



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

In the Matter of

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

DECISION

MKB/148603

PRELIMINARY RECITALS

Pursuant to a petition filed February 20, 2013, under Wis. Stat. § 49.45(5), and Wis. Admin. Code § HA 3.03(1), to review a decision by the Disability Determination Bureau ["DDB"] in regard to Medical Assistance ["MA"], a Hearing was held via telephone on May 07, 2013.

The issue for determination is whether petitioner is disabled for purpose of the MA Katie Beckett Program ["KBP"].

There appeared at that time via telephone the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED] [REDACTED] (not present at May 7,
2013 Hearing)
c/o [REDACTED]
[REDACTED]
[REDACTED]

Represented by:

[REDACTED] [REDACTED], petitioner's mother
[REDACTED]
[REDACTED]

Respondent:

Department of Health Services
1 West Wilson Street
Madison, Wisconsin 53703
By: No Appearance
Disability Determination Bureau
722 Williamson St.
Madison, WI 53703

OTHER PERSON PRSSENT:

[REDACTED] [REDACTED], petitioner's grandmother

ADMINISTRATIVE LAW JUDGE:

Sean P. Maloney
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (age 9 years) is a resident of Shawano County.
2. On October 24, 2012 petitioner filed an *Application For Katie Beckett Program Wisconsin Medicaid*; by a letter dated January 14, 2013 DDB found that petitioner was not eligible for KBP because his condition is not disabling.
3. On February 20, 2013 petitioner filed a *Medicaid -- Child Reconsideration Request* with DDB but DDB again determined that petitioner's condition is not disabling.
4. Petitioner has diagnosis of mood disorder Not Otherwise Specified [“NOS”], Attention Deficit Hyperactivity Disorder [“ADHD”], Oppositional Defiant Disorder [“ODD”], and Tourette’s syndrome (no active symptoms); he takes medication which has a positive effect, he is responding well, his symptoms have improved (a *bellinhealth Psychiatric Center* “Progress Note” dated December 27, 2012 states: “He is doing very well at home and at school. He has minimal outbursts.”); he has a Full Scale IQ of 97 (his math and written language skills are at grade level and his reading skills are slightly below grade level; he has a serious problem with work pace and can be slow in processing information); he has had hallucinations in the past but not since he has taken medication.
5. Petitioner has good days and bad days; he has a serious problem sustaining attention during play and an obvious problem playing cooperatively with peers, expressing anger approximately, interpreting social cues, handling frustration, and asserting emotional needs; he can act on impulse; when his medication wears off (usually about 4:30 P.M.) he can fly into uncontrollable rages (hitting, pushing, and screaming which can last 1 hour or longer; he has punched holes in the wall and destroyed property) and he can be both physically and verbally abusive to both his parents and siblings (shoving his brother’s head into a cabinet; screaming in his grandmother’s face; raging when he is told he must do homework; the family has had to leave restaurants, stores, carnivals, and playgrounds due to his rages); he is easily distracted (must be told repeatedly to get shoes on; get coat on; finish his meal); he seems not to realize the seriousness of his actions; he has walked into the street without looking.

DISCUSSION

A child is determined to be disabled by standards outlined in the Social Security Act. 42 U.S.C. § 1396a(e)(3)(A) (2000 Supplementary Pamphlet), See also, 42 U.S.C. § 1382c(a)(3)(C) (2000 Supplementary Pamphlet), 42 C.F.R. § 435.225 (2011), Wis. Stat. § 49.46(1)(d)4. (2011-12). The applicable Social Security Act disability standards are found in the Code of Federal Regulations [“CFR”], Title 20, Part 416, Subpart I (§§ 416.901 et. seq.), and, by reference, Appendices 1 and 2, Subpart P, Part 404.

Under the Social Security Act, for a child to be *disabled* the child must have a medically determinable physical or mental impairment or combination of impairments that causes marked and severe functional limitations. 20 C.F.R. § 416.906 (2011). Unless the impairment is expected to result in death, it must have

lasted or must be expected to last for a continuous period of at least 12 months. This is called the *duration requirement*. Id. & 20 C.F.R. § 416.909 (2011). If a child files a new application and the child is engaged in Substantial Gainful Activity, the child will not be considered *disabled* even if the child otherwise meets the definition of *disabled*. 20 C.F.R. § 416.906 (2011). A *Substantial Gainful Activity* [“SGA”] means work that: (a) involves doing significant and productive physical or mental duties; and, (b) is done (or intended) for pay or profit. 20 C.F.R. §§ 416.910 & 416.972 (2011).

