



FH

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

In the Matter of

██████████
c/o ██████████ & ██████████
██████████
██████████

DECISION

CWK/148320

PRELIMINARY RECITALS

Pursuant to a petition filed March 25, 2013, under Wis. Admin. Code § HA 3.03(1), to review a decision by the Wisconsin Department of Health Services ["DHS"] in regard to Medical Assistance ["MA"], a Hearing was held via telephone on April 23, 2013.

The issue for determination is whether or not petitioner satisfies the Level Of Care ["LOC"] criteria of the MA Katie Beckett Program ["KBP"].

There appeared at that time via telephone the following persons:

PARTIES IN INTEREST:

Petitioner:

██████████ (not present at April 23,
2013 Hearing)
c/o ██████████ & ██████████
██████████
██████████

Represented by:

██████████ & ██████████, petitioner's
parents
██████████
██████████

Respondent:

Department of Health Services
1 West Wilson Street
Madison, Wisconsin 53703
By: Christine Shanahan, Case Manager
Kay Marose, Services Supervisor, Human Services
Wisconsin Department of Health Services
Division of Long Term Care
1 West Wilson Street
P.O. Box 7851
Madison, Wisconsin 53707-7851

OTHER PERSON PRESENT:
Heather Ehrlich, ESS, Dodge County Human Services & Health Department

ADMINISTRATIVE LAW JUDGE:
Sean P. Maloney
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (age 11 years) is a resident of Dodge County.
2. Petitioner has diagnoses of Pervasive Developmental Disorder [“PDD”] Not Otherwise Specified [“NOS”], Attention Deficit Hyperactivity Disorder [“ADHD”] (combined, severe type), Oppositional Defiant comorbid behaviors, and Von Willebrand Disease; he takes medication (Vyvanse) which has controlled his impulsive behavior.
3. Petitioner has social deficits (is unable to carry on conversations when the subject runs out, unable to transition one topic to the next, and is very literal) and complains that no one will play with him at school; he is completely independent in bathing, dressing, eating, grooming, mobility, toileting and transferring (although he does not like to bath or groom and must be prompted to do so)
4. Petitioner is in the 5th grade at school; he demonstrates delays in problem solving, has great difficulty organizing his thoughts and putting them down on paper, and it is hard for him to follow multi-step direction because he becomes easily distracted; he has a full scale IQ of 85 based on testing in January 2013; he is within 2 standard deviations of the mean on oral and written language tests; he receives services from a Speech/Language Pathologist [“SLT”] at school.
5. Petitioner has shown improvement since taking his medication; he is no longer in an emotional behavior disabilities classroom; he no longer exhibits extreme behaviors but has been suspended 2 times from school (1 in-school suspension and 1 suspension where he was sent home), there have been 2 telephone calls from his school for “mouthiness”, he can swear on occasion, and he still picks on his older brother; he is very disrespectful to his parents; on occasion other parents have threatened to call the police due to petitioner’s temper issue.

DISCUSSION

The purpose of the Katie Beckett waiver program is to encourage cost savings to the taxpayer by permitting disabled children, who would otherwise be institutionalized, to receive MA while living at home with their parents. 42 U.S.C. 1396a(e)(3); 42 C.F.R. § 435.225 (2011); Wis. Stat., § 49.46(1)(d)4. (2011-12). Therefore, for a child to be eligible for MA under the Katie Beckett Program the Level Of Care [“LOC”] required by the child's condition must be a level of care that would normally be provided in an institution. 42 U.S.C. § 1396a(e)(3)(b)(i); 42 C.F.R. § 435.225(b)(1) (2011); *The Katie Beckett Program: Policies and Procedures* [“KBPPP”], 3.04A3; See also, Wis. Stat. § 49.46(1)(d)4 (2011-12). The DHS Division of Long Term Care [“DLTC”] determined that petitioner does not require an institutional LOC.

As per Katie Beckett Program Policies and Procedures there currently are four levels of institutional LOC.

