



FH

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

In the Matter of

[REDACTED]

DECISION

MKB/145800

PRELIMINARY RECITALS

Pursuant to a petition filed November 27, 2012, under Wis. Stat., §49.45(5), to review a decision by the Disability Determination Bureau (DDB) to deny disability for Katie Beckett Medical Assistance (MA) purposes, a hearing was held on January 17, 2013, by telephone.

The issue for determination is whether petitioner is disabled.

PARTIES IN INTEREST:

Petitioner:

[REDACTED]

Respondent:

Department of Health Services
1 West Wilson Street
Madison, Wisconsin 53703
By: DDB Disability File

ADMINISTRATIVE LAW JUDGE:

Brian C. Schneider
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner is a one-year-old resident of Portage County; she will turn age two in late January, 2013.
2. An application for Katie Beckett MA was filed on petitioner's behalf on July 25, 2012. By a notice dated November 14, 2012, the DDB found that petitioner was not disabled. Petitioner filed a reconsideration request, but the DDB affirmed the denial on December 5, 2012.
3. Petitioner suffered a stroke when she was born. She now has hemiplegia (a form of cerebral palsy) on her left side. She has little fine or gross motor ability with her left hand. She has limitations in her left leg as well, but is learning to walk with an ankle-foot orthotic.

4. Petitioner appears to have no cognitive limitation.

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", she is not disabled and the evaluation stops. Petitioner is not working, so she 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.

The listing for cerebral palsy, no. 111.07, requires a gross anatomical deformity (as referenced to listing 101.02) or a motor dysfunction that results in an extreme disruption of fine and gross movements or gait and station (as referenced to listing 111.06). The DDB found an impairment in motor skills, but not extreme enough to meet the listing because she shows the ability to improve with physical therapy. To meet the listing there must be virtually no use of the particular extremity.

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 had a marked limitation in motor control. I agree, and I cannot find that she has an extreme limitation in that area for the reason discussed above. The DDB found that petitioner has a less than marked limitation in physical health, and I cannot find that his limitation is worse than that. Petitioner has no limitations otherwise, partly because her age does not allow her to be tested. For example, it is difficult to determine how she is functioning in personal cares because all two-year-olds require maximum assistance.

I must conclude that the DDB correctly found petitioner to be not disabled. This does not mean that the result will not change over time; her condition could worsen, although the prognosis now is that she likely will continue to improve her functioning.

CONCLUSIONS OF LAW

Petitioner is not disabled as required for Katie Beckett MA eligibility.

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 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 23rd day of January, 2013

\sBrian C. Schneider
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 January 23, 2013.

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