



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

In the Matter of

[REDACTED]

DECISION

MKB/143321

PRELIMINARY RECITALS

Pursuant to a petition filed August 21, 2012, under Wis. Stat. § 49.45(5), and Wis. Admin. Code § HA 3.03(1), to review a decision by the Bureau of Long-Term Support in regard to Medical Assistance, a hearing was held on September 19, 2012, at Chippewa Falls, Wisconsin.

The issue for determination is whether the Bureau correctly denied the petitioner's application for the Katie Beckett program because she is not functionally eligible.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]

Respondent:

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

By: Peg Corp, R.N.
Bureau of Long-Term Support
1 West Wilson
Madison, WI

ADMINISTRATIVE LAW JUDGE:

Michael D. O'Brien
Division of Hearings and Appeals

FINDINGS OF FACT

1. The petitioner is a resident of Chippewa County.
2. The petitioner applied for Medicaid through the Katie Beckett program on May 30, 2012. The Department denied his request on July 24, 2012.

3. The petitioner is a six-year-old boy diagnosed with developmental delays, hyperactivity, inattentive behavior, and hypotonia.
4. As of March 2011, the petitioner's full scale IQ was 77, his verbal IQ was 81, and his performance IQ was 86. His receptive language score was 61 and his expressive language score 71 on the Clinical Evaluation of Language Fundamentals. He does not function at the grade level of his peers in several areas, including writing his name, counting, and reciting the alphabet.
5. The petitioner has an aide throughout the day at school because he gets distracted easily. He has trouble keeping his hands to himself at school.
6. The petitioner must be reminded what to do while bathing because of his short attention span. He has difficulty remembering sequences of events. He dresses, eats, grooms himself, uses the toilet, moves about, and transfers himself without assistance.

DISCUSSION

The Bureau of Long-Term Support denied the petitioner's medical assistance benefits through the Katie Beckett Waiver because it contends that he does not meet the required level of care standard. To qualify, a child must be part of one of the target groups: children with developmental disabilities, physical disabilities, or severe emotional disturbances. *Medicaid Home & Community-Based Services Waivers Manual*, § 2.02D.

Eligibility depends first upon being found disabled by the Disability Determination Bureau and next upon meeting one of the levels of care: The Hospital and Nursing Home care levels are available for people with physical impairments. The SED (severe emotional disturbance) level is available for those requiring psychiatric hospitalization, and the ICF/DD1 and ICF/DD2 care levels are for individuals who suffer from mental retardation or a developmental disability. The petitioner is a 6-year-old boy diagnosed with developmental delays, hyperactivity, inattentive behavior, and hypotonia. I can find no evidence in the file that he has been found disabled but will assume that he has been because the Department has discussed only whether he meets on of the level of care criteria.

To meet the hospital level of care he must meet all three of the following criteria:

1. The child needs **Frequent and Complex Medical Care** that require the use of equipment to *prevent life-threatening situations*;
2. The child's complex skilled medical interventions are expected to persist for specific **Duration** of time; and
3. The child's overall health condition must require **Continuous Assessment of an Unstable and Life-Threatening Condition**.

Institutional Levels of Care. Children's Long Term Support Program in Wisconsin. P.29 (emphasis in original)

Frequent and complex care requires skilled medical care multiple times a day and must include one the following items: tracheostomy care, ventilator care, IV access, Oxygen, total parenteral nutrition, or dialysis. *Id.* The petitioner does not qualify for this level because he does not require any skilled medical care.

To meet the basic nursing home criteria the child must have

a long-term medical or physical condition, which significantly diminishes his/her functional capacity and interferes with the ability to perform age appropriate activities of daily living at home and in the community. This child requires an extraordinary degree of daily assistance from others to meet everyday routines and special medical needs. The special medical needs warrant skilled

nursing interventions that require specialized training and monitoring that is significantly beyond that which is routinely provided to children. *The intensity and frequency of required skilled nursing interventions must be so substantial that without direct, daily intervention, the child is at risk for institutionalization within a nursing home.*

Id., p.22. (emphasis in original)

The petitioner has some problems with fine motor coordination but he dresses, eats, grooms himself, uses the toilet, moves about, and transfers himself without assistance. He has some problems with bathing, but this has to do with a short attention span rather than any physical limitation. He does not require any direct, daily skilled nursing intervention. Therefore, he does not meet the hospital or nursing home care levels available for people with physical impairments.

To qualify for a severe emotional disturbance, a person must meet all four of the following criteria:

1. The child has a **Diagnosis** of a mental health condition; and
2. The child's mental health diagnosis or symptoms related to the diagnosis have existed and are expected to persist for a specific **Duration** of time; and
3. The child is in need of **Involvement with Service Systems** related to mental health support; and
4. The child exhibits **Severe Symptomology or Dangerous Behaviors** at a specific intensity and frequency of required interventions such that without this direct, daily community-based intervention, the child is at risk for institutionalization within a psychiatric hospital.

Institutional Levels of Care, Children's Long Term Support Programs In Wisconsin . p.8 (emphasis in original). The severe symptomologies required by the last criterion include psychotic symptoms, suicidality, violence, and anorexia or bulimia. Dangerous behaviors include high risk behaviors, self-injurious behaviors, aggressive and offensive behaviors, and lack of behavioral controls. *Id.*, p.15. The petitioner has been diagnosed with hyperactivity and inattentive behavior. He has trouble keeping his hands off from others and requires an aide throughout the day at school. But he does not exhibit any of the severe symptomologies or dangerous behaviors required to meet this standard of care.

To qualify for a developmental disability, he must be diagnosed with a cognitive disability such as mental retardation or a similar diagnosis. *Id.*, p.3. He must next show either that he has at least a "30% delay in intellectual functioning, based on valid, standardized and norm referenced measures of aggregate intellectual functioning" or falls at least two standard deviations below the mean "on valid, standardized and norm referenced measures of aggregate intellectual functioning. *Id.* P.4. Generally, each standard deviation on a 100-point test is 15 points, so he would have to have a score of 70 or less to be at least two standard deviations below the mean. He has significant deficits in language: His receptive language score was 61 and his expressive language score 71 in March 2011. But there are no tests indicating that his *aggregate* intellectual functioning is delayed at least 30% or falls at least two standard deviations below the mean. When last measured in March 2011, his full scale IQ was 77, his verbal IQ 81, and his performance IQ 86. Because none of these scores fall two standard deviations below the norm, I must find that he does not have a developmental disability. This means that he does not meet any of the required levels of care. Therefore, he does not qualify for medical assistance under the Katie Beckett Waiver.

CONCLUSIONS OF LAW

The petitioner does not require the level of care necessary to be eligible for medical assistance under the Katie Beckett Waiver.

THEREFORE, it is

ORDERED

The petitioner's appeal is 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 served and 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, 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 1st day of November, 2012

Michael D. O'Brien
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

David H. Schwarz
Suite 201
5005 University Avenue
Madison, WI 53705-5400

Telephone: (608) 266-3096
FAX: (608) 264-9885
email: DHAmail@wisconsin.gov
Internet: <http://dha.state.wi.us>

The preceding decision was sent to the following parties on November 1, 2012.

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