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

In the Matter of

[REDACTED]

DECISION

MKB/143800

PRELIMINARY RECITALS

Pursuant to a petition filed July 18, 2012, under Wis. Stat. § 49.45(5), and Wis. Admin. Code § HA 3.03(1), to review a decision by the Disability Determination Bureau (DDB) in regard to Medical Assistance (MA), a telephonic hearing was held on October 09, 2012, at Racine, Wisconsin. The record was held open 5 days to allow petitioner's representatives time to submit additional information to this ALJ, which was received.

The issue for determination is whether the Disability Determination Bureau (DDB) correctly determined that the petitioner is not a disabled child for MA-Katie Beckett purposes.

There appeared at that time and place the following persons:

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:

Kelly Cochran
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner is a resident of Racine County. She lives with her parents and two-year-old sister in the community.
2. On April 19, 2012 petitioner applied for Katie Beckett MA. By a letter dated July 5, 2012 the DDB found that petitioner was not disabled. Petitioner sought reconsideration, but the DDB affirmed its determination on or about September 13, 2012. Petitioner's file was then forwarded to the Division of Hearings and Appeals for this appeal.
3. DDB determined that the petitioner is not disabled because, although her impairment is "severe," it does not meet, medically equal, or functionally equal the severity of a listed impairment. More specifically, her impairment allegedly does not cause sufficiently marked and severe functional limitations.
4. The petitioner, age 8, is diagnosed with bipolar disorder, oppositional defiant disorder (ODD), attention deficit hyperactivity disorder (ADHD), and anxiety. She has been on medication for her mental health needs, with various attempts on different medications.
5. *Listing 112 Criteria:* The petitioner's condition does not meet the Listing criteria for §112.04 (Mood Disorders), §112.08 (Personality Disorders) or §112.011 (Attention Deficit Hyperactivity Disorder).
6. In the domain of acquiring and using information, the petitioner has no limitation. The petitioner does grade level work in all of her academics, but has had some problems when not taking her ADHD medication.
7. In the domain of attending and completing tasks, the petitioner has a less than marked limitation. She is able focus, organize and complete work without distracting herself and others without significant problems when she is taking her ADHD medication. Without medication, she has obvious problems with this domain.
8. In the domain of interacting and relating with others, the petitioner has a "less than marked" limitation. When she is on her ADHD medication, her problems with maintaining friendships, playing cooperatively, respecting personal space, speaking too loud and fast, and responding to negative or positive feedback, are better controlled and without serious problems.
9. In the domain of moving about and manipulating objects, the petitioner has no limitations.
10. In the domain of caring for herself, the petitioner has a "less than marked" limitation. She can care for herself in an age-appropriate manner but may need some reminders and supervision. Mood swings and tantrums are noted in the home but not at school. When she is on her medication, there are no noted serious problems in the home or at school.
11. In the domain of health and physical well-being, the petitioner has no physical disabilities. No vision concerns have been noted. The petitioner concedes that she has no limitations in this domain. She did have some problems with blood sugar elevation, however, that issue was resolved when she switched to a different ADHD medication.

DISCUSSION

The petitioner desires to be found eligible for MA services. As a condition of eligibility, she must be found "disabled," at the level required for federal SSI eligibility.

I. DEFINITION OF CHILDHOOD DISABILITY.

To be considered a disabled person, an applicant must meet the tests used by the Social Security Administration to determine disability for Supplemental Security Income (SSI) benefits. For SSI purposes, a disabled child must have a medically determinable physical or mental impairment, or combination of impairments, that causes marked and severe functional limitation, and that can be expected to last for at least a year. See 20 C.F.R. §416.906. More specifically, 20 C.F.R. §416.911(b) declares:

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, medically equal, or functionally equal the requirements of the listings, [appendix 1 of Subpart P of 20 C.F.R. Part 404], or (2) Would result in a finding that you are disabled under sec. 416.994a...[§416.994a pertains to a child who has been previously found to be disabled by DDB].

A sequential process is used to apply these definitions to a specific case. 20 C.F.R. §416.924. The first test in the sequence is whether the claimant is performing “substantial gainful activity.” Because the petitioner is not working, she passes this first test.

The second sequential test is whether 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 is not severe. 20 C.F.R. §416.924(c). The Disability Determination Bureau (DDB) has conceded that the petitioner’s impairment is severe, so she passes the second test.

The third sequential test element is the heart of the dispute here. The third test considers whether the child 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 (Listings). 20 C.F.R. §416.924(d). DDB determined that the petitioner did not meet this requirement, and that she is therefore not disabled for SSI/MA purposes.

