

Quick Overview of the Division of Hearings and Appeals Hearing Process in Children's Long-Term Support Service Cases

This resource material is intended as a self-advocacy guide for people with disabilities. Nothing written here shall be understood to be legal advice. For specific legal advice, please contact an attorney.

Introduction

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 Children's Long-Term Support program has wrongfully denied a service to your child. You also have the right to appeal if the Children's Long-Term Support 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 factsheet is a step-by-step guide to the appeal process.

Step 1: Appeal

The county must send you a notice whenever it denies, reduces, 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.

Although required, the county does not always send a notice when they deny, reduce, or only partially approve an item. These denials or reductions often happen causally in discussions with your case manager. Even if no official notice is sent out, you still have the right to appeal. (See Tip 3 on page 4 for more information).

There is no official form for appealing a Children's Long-Term Support decision. You can use the general Request for Hearing Form on the Division of Hearings and Appeals' website:

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

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 a copy of the notice you got from the county to your appeal. That makes it easier for the Division of Hearings and Appeals to process your appeal correctly. A sample appeal letter is attached to this guide on page 14.

You can either mail, email, or fax your appeal to the Division of Hearings and Appeals. 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 the Division of Hearings and Appeals misplaces it. 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 your appeal 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 delete the methods you didn't use.

Tip 1

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 2

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 3

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 they were 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 the Division of Hearings and Appeals, just as you would if you had received a notice.

Step 2: Division of Hearings and Appeals 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 the Division of Hearings and Appeals (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 to 5 weeks from when you submitted 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 them 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 them what phone number they should call to reach you on the day of the hearing.

Tip 4

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 5

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.

Gathering Documentation

If you are requesting a medically related service, such as respite or a certain type of therapy, you will want to get something in writing from a doctor or other medical professional (i.e. Nurse Practitioner (NP), Occupational Therapist (OT), Physical Therapist (PT), or Speech-Language Pathologist (SLP)) that explains — in as much detail as possible — why the particular service is needed for your child. In cases involving items or equipment, this letter would explain why a particular item is needed for your child, and why any other proposed item would be inappropriate based on the child's medical and behavioral needs.

Emails are acceptable 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 can help the judge understand why your child may need a service. For example, the functional screen 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 Children's Long-Term Support Policy that applies to whatever service it is you are trying to get. The Children's Long-Term Support Waiver Manual contains the service definitions and coverage criteria for all the Children's Long-Term Support services.

Here is the link to that Manual:

www.dhs.wisconsin.gov/publications/p02256.pdf

The service definitions are in 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 the information and then get it to the judge at least two days before the hearing. Because the Division of Hearings and Appeals 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 6

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.

Witnesses

You have the right to call witnesses. If you are going to have a witness, you want to either arrange for the witness to be in the same room as you or have a number 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 fairly 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 they don't do that, you should ask the Judge if they received each piece of information you sent or emailed. 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 7

The judge will probably describe the "issue" for hearing.

For example, in a Children's Long-Term Support denial, the issue is "Whether the county correctly denied the Petitioner's request for an outdoor play structure."

Tip 8

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 the county's representative is done talking, 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 there in-person 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 9

Having lots of background noise 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, or you will not be able to concentrate on the case.

If at all possible, try to make arrangements to be in a quiet space while the hearing is happening. You will need to pay attention on the call and be able to present your case clearly.

Tip 10

The way to deal with nerves 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 yourself what points you want to make.

If you have a witness, do a separate outline that reminds you what points you need the witness to cover and questions you need to ask them. As they are speaking, check off each covered item on your list. 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 lose, the decision will tell you what your appeal rights are.

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 Appeal Hearing Request Letter

[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.]