

FH  
[REDACTED]

STATE OF WISCONSIN  
Division of Hearings and Appeals

---

In the Matter of

[REDACTED]  
[REDACTED]  
c/o [REDACTED] and [REDACTED]  
[REDACTED]  
[REDACTED]

DECISION

MKB/146326

---

**PRELIMINARY RECITALS**

Pursuant to a petition filed January 02, 2013, 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 January 31, 2013, at Appleton, Wisconsin regarding petitioner's appeal of the January 5, 2013 discontinuance of his Katie Beckett eligibility due to no longer meeting the Level of Care requirement. See Exhibit 1 (December 5, 2012 discontinuance notice). The petitioner has received Katie Beckett benefits since April 1, 2012 under the Nursing Home Level of Care (LOC). The petitioner's mother represented [REDACTED] at the hearing.

During that hearing, Mrs. [REDACTED] requested that the record be held open for about two months 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. DHA received the new evidence on April 9, 2013.

This Administrative Law Judge (ALJ) sent an April 9, 2013 cover letter to Ms. Behrend at the Bureau of Long Term Support with copies of the following Exhibits: a) Exhibit 3 - a December 29, 2012 letter by petitioner's parents; b) a March 30, 2013 updated letter by petitioner's parents; and c) a March 21, 2013 letter by Dr. [REDACTED], MD. In that same letter, this ALJ requested that Ms. Behrend review those documents and letters, and submit a detailed reconsideration summary to me at the Division of Hearings and Appeals by April 22, 2013 regarding petitioner's eligibility under Hospital Level of Care or any other Level of Care with a copy of that reconsideration summary to be sent to petitioner's mother as his representative. Mr./Mrs. [REDACTED] were granted until May 2, 2013 to submit to DHA (with a copy to Ms. Behrend any response to the reconsideration summary. Ms. Behrend timely submitted its Reconsideration summary to DHA and petitioner's parents. However, petitioner's parents failed to submit any response to the reconsideration to DHA by the May 2, 2013 deadline or even by the date of this Decision.

The issue for determination is whether the Department correctly discontinued the petitioner's Katie Beckett MA Waiver program eligibility effective January 5, 2013, due to no longer meeting the level of care requirement.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

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

Respondent:

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

By: Barbara Behrend, nurse 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 (CARES # ██████████) is a 7 year old resident of Outagamie County who resides in a private residence with his parents.
2. The petitioner has received MA Katie Beckett Program benefits since April 1, 2012 under the Nursing Home Level of Care.
3. Petitioner was born with congenital hydrocephalus necessitating a ventriculoperitoneal shunt placement shortly after his birth. He is also diagnosed with ataxic cerebral palsy, Still's murmur and seizures. Due to brain abnormalities, he has difficulty following two and three step instructions. He has also difficulty with attentional stamina, and needs prompts to think about what he would do in the next steps for the task. He can be easily distracted, and then relies on adults for re-direction rather than looking at his peers to see what they are doing and getting his cues from them. He was administered the Wechsler Intelligence Scale for Children and was scored 100 on the full scale IQ on November 14, 2011. His IEP states: "██████████'s communication and language skills are age appropriate, with the exception of the lack of peer interaction." He does not meet the Katie Beckett program criteria for communication or learning.
4. Petitioner attended school on an abbreviated school schedule last year due to his fatigue. However, his time at school was increased and in May, 2012 he was scheduled to be a full time student. As a first grader at ██████████ ██████████ ██████████ ██████████, he is attending school full time with an aide to assist him with balance and other issues.
5. Petitioner requires some assistance with certain Activities of Daily Living (ADLs) of the self-cares of bathing, grooming, dressing, and toileting. He is assisted in and out of the tub due to risk of falling. He requires reminder during washing his hands and face and brushing his teeth because at times he cannot remember what to do. ██████████ is independent with eating, mobility

and transferring. He can walk independently (without a wheel chair), but does have challenges due to dizziness and depth perception issues.

6. On December 5, 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 Katie Beckett eligibility would discontinue effective January 5, 2013, due to petitioner no longer meeting the required level of care criteria. See Exhibit 1.
7. Katie Beckett Nurse consultant Barbara Behrend sent an April 12, 2013 reconsideration summary to DHA confirming that petitioner does **not** have a long term disability which requires one substantial daily nursing intervention, but he does have substantial functional impairments in at least **two** areas necessary to meet the Nursing Home or any other Katie Beckett Program Level of Care.
8. The petitioner’s representative did not submit any response to the Department’s April 12, 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 no longer meets 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, Severe Emotional Disturbance (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.

The petitioner has received MA Katie Beckett benefits since April 1, 2012 under the Nursing Home Level of Care.

The child does not receive any regular daily or twice weekly nursing cares at this time. He does not meet the hospital level of care. Likewise, there is no diagnosis of severe mental illness, so the Severe Emotional Disturbance (SED) level is not applicable at this time. Finally, there is no significant 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 does not currently 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 the 3 areas of bathing, grooming/dressing, and toileting. However, if

petitioner was able to establish that he was unable to “tolerate” his current full time student school schedule and needed to significantly reduce his schedule, then he might meet the “learning” functional limitation.

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 or two skilled nursing interventions at least weekly. In reviewing the remaining criteria for substantial functional limitations under this seven category list, there is evidence of his functional impairments in bathing, grooming/dressing, and toileting. The work category only applies to minors over 16 years old.

During the hearing, petitioner’s mother testified regarding [REDACTED]’s many medical, cognitive, and physical problems and limitations as explained in the above Findings of Fact. 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 discontinued the petitioner’s Katie Beckett eligibility as of January 5, 2013. The petitioner submitted December 29, 2012 and March 30, 2013 letters by petitioner’s parents and a March 21, 2013 letter by Dr. [REDACTED] [REDACTED], MD. However, while those letters did provide helpful information regarding petitioner’s problems, those letters did not establish that the petitioner continued to meet a KB level of care for continued eligibility by have a daily skilled nursing intervention or two skilled nursing interventions per week.

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. Behrend’s April 12, 2013 Reconsideration summary to DHA by the May 2, 2013 deadline or even by the date of this decision. At this time, the petitioner’s parents were unable to establish that petitioner continues to meet any level of care for continued Katie Beckett eligibility. While [REDACTED] does have the significant functional impairments, he does not have the necessary nursing needs necessary to meet any level of care for the Katie Beckett Program. Accordingly, based upon the above, I conclude that the Department correctly discontinued the petitioner’s Katie Beckett MA Waiver program eligibility effective January 5, 2013, due to no longer meeting the level of care requirement.

As dicta, if [REDACTED] develops medical needs for daily or twice weekly skilled nursing interventions (or a fourth substantial functional limitation), petitioner’s parents may wish to re-apply for Katie Beckett eligibility in the future.

### **CONCLUSIONS OF LAW**

1. Petitioner no longer meets any level of care for continued Katie Beckett Program eligibility at this time.
2. The Department correctly discontinued the petitioner’s Katie Beckett MA Waiver program eligibility effective January 5, 2013, due to no longer 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 30th day of May, 2013

---

\sGary M. Wolkstein  
Administrative Law Judge  
Division of Hearings and Appeals



**State of Wisconsin\DIVISION OF HEARINGS AND APPEALS**

David H. Schwarz  
Suite 201  
5005 University Avenue  
Madison, WI 53705-5400

Telephone: (608) 266-3096  
FAX: (608) 264-9885  
email: [DHAmail@wisconsin.gov](mailto:DHAmail@wisconsin.gov)  
Internet: <http://dha.state.wi.us>

The preceding decision was sent to the following parties on May 30, 2013.

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