



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]

DECISION

MKB/143262

PRELIMINARY RECITALS

Pursuant to a petition filed March 26, 2012, under Wis. Stat., §49.45(5), to review a decision by the Disability Determination Bureau (DDB) to deny disability for Medical Assistance (MA) purposes, a hearing was held on September 20, 2012, by telephone.

The issue for determination is whether petitioner is disabled for Katie Beckett MA purposes.

PARTIES IN INTEREST:

Petitioner:

[REDACTED]

Respondent:

Department of Health Services
1 West Wilson Street, Room 651
Madison, Wisconsin 53703

By: No Appearance
Disability Determination Bureau
722 Williamson St.
Madison, WI 53703

ADMINISTRATIVE LAW JUDGE:

Brian C. Schneider
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner is a 10-year-old resident of Brown County.
2. An application for Katie Beckett MA was filed on petitioner's behalf on November 11, 2011. By a letter dated February 10, 2012, the DDB found that petitioner was not disabled. Petitioner requested reconsideration, but the DDB affirmed the determination on August 15, 2012.

3. Petitioner is diagnosed with Asperger's Syndrome, attention deficit hyperactivity disorder (ADHD), and oppositional defiant disorder (ODD). He has social impairments and impairments with activities of daily living. He has impairments with concentration and persistence, but less so when he is on his ADHD medication. He is in his age appropriate grade in school.

DISCUSSION

The purpose of the "Katie Beckett" waiver is to encourage cost savings to the government by permitting disabled children, who would otherwise be institutionalized, to receive MA while living at home with their parents. Sec. 49.47(4)(c)1m, Wis. Stats. The agency is required to review Katie Beckett waiver applications in a five-step process. The first step is to determine whether the child is age 18 or younger and disabled. The remaining four steps are whether the child requires a level of care that is typically provided in a hospital, nursing home, or ICF-MR, assessment of appropriateness of community-based care, costs limits of community-based care, and adherence to income and asset limits for the child.

Current standards for childhood disability were enacted following the passage of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996. The current definition of a disabling impairment for children is as follows:

If you are a child, a disabling impairment is an impairment (or combination of impairments) that causes marked and severe functional limitations. This means that the impairment or combination of impairments:

- (1) Must meet or medically or functionally equal the requirements of a listing in the Listing of Impairments in appendix 1 of Subpart P of part 404 of this chapter, or
- (2) Would result in a finding that you are disabled under § 416.994a.

20 C.F.R. §416.911(b). §416.994a referenced in number (2) describes disability reviews for children found disabled under the prior law.

The process of determining whether an individual meets this definition is sequential. See 20 C.F.R. §416.924. First, if the claimant is doing "substantial gainful activity", he is not disabled and the evaluation stops. Petitioner is not working, so he passes this step.

Second, physical and mental impairments are considered to see if the claimant has an impairment or combination of impairments that is severe. If the impairment is a slight abnormality or a combination of slight abnormalities that causes no more than minimal functional limitations, it will not be found to be severe. 20 C.F.R. §416.924(c). Petitioner was determined to meet this step.

Next, the review must determine if the claimant has an impairment(s) that meets, medically equals or functionally equals in severity any impairment that is listed in appendix 1 of subpart P of Part 404 of the regulations. I reviewed listing nos. 112.10 for Autistic Disorder and 112.11 for ADHD. To be eligible under both listings the child must have marked impairments in two of the following: cognitive/communicative functioning, social functioning, personal functioning, and maintenance of concentration, pace, and persistence. If the child does not meet a listing, the review moves to the next step. I will move there immediately because the next step incorporates the listing areas but adds two additional areas (motor control and physical health).

If a child does not meet or equal the Listings, the last step of the analysis is the assessment of functional limitations as described in sec. 416.926a of the regulations. This means looking at what the child cannot do because of the impairments in order to determine if the impairments are functionally equivalent in severity to any listed impairment. The child must have marked impairments in two of the following six domains: (1)

cognitive/communicative functioning, (2) maintaining concentration, persistence, and pace, (3) social functioning, (4) motor control, (5) personal functioning, and (6) physical health. To be found disabled, the child must have marked limitations in two of the six areas, or an extreme limitation in one of the areas. 20 C.F.R. §416.926a(b)(2).