DDB determined that petitioner is not disabled because it found that although petitioner has one or more severe physical or mental impairments his condition does not cause marked and severe functional limitations. The phrase *marked and severe functional limitations* is a level of severity that meets, or medically or functionally equals, the severity of a listing in the Listing of Impairments found in Appendix 1 of Subpart P of Part 404 of Title 20 of the C.F.R. See, 20 C.F.R. § 416.902 (2011). This *Listing of Impairments* is known simply as *the Listing*. A child’s impairment may be a *severe impairment* and yet not meet, or medically or functionally equal, the severity of a listing in the Listing. This is because not all severe *impairments* cause *marked and severe functional limitations*. See, 20 C.F.R. §§ 416.902 & 416.924(c) & (d) (2011).

A child has *marked and severe functional limitations* in any one of the following 3 circumstances: (1) the child’s severe impairment meets the severity of a listing found in the Listing; (2) the child’s severe impairment medically equals the severity of a listing found in the Listing; or, (3) the child’s severe impairment functionally equals the severity of a listing found in the Listing. Id.; See also, 20 C.F.R. §§ 416.926 & 416.926a (2011). Therefore, if a child’s severe impairment meets at least 1 of these 3 tests and also meets the duration requirement, he or she will be found to be *disabled*. 20 C.F.R. § 416.924(d)(1) (2011). On the other hand, if a child’s severe impairment does not meet any of these 3 tests, or does not meet the duration requirement, he or she will be found to be *not disabled*. 20 C.F.R. § 416.924(d)(2) (2011).

First, it cannot conclude that petitioner's impairment equals the severity of a listing found in the Listing. The Listings that petitioner is most likely to equal are 112.04 [“Mood Disorder”] and 112.11 [“Attention Deficit Hyperactivity Disorder”]. However, petitioner does not currently exhibit all the necessary symptoms to the necessary degree to meet those Listings. This is particularly true in petitioner’s case since his symptoms are, for the most part, controlled by medication. See, 20 C.F.R. §§ 416.924a(b)(9)(i) & 416.930 (2011). This is not to be taken to mean that petitioner does not have any impairment. It means only that his impairments do not rise to the required level.

Second, based on the evidence, petitioner's impairments do not medically equal the severity of a listing found in the Listing. Petitioner's impairments are not at least equal in severity and duration to the listed findings found in the Listing. See, 20 C.F.R. § 416.926 (2011).

Third, based on the evidence, it cannot conclude that petitioner's impairments functionally equal the severity of a listing found in the Listing. In order for a severe impairment to functionally equal the severity of a listing found in the Listing it must be of *listing level severity*. A severe impairment is of *listing-level severity*

if there are *marked*¹ limitations in any 2 of the following 6 *domains* (or an *extreme*² limitation in any 1 of the domains): (i) acquiring and using information; (ii) attending and completing tasks; (iii) interacting and relating with others; (iv) moving about and manipulating objects; (v) caring for oneself; and, (vi) health and physical well-being. 20 C.F.R. §§ 416.926a(b)(1) & (d) (2011); see also, 20 C.F.R. § 416.926a(e)(2)(i) & (3)(i) (2011). Based on the evidence in the record of this matter, petitioner does not have a marked impairment in 2 domains (or an extreme impairment in any one of the domains). Petitioner might have a marked limitation in the domain of interacting and relating with others -- but it is not extreme (his symptoms are, for the most part, controlled by mediation).

CONCLUSIONS OF LAW

For the reasons discussed above, petitioner is not disabled.

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.

¹ A *marked* limitation will be found when the child's impairment interferes seriously with the child's ability to independently initiate, sustain, or complete activities. The child's day-to-day functioning may be seriously limited when the child's impairments limit only 1 activity or when the interactive and cumulative effects of the impairment limit several activities. *Marked* limitation also means a limitation that is *more than moderate* but *less than extreme*. It is the equivalent of the functioning one would expect to find on standardized testing with scores that are at least 2, but less than 3, standard deviations below the mean. 20 C.F.R. § 416.926a(e)(2)(i) (2011).

² An *extreme* limitation will be found when the child's impairment interferes very seriously with the child's ability to independently initiate, sustain, or complete activities. The child's day-to-day functioning may be very seriously limited when the child's impairments limit only 1 activity or when the interactive and cumulative effects of the impairment limit several activities. *Extreme* limitation also means a limitation that is *more than marked*. It is the rating given to the worst limitations. However, it does not necessarily mean a total lack or loss of ability to function. It is the equivalent of the functioning one would expect to find on standardized testing with scores that are at least 3 standard deviations below the mean. 20 C.F.R. § 416.926a(e)(3)(i) (2011).

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 13th 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 13, 2013.

Shawano County Department of Social Services
Bureau of Long-Term Support
Division of Health Care Access and Accountability