

Quick Overview of the Division of Hearings and Appeals (DHA) Hearing Process in CLTS Service Cases

By Mitchell Hagopian, Attorney

The **Children's Long-Term Support (CLTS) Waiver** is part of the Medicaid Program. This means that you, as a parent, have a right to appeal if you think your CLTS program has wrongfully denied a service to your child. You also have the right to appeal if the CLTS program tells you it will stop providing a service or reduce the number of hours you think your child still needs. An agency called the Division of Hearings and Appeals (DHA) hears these appeals. This advocacy paper is a step-by-step guide to the appeal process.

Step 1: Appeal

The county must send you a notice whenever it denies or only partially approves something you have asked for. That notice should give you information about what the county denied, how to appeal, and the time limits for appealing.

There is no official form for appealing a CLTS decision. You can use the general Request for Hearing Form on DHA's website:

doa.wi.gov/Pages/LicensesHearings/DHAWFSHrgRequestForms.aspx.

A sample is attached.

A simple letter to the Division of Hearings and Appeals (DHA) that briefly says that you want to appeal is also good enough. If possible, you should attach the notice you got from the county to your appeal. That makes it easier for the DHA to process your appeal correctly. A sample appeal letter is attached.

You can either mail, email, or fax your appeal to DHA. Faxing or emailing is better because you will know immediately if it was received, and you will have a record that it was delivered just in case DHA misplaces it (yes — it happens). If you choose to email your request, you will have to prepare an appeal, sign it, scan it, and attach it to your email. If you choose to send via U.S. mail, it is a good idea (though not required) to send it via certified mail. The three options for submitting the appeal are in the sample appeal letter — you would just delete the ones you didn't use.

Tip

Don't be late with your appeal! The appeal deadlines are firm. If your appeal is late, it will be dismissed. You have up to 90 days from the date of the denial notice to appeal.

Tip

If the county cuts off or reduces a service your child is receiving, you can appeal before the effective date and keep services the same until after the hearing. If you win, the service will continue without a gap. The county should give you at least 10 days to file an appeal before the effective date. The notice should tell you the effective date and explain you may need to pay for ongoing benefits if you lose at the hearing. In Wisconsin, recovery procedures for ongoing benefits are very uncommon if they happen at all. If you want to request ongoing benefits, you need to file your hearing before the effective date and write this in your hearing request.

Tip

If the county denies something verbally but does not send you a notice, you can still appeal. You just want to make sure your appeal letter includes a few details about what was denied, who denied it, and when the denial happened. For example: "On August 5, 2022, my child's case manager (include name if you have it) told me he/she was denying my request for an outdoor play structure. I have never received a notice from the county on this denial." You would send your appeal letter to DHA, just as you would if you had received a notice.

Step 2: DHA Acknowledgement

You will get a written acknowledgement from the Division of Hearings and Appeals that it has received your appeal.

Step 3: Notice of Hearing

Very shortly after the written acknowledgement from DHA (or possibly at the same time) you will receive a "Notice of Hearing." That notice will tell you the time and date of your hearing. The date of the hearing is usually 3-5 weeks from when you requested the appeal. It will also tell you the name of the Administrative Law Judge who will be deciding the case. The hearing will be a telephone hearing. The notice will also tell you that any documents you want the judge to have should be sent or emailed to him/her at least two days before the hearing (an email address and details for how to do this are included in the notice). It will also tell you that you need to call the Judge and tell him/her what phone number they should call to reach you on the day of the hearing.

Tip

If the date or time of the hearing is inconvenient (like you or your child have a medical appointment, or you have a planned vacation) call the Judge and ask for the hearing to be rescheduled. The Judges are very understanding and will typically grant at least one reschedule request.

Tip

Don't forget to call and give the judge your number. They can't call you if they don't have your number.

Step 4: County Summary Letter

The county is supposed to prepare a letter summarizing what action they took and why. But many counties don't always do this. So, you may or may not get such a letter. If you do, it will be helpful as you prepare for the hearing.

Step 5: Gather Your Evidence

You need to gather your written evidence and decide if you will have any witnesses. The kind of evidence you need depends on the service you are asking to get covered. If it is a medically related service, (like a specialized stroller or some type of therapy, like equine therapy) you will want something from a doctor or other medical professional (nurse, OT, PT or SLP) that explains — in as much detail as possible — why the particular device, equipment, or therapy is needed for your child. Ideally, in cases involving equipment, such a letter would also explain why a 'store' stock item would be inappropriate for your child. If you are asking for a home modification to improve accessibility, an accessibility study is great evidence.

Emails are OK if you can print them out and they have some kind of logo or the medical professional includes their title and relevant licensing info in the signature block at the end of the email.

Sometimes your child's long-term care functional screen report can help the judge understand why your child may need a service. For example, the functional screen report might show that your child runs away often. This is good information if you are trying to get the county to approve a fence for your backyard.

It is also a good idea to be familiar with the CLTS Policy that applies to whatever service it is you are trying to get. The CLTS Waiver Manual contains the service definitions and coverage criteria for all the CLTS services. Here is the link to that Manual:

www.dhs.wisconsin.gov/publications/p02256.pdf. The service definitions are in Chapter 4 (Section 4.6). You may want to print off the pages that relate to the service you seek and provide a copy to the Judge.

After you've gathered all that information, organize it, and then get it to the judge at least two days before the hearing. Because DHA likes to receive things by email, you will need to have access to a scanner. If you don't have a scanner, make sure you plan ahead and have enough time to get documents scanned and emailed to the *Judge*.

Tip

If you have a large number of documents that you want the judge to have, consider numbering them with either a number or a letter, like "Doc. 1" or "Doc. A." This will help you and the Judge quickly find and reference a document while talking on the phone. If you only submit one or two documents, you don't need to bother with this.