First is the Intermediate Care Facility ["ICF/MR"] LOC. Children in this LOC must have all of the following: (a) a permanent cognitive disability; (b) substantial functional limitations; and, (c) a need for active treatment. The ICF/MR LOC is based upon the child having needs similar to people in an intermediate care facility for children with mental retardation. The intensity and frequency of required interventions to meet the child's functional limitations must be so substantial that without the intervention, the child is at risk for institutionalization. *Institutional Levels of Care: Children's Long Term Support Programs in Wisconsin*, updated January 2010 ["ILC"], page 3. Petitioner does not have a permanent cognitive disability with substantial functional limitations. Therefore, petitioner does not meet the ICF/MR LOC.

Second is the Psychiatric Hospital -- Severe Emotional Disturbance ["SED"] LOC. Children in this LOC must have a long-term severe mental health condition diagnosed by a licensed psychologist or psychiatrist. The child must exhibit **Severe Symptomology or Dangerous Behaviors** at a specific intensity and frequency of required interventions such that without this direct, daily community-based intervention, the child is at risk for institutionalization within a psychiatric hospital. See, ILC, page 8. Petitioner does have mental health conditions -- not of the severity required. See, ILC pages 8-21. Further, petitioner does not have the required involvement with service systems. See, ILC pages 10-12. Therefore, petitioner does not meet the SED LOC.

Third is the Nursing Home -- Physical Disabilities ["NHPD"] LOC. Children in this LOC must have a long-term medical or physical condition which significantly diminishes his or her functional capacity and interferes with the ability to perform age appropriate activities of daily living at home and in the community. See, ILC page 22.

One way to qualify for the NHPD LOC is for the child to be in need of Skilled Nursing/Therapeutic interventions AND to exhibit substantial functional limitations when compared to age appropriate activities in at least 2 of the following 7 areas (and the substantial functional limitations must reasonably be expected to last at least 1 year): learning; communication; self-care; mobility; social competency; work; meal preparation or money management. See, ILC, pages 23-24. Petitioner does not need Skilled Nursing/Therapeutic interventions {Speech/Language Pathology Therapy ["SLT"], Occupational Therapy ["OT"], and Physical Therapy ["PT"]} count only if the child is involved in 6 or more sessions per week with professional therapists AND only if the child needs some other Skilled Nursing/Therapeutic intervention in addition to the SLT/OT/PT}. See, ILC page 23. Additionally, petitioner does not exhibit the necessary substantial functional limitations. Therefore, petitioner does not qualify for the NHPD LOC that way.

Another way to qualify for the NHPD LOC is for the child to exhibit substantial functional limitations requiring daily direct hands on assistance in at least 4 of the following 7 areas (and the substantial functional limitations must reasonably be expected to last at least 1 year): learning; communication; bathing; grooming or dressing; eating; toileting; mobility. See, ILC page 26. Petitioner does not exhibit substantial functional limitation in at least 4 of those areas. Therefore, petitioner does not qualify for the NHPD LOC that way.

The final way to qualify for the NHPD LOC is to have at least 1 of the following 5 exceptional circumstances criterion: terminal condition; transplant pending; stage IV cancer; recurrent cancer; post transplant (but the transplant must have occurred no more than 12 months prior to the date of review). See, ILC page 28. Petitioner does not meet any of the 5 exceptional circumstances criterion. Therefore, petitioner does not qualify for the NHPD LOC that way.

Fourth is the Hospital -- Physical Disabilities ["HPD"] LOC. Children in this LOC must have needs that are typically meant in an inpatient medical hospital setting. See, ILC page 29. Petitioner does not have needs that are typically meant in an inpatient medical hospital setting. Therefore, petitioner does not meet the HPD LOC.

Based upon the above review of the LOC criterion, petitioner's level of care is not at any of the institutional levels of care. Therefore, petitioner does not meet the Level Of Care ["LOC"] requirement of the MA Katie Beckett Program. DLCT's decision is affirmed.

If petitioner's condition changes he may reapply for the MA Katie Beckett Program.

CONCLUSIONS OF LAW

Petitioner does not satisfy the Level Of Care ["LOC"] criteria of the MA Katie Beckett Program.

NOW, 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 24th day of May, 2013

\sSean P. Maloney
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 May 24, 2013.

Dodge County Department of Human Services
Bureau of Long-Term Support