



FH

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

██████████
c/o ██████████ and ██████████
██████████
██████████

DECISION

MKB/144407

PRELIMINARY RECITALS

Pursuant to a petition filed October 11, 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 November 28, 2012, at Sturgeon Bay, Wisconsin regarding petitioner's appeal of the denial of his July 30, 2012 Katie Beckett application due to not meeting the Level of Care requirement. See Exhibit 1 (September 14, 2012 denial notice). The petitioner's mother represented ██████████ at the hearing.

During that hearing, Mrs. ██████████ requested that the record be held open for about one month for the submission of additional evidence to the Division of Hearings and Appeals (DHA), and then for that information to be sent to the Katie Beckett Bureau to review the new evidence and issue a reconsideration summary.

This Administrative Law Judge (ALJ) sent a January 4, 2013 cover letter to Ms. Bansley at the Bureau of Long Term Support with copies of the following documents: a) a December 11, 2012 three page letter by Dr. George Whetmore, DO; b) a December 17, 2012 letter by Dr. Megan Neuman, M.D.; c) IEP evaluation report; and d) multiple Regular Education Teacher's Reports.

In that same letter, this ALJ request that Ms. Bansley review these documents and letters, and submit a reconsideration summary to me at the Division of Hearings and Appeals by January 21, 2013 regarding petitioner's eligibility under any Level of Care (or combination of levels of care) with a copy of that reconsideration summary to send to petitioner's mother as his representative. Mrs. ██████████ was granted until January 28, 2013 to submit to DHA (with a copy to Ms. Bansley) any response to the reconsideration summary. The Department timely submitted its Reconsideration summary to DHA and petitioner's representative, and is received into the hearing record. However, Ms. ██████████ failed to submit any response to the reconsideration to DHA by the January 28, 2013 deadline or even by the date of this Decision.

The issue for determination is whether the Department correctly denied the petitioner's July 30, 2012 application for the Katie Beckett MA Waiver program due to not meeting the level of care requirement.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[Redacted]
c/o [Redacted]
[Redacted]

Representative:

[Redacted] mother
[Redacted]

Respondent:

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

By: Patsy Bansley, RN consultant
Katie Beckett Program
Bureau of Long-Term Support
P.O. Box 7851
Madison, WI 53707-7851

ADMINISTRATIVE LAW JUDGE:

Gary M. Wolkstein
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner is a 14 year old resident of Door County who resides in a private residence with his parents.
2. On or about July 30, 2012, petitioner’s parents applied on behalf of the petitioner for benefits under the MA Katie Beckett Program.
3. Petitioner is diagnosed with ADHD, Pseudo Intestinal Obstruction, Chronic constipation, colon dysmotility with a diagnosis of migraines and headaches, and placement of a cecostomy tube, major depressive disorder-single episode and anxiety disorder NOS. Petitioner has very little to no intestinal motility which has led to blockage, impacted stool, and some leakage. He had a cecostomy tube placed 6 years ago, and requires cecostomy flushes 3 times per week. The antegrade enemas necessary to empty the colon remain painful, and that pain can be debilitating and lead to repeated school absences and struggles with fatigue and depression.
4. Petitioner is independent in all of his Activities of Daily Living (ADLs) of bathing, grooming, dressing, eating toileting and mobility.
5. The petitioner is scheduled to see his therapist twice per month for the next 6 months for individual psychotherapy and cognitive behavioral therapy to address irritability, depressed mood, eating/sleeping disturbance, fatigue and anxiety.
6. The petitioner attends 8th grade at [Redacted] and takes some special education classes due to his health problems. He has a “504 Accommodation” plan at school which includes frequent bathroom breaks and flexible schedule for testing and make-up work. He is a hard worker and overall is doing well in school.
7. On September 14, 2012, the Department, by the Division of Long Term Care – Katie Beckett Program, issued a letter Notice to the petitioner’s parents informing them that petitioner’s July 30, 2012 Katie Beckett application was denied due to petitioner not meeting the required level of care criteria. See Exhibit 1.

8. Katie Beckett Nurse consultant Patsy Bansley sent a January 15, 2013 reconsideration summary to DHA confirming that while petitioner does have a long term disability and requires one substantial daily nursing intervention (his cecostomy care), [REDACTED] does not have substantial functional impairments in at least **two** areas necessary to meet the Nursing Home or any other Katie Beckett Program Level of Care.
9. The petitioner's representative did not submit any response to the Department's January 15, 2013 reconsideration.

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. Petitioner continues to meet this first standard. 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 agency determined that petitioner does not require this level of care. (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.)

The Department developed a policy manual, issued in January, 1993, which defines and describes childhood care levels. See, Katie Beckett Program Policies and Procedures. The level of care criteria were amended most recently in 2007. There currently are four levels of care: hospital, SED, nursing home, and care facility for the developmentally disabled (ICF-DD). While the four levels essentially remain as defined in 2007, the 1993 Manual is now completely obsolete. The so-called "narratives" for these levels of care have been restated in a new written policy document called the *Institutional Levels of Care – Children's Long Term Support Programs In Wisconsin*, effective January, 2010.