"Marked" limitation and "extreme" limitation are defined in the regulations at 20 C.F.R. §416.926a(e). Marked limitation means, when standardized tests are used as the measure of functional abilities, a valid score that is two standard deviations below the norm for the test (but less than three standard deviations). For children from ages three to age eighteen, it means "more than moderate" and "less than extreme". The regulation provides that a marked limitation "may arise when several activities or functions are limited or even when only one is limited as long as the degree of limitation is such as to interfere seriously with the child's functioning." In comparison, "extreme" limitation means a score three standard deviations below the norm or, for children ages three to age eighteen, no meaningful function in a given area.

Petitioner was found by the DDB to have less than marked limitations in domain 3 and 5, with no limitations in domains 1, 2, 4, and 6.

Petitioner's mother testified that he has limitations in domain 2, but with medications any limitations in that domain would be less than marked. Petitioner's teacher (██████████) noted that he could perform activities with quiet and structure, and that he would get off-task if there was noise or a break from routine. I could make a finding of less than marked limitation on that description, but not a marked limitation.

The same teacher noted limitations in social functioning and in personal functioning, but the ratings were mainly in the 2-3 range on the 1-5 scale, and the problems typically occurred weekly or even monthly. Again, those scores would not rise to the level of a marked impairment. Other teacher's reports were similar, with some differences in rating and frequency. The worst scenario was described by petitioner's mother, and her ratings reflect her testimony that petitioner is worse at home than in school.

All of these questionnaires were reviewed by the DDB in making the disability determination. The DDB expert concluded that petitioner did not have a marked limitation in any of the six domains, and the evidence at the hearing is not sufficient to rebut the finding. The DDB reviewer is an expert in these determinations. I have reviewed the documents and find no obvious errors in the DDB determination. I have to accept that finding without any similar expert finding to the contrary.

CONCLUSIONS OF LAW

The DDB correctly determined that petitioner is not disabled because his impairments are not sufficiently limiting to meet the requirement that he have marked limitations in at least two areas of functioning.

THEREFORE, it is

ORDERED

That the petition for review herein be and the same is hereby dismissed.

REQUEST FOR A REHEARING

This is a final administrative decision. If you think this decision is based on a serious mistake in the facts or the law, you may request a rehearing. You may also ask for a rehearing if you have found new evidence which would change the decision. Your request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and tell why you did not have it at your first hearing. If you do not explain these things, your request will have to be denied.

To ask for a rehearing, send a written request to the Division of Hearings and Appeals, P.O. Box 7875, Madison, WI 53707-7875. Send a copy of your request to the other people named in this decision as "PARTIES IN INTEREST." Your request for a rehearing must be received no later than 20 days after the date of the decision. Late requests cannot be granted.

The process for asking for a rehearing is in Wis. Stat. § 227.49. A copy of the statutes can be found 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 appropriate court no more than 30 days after the date of this hearing decision (or 30 days after a denial of rehearing, if you ask for one).

For purposes of appeal to circuit court, the Respondent in this matter is the Department of Health Services. After filing the appeal with the appropriate court, it must be served on the Secretary of that Department, either personally or by certified mail. The address of the Department is: 1 West Wilson Street, Room 651, Madison, Wisconsin 53703. A copy should also be sent to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400.

The appeal must also be served on the other "PARTIES IN INTEREST" named in this decision. The process for appeals to the Circuit Court is in Wis. Stat. §§ 227.52 and 227.53.

Given under my hand at the City of Madison,
Wisconsin, this 26th day of September, 2012

Brian C. Schneider
Administrative Law Judge
Division of Hearings and Appeals

c: Bureau of Long -Term Support - email
Department of Health Services - email



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The preceding decision was sent to the following parties on September 26, 2012.

Bureau of Long-Term Support
Division of Health Care Access and Accountability