



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]

DECISION

MKB/145750

PRELIMINARY RECITALS

Pursuant to a petition filed December 04, 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 February 19, 2013, at Chippewa Falls, Wisconsin. A hearing scheduled for January 23, 2013, was rescheduled at the petitioner's request.

The issue for determination is whether the petitioner requires the level of care needed to remain eligible for the Katie Beckett 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: Patsy Bansly
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 has been receiving medical assistance under the Katie Beckett Waiver. The Division of Long Term Care notified his parents on October 31, 2012, that he was no longer eligible for the program because he no longer requires the level of care needed to qualify for benefits.
3. The petitioner has no significant emotional disturbances or intellectual problems.
4. The petitioner is a 11-year-old boy diagnosed with hydrocephalus, neurogenic bowel and bladder, and severe spina bifida. He has no feeling below his knees.
5. The petitioner uses a surgically-created moderation to his large intestine to irrigate his bowels. The procedure, which must be performed every other day, requires filling a bag with soap and water and hanging it high enough so that gravity will cause it to empty out. This process takes about 45 minutes. The petitioner still has occasional incontinence, which consists of liquid stools. Because of their consistency, he requires help changing clothes and cleaning up.
6. The petitioner requires catheterization four times a day. He can do this himself but requires reminding.
7. The petitioner's bladder must be flushed every other day . This is done with a catheter inserted into his penis.
8. To relieve fluid pressure on his brain, the petitioner has a shunt that goes from the back of his head, down through the inside of his neck, and through his belly. This shunt has failed and been replaced twice. If a failure is not detected quickly, he could suffer brain damage because of the pressure from fluid buildup.
9. The petitioner is susceptible to sores on his feet because of his lack of feeling there.
10. The petitioner receives no regular nursing care in his home.

DISCUSSION

The Bureau of Long-Term Support seeks to end the petitioner's medical assistance benefits through the Katie Beckett Waiver because it contends that he no longer meets 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 an 11-year-old boy who is a good student and has no significant emotional problems, so he does not qualify under the latter two criteria. He does have significant physical problems that have qualified him for the Katie Beckett program until now. Those include hydrocephalus, neurogenic bowel and bladder, and severe spina bifida. He has no feeling below his knees, has had a shunt placed in his head to relieve fluid buildup, and has had his large intestine surgically modified.

The petitioner walks with AFOs, and occasionally uses a wheelchair. Because he has no feeling below his knees, his feet must be checked frequently for sores. His shunt has been replaced twice and must be closely observed for potential failure because if it does not work for any significant time, fluid buildup could cause brain damage. His bowel program requires that a bag filled with soap and water hanging over his head be attached to his surgically altered large intestine to flush his digestive system. This must be done every other day and takes about 45 minutes each time. Despite this procedure, he still has occasional incontinence,

which consists of liquid stools that are difficult for him to clean up alone. His bladder requires flushing every other day using a catheter inserted in his penis. He also requires normal emptying of his bladder through a catheter that must be changed four times a day. The petitioner can perform these tasks by himself, but, as with most 11-year-old boys, has things he would rather be doing and often forget to do what he is supposed to be doing.

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 has serious problems that require frequent care, but none of this care can be considered complex as that word is defined above because it does not include tracheostomy care, ventilator care, IV access, oxygen, total parenteral nutrition, or dialysis. Nor, despite this frequent care, does he require continuous assessment of an unstable and life-threatening problem. The care he receives is provided competently by his parents, but it is not the type of care one would be placed in a hospital for. Therefore, he does not meet the hospital level of care.

To meet the other level of care that would allow him to remain in the program, the basic nursing home level, he 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)

Again it must be pointed out that the petitioner requires care well beyond that received by most children his age. The record is clear that his parents perform this care well and have had to learn to do things such as catheterizing that most adults cannot do. But these are not the types of tasks that require direct daily intervention by a nurse trained to perform skilled procedures. I find, therefore, that although the petitioner has serious problems that require frequent intervention by his parents—which they have done well, he does not meet the nursing home care levels available for people with physical impairments. 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 Becket 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 6th day of March, 2013

\sMichael D. O'Brien
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 March 6, 2013.

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