On or about July 30, 2012, petitioner's parents applied on behalf of the petitioner for eligibility under the MA Katie Beckett Program.

The child does not receive any nursing cares other than cecostomy care. He does not meet the hospital level of care. Likewise, there is no diagnosis of severe mental illness other than ADHD, so the Severe Emotional Disturbance (SED) level is not applicable at this time (although there is a pain management issue which results in some depression/anxiety issues for [REDACTED]). Finally, there is no evidence of cognitive impairment, let alone similar to mental retardation, so the ICF-Developmentally Disabled level of care is also not applicable. Therefore, if the child was to be found eligible for the Katie Beckett Program, he would need to meet the nursing home level of care.

To do so, he must meet the standards enumerated in the *Institutional Levels of Care – Children's Long Term Support Programs In Wisconsin*, at pp. 22 -26, as Standard I and Standard II. He clearly does not meet Standard II, which requires "substantial functional limitations in at least 4 of 7 categories for learning, communication, bathing, grooming or dressing, eating, toileting and mobility. At this time, he has substantial functional limitations in intestinal motility and obstruction problems (cecostomy tube needed).

That leaves only Standard I. To meet it, he must demonstrate that he needs and receives at least one skilled nursing intervention from a list therein, that must be performed **daily** and is reasonably expected to continue for at least six months **OR** two skilled nursing interventions or therapeutic interventions, from a list therein, that must be performed at least weekly and expected to continue for at least six months **PLUS** two substantial functional limitations from the list of 7 (different) categories for learning, communication, self care, mobility, severe behavioral issue, or work for children over 16. *Institutional Levels of Care – Children's Long Term Support Programs In Wisconsin*.

The petitioner's representative was unable to establish that he has any **daily** skilled nursing intervention, but does require flushing of his cecostomy three times per week. In reviewing the remaining criteria for substantial functional limitations under this seven category list, there is no evidence of impairment of learning, self cares normal for a 14 year old, mobility, and no severe behavioral issues (other than pain management and resultant depression/anxiety). The work category only applies to minors over 16 years old.

During the hearing, petitioner's mother testified regarding [REDACTED]'s intestinal constipation and obstruction, and resultant pain and mental health depression/anxiety. However, as explained above in the Preliminary Recitals, the record was held open for the petitioner to submit additional medical evidence to establish that the Department incorrectly denied the petitioners' Katie Beckett application. One of the letters submitted was a two page December 11, 2012 letter by Dr. George Whetmore. In that letter, Dr. Whetmore explained that [REDACTED] has a longstanding history of gastrointestinal dysmotility eventually undergoing a cecostomy. [REDACTED] then needed a partial laparoscopic colectomy which subsequently caused infection and scarring. Since those procedures, petitioner has had chronic pain, periodic nausea and vomiting and some weight loss. He also has "anxiety related to adjustment of these medical conditions." Dr. Whetmore indicated that he has concern that [REDACTED]'s "mental health issues will continue to escalate, unless significant intervention occurs, which ultimately puts him at grave risk for need for inpatient placement at a psychiatric facility."

Dr. Megan Neuman's letter explained the petitioner's ongoing problems with constipation, the need for cecostomy flushes three times per week, and the difficulty of dealing with his periodic leaking stool. Dr. Neuman explained that the antegrade enemas necessary to empty the colon remain very painful and unpleasant. Dr. Neuman is concerned that [REDACTED]'s pain can be quite "debilitating, leading to repeated school absences, struggles with fatigue, decreased mood and energy" and affects his mental health.

[REDACTED]'s IEP indicated that his performance in school is generally above average, and that he is personable, polite and intelligent. There is some concern about petitioner appearing withdrawn, his lack of motivation, and being out of school affect his social life. His grades are at grade level, and he has good test taking skills and adequate reading skills. He has a school provided tutor for some of his classes.

The petitioner's parents are very involved, caring parents who are clearly attempting to provide the best medical care for their son. However, petitioner's parents did not submit any response to the Ms. Bansley's January 15, 2013 Reconsideration summary to DHA by the January 28, 2013 deadline or even by the date of this decision. At this time, the petitioner's parents were unable to establish that petitioner meets any level of care for Katie Beckett eligibility. While [REDACTED] does have some nursing needs, he does not have the significant functional impairments or significant developmental delays necessary to meet any level of care for the Katie Beckett Program. Accordingly, based upon the above, I conclude that Department correctly denied the petitioner's July 30, 2012 application for the Katie Beckett MA Waiver program, due to not meeting the level of care requirement.

As dicta, if [REDACTED] develops substantial functional limitation in two categories or his mental health symptoms worsen to meet the psychiatric hospital/ severe emotional disturbance level of care, petitioner's parents may wish to re-apply for Katie Beckett eligibility in the future.

CONCLUSIONS OF LAW

1. Petitioner does not meet any level of care for Katie Beckett Program eligibility at this time.
2. The Department correctly denied the petitioner's July 30, 2012 application for the Katie Beckett MA Waiver program, due to not meeting the level of care requirement.

THEREFORE, it is

ORDERED

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 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 28th day of February, 2013

\sGary M. Wolkstein
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 February 28, 2013.

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