II. THE PETITIONER’S CONDITION DOES NOT *MEET* OR *MEDICALLY EQUAL* THE LISTINGS AT SECTION 112.

There is a specific section of the Listings – sec. 112. - that deals with mental health diagnoses. That section can be viewed online at www.ssa.gov/disability/professionals/bluebook/112.00-MentalDisorders-Childhood.htm. The evidence does not show that petitioner meets the specific Listing criteria. The next question is whether she *functionally equals* an appropriate Listing standard.

III. THE PETITIONER’S CONDITION DOES NOT *FUNCTIONALLY EQUAL* THE SECTION 112 LISTINGS.

The Listings describe impairments that are significant enough to cause "marked and severe" functional limitations. This phrase is a term of art in children’s disability rules. In general, a child’s impairment(s) is of "listing-level severity" if it results in “marked” limitations in two broad areas of functioning, or “extreme” limitations in one such area. See 20 C.F.R. §416.925.

"Marked" and "extreme" limitation are defined 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). Or, for children from age three to age eighteen, it means "more than moderate" and "less than extreme." Expressed another way, a marked limitation seriously interferes with a child’s day -to-day functioning. Marked limitations must be present in two “domains.”

In comparison, "extreme" limitation means a score three standard deviations below the norm or, for children age three to age eighteen, no meaningful function in a given area. See 20 C.F.R. §416.926a(e)(3). Fortunately, the petitioner does not have the extreme limitation of "no meaningful function" in a given area.

To return to a discussion of whether the petitioner has "marked" limitations in two domains, the SSI rule identifies six domains to be reviewed: (1) Acquiring and using information, (2) Attending and completing tasks, (3) Interacting and relating with others, (4) Moving about and manipulating objects, (5) Caring for yourself, and (6) Health and physical well-being. See 20 C.F.R. §416.926a(b)(1). I conclude that, although the petitioner has some limitations in multiple domains, the petitioner does not have a *marked* limitation in any domain.

In the domain of acquiring and using information, the petitioner has no limitation. The petitioner does grade level work in all of her academics, but has had some problems when not taking her ADHD medication. I must agree that the facts do not show that she has a marked limitation in this domain. In the domain of attending and completing tasks, the petitioner has a less than marked limitation. She is able focus, organize and complete work without distracting herself and others without significant problems when she is taking her ADHD medication. Without medication, she has obvious problems with this domain, especially as noted by her teacher with respect to organization. In the domain of interacting and relating with others, the petitioner has a "less than marked" limitation. When she is on her ADHD medication, her problems with maintaining friendships, playing cooperatively, respecting personal space, speaking too loud and fast, and responding to negative or positive feedback, are better controlled and without serious problems. Her parents report this as the domain in which she has the most difficulty. She is described as having 2 new friends, but parent reports expect those friendships to end shortly based on past practice in which she gets too bossy, interrupts talking, gets stuck on what is fair, and ends in tears and/or yelling. She is involved weekly at school with her counselor there and in a friendship group there. No reports show that her limitations here involve marked limitations to the degree that she is running away, physically aggressive, or so shut down so as to avoid any eye contact or social interaction. In the domain of moving about and manipulating objects, the petitioner has no limitations. In the domain of caring for herself, the petitioner has a "less than marked" limitation. She can care for herself in an age - appropriate manner but may need some reminders and supervision. Mood swings and tantrums are noted in the home but not at school. When she is on her medication, there are no noted serious problems in the home or at school. In the domain of health and physical well-being, the petitioner has no physical disabilities and no vision concerns have been noted. She did have some problems with blood sugar elevation, however, that issue was resolved when she switched to a different ADHD medication. It is the attempts at medicating her correctly that appear to have caused or contributed to her problems and limitations, however, it also appears that her current medication is working now to control them substantially.

I have reviewed the extensive case file and the exhibits produced for the hearing, and I must concur with the DDB's determination. I do not mean to minimize petitioner's challenges, but no behaviors have demonstrated two Marked or one Extreme level of limitation. Under these facts, her conditions are not so severe as to functionally render her "disabled" as that term is defined in the Social Security regulations, or as used for MA and/or Katie Beckett purposes. The Bureau correctly determined that the petitioner is not disabled, and denied her MA- Katie Beckett application.

I add, assuming petitioner finds this decision unfair, that it is the long-standing position of the Division of Hearings & Appeals that the Division's hearing examiners lack the authority to render a decision on equitable arguments. See, Wisconsin Socialist Workers 1976 Campaign Committee v. McCann, 433 F.Supp. 540, 545 (E.D. Wis.1977). This office must limit its review to the law as set forth in statutes, federal regulations, and administrative code provisions.

CONCLUSIONS OF LAW

That petitioner is not disabled as that term is defined for Katie Beckett MA purposes.

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 Milwaukee,
Wisconsin, this 22nd day of October, 2012

Kelly Cochrane
Administrative Law Judge
Division of Hearings and Appeals

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



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

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The preceding decision was sent to the following parties on October 22, 2012.

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