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

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In the Matter of

[REDACTED]

DECISION

MKB/143550

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**PRELIMINARY RECITALS**

Pursuant to a petition filed June 27, 2012, under Wis. Stat. § 49.45(5), and Wis. Admin. Code § HA 3.03(1), to review a decision by the Outagamie County Department of Human Services in regard to Medical Assistance, a hearing was held on October 01, 2012, at Appleton, Wisconsin.

The issue for determination is whether petitioner is disabled for the purposes of the Katie Beckett waiver Program.

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: No Appearance

Outagamie County Department of Human Services  
401 S. Elm Street  
Appleton, WI 54911-5985

**ADMINISTRATIVE LAW JUDGE:**

John P. Tedesco  
Division of Hearings and Appeals

**FINDINGS OF FACT**

1. Petitioner is a resident of Outagamie County.

2. Petitioner has been receiving Katie Beckett Waiver Program services for a period going back to at least 2009.
3. He has benefitted by these services and has shown significant improvement.
4. The Disability Determination Bureau issued a finding on no disability on June 1, 2012.
5. Petitioner filed a timely appeal.

### DISCUSSION

The purpose of the "Katie Beckett" waiver is to encourage cost savings to the government by permitting children under age 18, who are totally and permanently disabled under Social Security criteria, to receive MA while living at home with their parents. Wis. Stat., §49.47(4)(c)1m. The Bureau of Developmental Disabilities Services 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 disability determination is made for the Bureau by DDB. If the child clears this hurdle, the second step is to determine whether the child requires a level of care that is typically provided in a hospital, nursing home, or ICF-MR. The remaining three steps are assessment of appropriateness of community-based care, costs limits of community-based care, and adherence to income and asset limits for the child.

“Disability” is defined as an impairment or combination of impairments that substantially reduces a child’s ability to function independently, appropriately, and effectively in an age -appropriate manner, for a continuous period of at least 12 months. Katie Beckett Program Policies and Procedures Manual, page 32. 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 passed 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. The DDB found that petitioner does not meet the listings. I reviewed listing nos. 112.10 for Autistic Disorder. To be eligible under this listing the child must have medically

documented findings of qualitative deficits in social interaction, verbal and nonverbal communication, and imaginative activity, and a markedly restricted repertoire of activities and interests. There also must exist 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) social functioning, (3) personal functioning, (4) maintaining concentration, persistence, and pace, (5) motor control, 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.

The DDB found that petitioner has either no limitation or less than a marked limitation in all six areas.

Cognitively, petitioner is in special-ed classes but is only minimally behind grade level. He had borderline to low-average IQ scores. His teachers indicate he is smart but needs structure and routine. He enjoys reading and computers.

Socially petitioner prefers to play alone, although he gets along well enough in play with others. While he has some delay, his speech is understandable. His behavior is more age-appropriate than it has been in previous years.

The impairment in personal functioning is that petitioner needs to be reminded to carry out tasks, and requires structure and routine. He is able to toilet himself when at school and no longer has accidents.

Concentration is an issue but petitioner does well when in a structured environment that provides him routine. He also benefits from having breaks in tasks.

Motor control problems included undeveloped fine motor skills and issues with carrying things, but overall he is able to function with motor control

Petitioner's physical health has improved and is on medication. His Hirschsprungs Disease is described as well-controlled.

Petitioner's mother appeared at the hearing and argued that the "Katie Beckett [Program] would be of great benefit for him with his disability." She describes an incident that happened recently in which petitioner had a "meltdown" and took 30 -45 minutes to calm down to the point that he could return to class. She agreed that petitioner has improved, but she states that it is not enough. Katie Beckett is a medical assistance program that provides care to many children. As a medical assistance program, it must have eligibility standards. The standards are not centered around whether the program can provide benefit for the child, or whether there is still more to be accomplished to achieve some ideal goals. The program has specific criteria that determine who receives services under the waiver.

The records show that petitioner has improved. There are concerns that petitioner might begin to have problems again as he grows and his medication dosages need to change, but I have to look at petitioner's situation now. I cannot make a determination based upon guessing what will happen in the future. I must review the Department decision from June 1, 2012. **If things have worsened, if things worsen in the future, or if petitioner gets new information that the Department has not considered, a new application for Katie Beckett MA can always be filed** , and it could be acted upon quickly because the program already has petitioner's history. At this point I must conclude that the DDB's determination was correct. There is insufficient evidence in the record, particularly in the testimony provided by petitioner's mother, to show that petitioner's impairments are more limiting than found by the DDB experts who review these cases regularly.

#### CONCLUSIONS OF LAW

The DDB correctly determined that petitioner no longer is disabled.

**THEREFORE, it is**

**ORDERED**

That the petition for review 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, 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 15th day of October, 2012

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John P. Tedesco  
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 October 15, 2012.

Outagamie County Department of Human Services  
Bureau of Long-Term Support  
Division of Health Care Access and Accountability