



STATE OF WISCONSIN  
Division of Hearings and Appeals

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In the Matter of

[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

DECISION

MKB/148764

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**PRELIMINARY RECITALS**

Pursuant to a petition filed January 31, 2013, under Wis. Stat. § 49.45(5), and Wis. Admin. Code § HA 3.03(1), to review a decision by the Disability Determination Bureau in regard to Medical Assistance, a hearing was held on May 23, 2013, at Port Washington, Wisconsin.

The issue for determination is whether the Department correctly denied the petitioner's application for the Katie Beckett Program because he does not meet disability criteria.

There appeared at that time and place the following persons:

**PARTIES IN INTEREST:**

Petitioner:

[REDACTED]  
[REDACTED]  
[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

**ADMINISTRATIVE LAW JUDGE:**

Debra Bursinger  
Division of Hearings and Appeals

**FINDINGS OF FACT**

1. Petitioner is a 7 year old resident of Ozaukee County. He applied for certification for Katie Beckett Program – Medical Assistance on June 20, 2012. He has ADHD, a speech/language

disorder, autism [pervasive development disorder (PDD)], a reading disorder and behavioral issues. He receives speech & language therapy as well as occupational therapy.

2. By letter dated December 17, 2012, the Department of Health Services, by the Disability Determination Bureau found that petitioner was not disabled and therefore not eligible for the Katie Beckett Program. Petitioner sought reconsideration, but the Bureau affirmed its determination on April 9, 2013.
3. On June 20, 2012, Petitioner also applied for Social Security Supplemental Security Income (SSI) benefits. Those benefits were denied on December 11, 2012, with a finding of “not disabled” entered by the Social Security Administration. The Petitioner has appealed the Social Security Administration decision but no final determination has been made yet.
4. The petitioner does not allege any new medical impairment, nor any worsening of the impairments considered in the Social Security decision, that the Social Security Administration has refused to consider.

### 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. Wis. Stat. §. 49.46(1)(d)4. The Department’s Disability Determination Bureau 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. When the applicant meets the first step, there are four other steps that must be met. 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.)

If the child does not meet the first step, then the application fails.

To be found “disabled” at step one, a person must meet the definition of that term as it is used for SSI purposes. See, Wis. Stat. § 49.47(4). The applicable SSI disability standards are found in the Code of Federal Regulations, Title 20, Part 416, Subpart I, and by reference Appendices 1 and 2, Subpart P, Part 404. For all MA-related purposes, including the Katie Beckett Program, a finding of disability must be in accordance with federal Social Security Disability Insurance Benefits (DIB) and/or Supplemental Security Income (SSI) standards. See, Wis. Stat. § 49.47(4)(a)4; see also, Katie Beckett Program Policies & Procedures Manual, Chapter III, pp. 16, 31.

Because the standards are the same, a finding of no disability for Social Security SSI purposes, as here, made within 12 months of the MA (Katie Beckett) application is binding on a State Medicaid (MA) agency. Exceptions may occur only if certain conditions exist such as allegations of a different disabling condition or changes in the previously considered conditions. None of the exceptions apply here. See, 42 C.F.R. § 435.541(a); see also, U.S. Department of Health and Human Services, Commentary, 54 Fed. Reg. 236 (1989).

If the petitioner’s appeal to the SSA results in a finding of “disabled”, then he will be disabled for Katie Beckett purposes as well.

The petitioner’s parent is advised that she may make a new application at any time. But because the petitioner has been denied Social Security SSI following a finding of no disability, I must conclude that petitioner is not eligible for Katie Beckett Program – MA at present. If the petitioner should experience greater behavioral problems, cognitive delays or functional delays, new documentation could support a

new disability finding by the federal agency. In addition, better current medical and clinical evidence may provide new information that could better demonstrate that he meets the SSA's disability criteria on appeal or re-application to the federal agency.

Petitioner is not disabled as that term is used for MA purposes pursuant to Wis. Stat. § 49.47(4), and the Department correctly determined that he is not eligible for Katie Beckett Program - MA.

### **CONCLUSIONS OF LAW**

The agency properly determined the Petitioner is not eligible for Katie Beckett Program – MA.

**THEREFORE, it is ORDERED**

That the petition be, and hereby 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 Milwaukee,  
Wisconsin, this 28th day of June, 2013

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\sDebra Bursinger  
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 June 28, 2013.

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