Note: Although not required, you should also send the county a copy of documents you sent the judge. It is possible the county will change its decision once it reviews your documents and sees you were right about your child's needs.

If you are going to have a witness (you have the right to call witnesses), you want to either arrange for the witness to be in the same room as you or have a number where the Judge can reach the witness once the hearing starts. Make sure you and the witness talk before the hearing, so you'll know what they're going to say. Prepare a few questions that are aimed at prompting the witness to cover all the information you are expecting them to talk about.

Step 6: The Hearing

On the day of the hearing, you need to have your telephone turned on and charged and be ready to receive the Judge's call. The hearing will likely only take about half an hour and is pretty informal. The judge will get both you and the county on the phone. The Judge will give a little overview of the process. The Judge will then "swear in" you, the county representatives, and any witnesses. The Judge may tell everyone what documents have been received. If he/she doesn't do that, you should ask the Judge if they received the information you sent/mailed. You will also want to make sure the county hasn't sent anything to the Judge that it did not send to you. If the Judge doesn't have what you sent or you don't have what the county sent, you may have to ask to have the hearing rescheduled so that everyone has the same documents. Once all this 'housekeeping' is done the actual hearing will start.

Tip

The judge will probably describe the "issue" for hearing. In a CLTS denial, for example, the issue is "Whether the county correctly denied the Petitioner's request for an outdoor play structure."

Tip

Once the issue is defined, the hearing should focus only on that. If you don't agree with how the judge describes the issue, you should resolve this at the beginning of the hearing. The issue can be confusing, especially if you did not get a notice.

The county goes first and tells the judge why it denied the request or terminated or reduced the service. Listen carefully and take notes. The county isn't supposed to be inventing and offering new reasons that you were not previously aware of. If the county starts doing that you should "object." When you object; you can simply say "this information was never told or provided to me, and I disagree with including it in the hearing." When that person is done with their presentation you can ask them questions. You don't have to, but you can.

Then it is your turn. If you have any witnesses, they should testify. If they aren't right there with you, make sure you have their phone number handy. Give that number to the judge, who will then call the person and conference them into the call. The judge will swear that person in and then you can ask your questions. The county gets to ask your witnesses questions if they choose to. Once all the witnesses have testified, you testify and wrap up the case for the judge. You can remind the judge what all the letters say and then tell the judge anything else you want to. If the county sent a summary letter, make sure you have addressed any point that was included in it.

It's important to stay focused on the issue and be professional; don't get angry or curse — even if the county has said something that makes you upset. When you are done, the county can then ask you any questions. The judge can also ask either you or the county questions at any time. Some judges do, some don't. Once everyone has had their say, the Judge will close the hearing. The Judge will issue a written decision; so you won't find out right away if you won or not. It will usually be several weeks before you receive the decision.

Tip

Having rambunctious children around when you are trying to do the hearing can be a problem. If the hearing is constantly getting interrupted the Judge may get irritated and you will not be able to concentrate on the case. If at all possible, try to make arrangements to have someone take care of your child/children while the hearing is happening. You will need to pay attention on the call and be able to present your case clearly. That can be hard if you are also trying to keep an eye on a child.

Tip

You're going to be nervous, trust me. The way to deal with that is to be prepared. Have a little written outline or notes that include the points you want to cover. It doesn't have to be extremely detailed, just good enough to remind you what points you want to make and remind you to say them. If you have a witness, do a separate outline that reminds you what points you need the witness to cover and/or questions you need to ask them. If the witness forgets a piece of important information, the outline will make sure you remember it and then you can ask the appropriate follow-up question to get your witness to discuss that point as well. Try to give the witness a copy of your notes or questions in advance.

Step 7: The Decision

Several weeks after the hearing you will get a written decision in the mail telling you if you won. If you win — celebrate! If you lose, the decision will tell you what your appeal rights are.

Good Luck! You can do this!

Step By Step Checklist

- Receive Notice** (or verbal denial) — decide if you want to appeal.
- File your appeal** by mail, fax, or as an attachment to an email before the deadline. File before the effective date if you want to ask to have your child's benefits continue.
- Receive acknowledgement** of your request.
- Receive Notice of Hearing** — the notice tells you the date and time of the hearing and who the Judge will be.
- Receive County CLTS agency Summary letter** — you may or may not get one of these.
- Prepare for the hearing** — gather evidence and decide if you need any witnesses.
- Submit documents and tell the Judge your phone number** — Email copies of any paper documents you want the judge to have; call the Judge and tell them what number they should call to reach you — do this at least two days before the hearing.
- Participate in the hearing** — be ready for the judge's call, have witnesses ready to be called by the judge.
- Receive the decision** — usually 2 weeks to two months later.

Sample Hearing Request Form

[Today's Date]

Division of Hearings and Appeals
4822 Madison Yards Way
5th Floor North
Madison, WI 53705-9100

[Via Fax at: (608) 264-9885]

[Via Email at: DHAMail@wisconsin.gov]

Re: [Child's Name]-DOB: [xx/xx/xxxx]

Dear DHA,

I, [parent name], on behalf of my child, [child's name], wish to appeal the decision by [County name] CLTS to [briefly describe what the county has denied – you may be able to quote directly from the notice you received]. That decision was communicated to me in a notice dated [date of notice and/or verbally on this date or email on this date]. I disagree with the County's decision. I believe my child needs the service. A copy of the notice from the County is attached.

Please send me all notices and documents related to this hearing. My contact information is below. Thank you.

Sincerely,

[parent signature]

[parent mailing address]

[parent telephone]

[parent email address-if there is one]

enc County Notice-add this if you have a notice and/or email denial, etc.