy. The agency shall revise the Petitioner’s ISP to include the gazebo/canopy and shall take the necessary actions to assist in the purchase of the item. The agency must revise the ISP and begin the process of purchasing the item 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, 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.

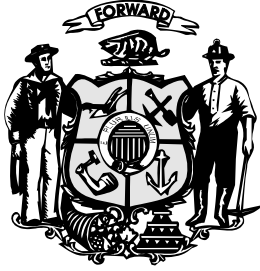
APPEAL TO COURT

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 30th day of November, 2022

\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 November 30, 2022.

Outagamie County Department of Human Services
Bureau of Long-Term Support
DHSCLOTS@dhs.wisconsin.gov