



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[Redacted]
c/o [Redacted] and [Redacted]
[Redacted]
[Redacted]

DECISION

MKB/150760

PRELIMINARY RECITALS

Pursuant to a petition filed June 03, 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, a telephonic hearing was held on September 09, 2013, at [Redacted], Wisconsin. At the request of petitioner, a hearing set for August 7, 2013 was rescheduled.

The issue for determination is whether the Department correctly discontinued the petitioner's Katie Beckett (KB) Program benefits effective October 1, 2013 because he is no longer "disabled" for KB eligibility purposes.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[Redacted]
c/o [Redacted]
[Redacted]
[Redacted]

Representative:

[Redacted], 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

ADMINISTRATIVE LAW JUDGE:

Gary M. Wolkstein
Division of Hearings and Appeals

**FINDINGS OF FACT**

1. Petitioner is a 5 year old resident of [REDACTED] County who lives at home with his parents and older brother.
2. The petitioner applied for the MA Katie Beckett Program during about June, 2009.
3. The petitioner was found “disabled” as of June 3, 2009, and was determined eligible for the Katie Beckett Program as of September 30, 2009.
4. The basis for his past KB eligibility was the determination that petitioner functionally equaled the Listings in Domain #3 (Interacting and Relating to Others), with a rating of “extreme.” Petitioner had been receiving speech therapy for about two years (since 2007), but used only a few words and used signs to communicate. He primarily relied on gestures to express his needs and wants, was generally 10-20% intelligible, and had difficulty vocalizing consonants.
5. During 2009, petitioner was diagnosed with anxiety disorder, developmental coordination disorder, hypertonia, and ataxia. Since 2012, petitioner has been diagnosed with Autism, ADHD, anxiety disorder NOS, speech language delays, and factor VII deficiency.
6. The petitioner continues to receive about 15 hours per week of autism services through the Wisconsin [REDACTED].
7. During early 2013, petitioner was evaluated regarding his continued Katie Beckett (KB) eligibility. The decision to discontinue petitioner’s KB eligibility due to no longer being disabled was due primarily to clear medical improvements in his domain #3 abilities (interacting and relating to others) which resulted in a rating reduction from “extreme” to “less than marked.” AS of 2013, petitioner’s speech showed significant improvement in his speech abilities. Speech language testing during February, 2013 confirmed that petitioner has low average core language skills with only some concern about receptive or expressive language, his speech significantly improved to 90% intelligibility with most of his consonants now intelligible. His speech improvement resulted in the North [REDACTED] School District no longer offering speech language services for him through his school.
8. Petitioner is in kindergarten at the [REDACTED] in the North [REDACTED] school district. He attends a regular classroom, without any aide, and receives no speech therapy services. He will begin the process for a new IEP during October, 2013.
9. The Department sent a May 15, 2013 notice to the petitioner stating that he was no longer eligible for continued Katie Beckett benefits because he was determined to no longer be “disabled” for KB eligibility purposes. The basis for the KB discontinuance was that the medical evidence indicated that [REDACTED]’s medical health had improved, and that he no longer meets the disability requirements for children.
10. In the petitioner’s June/July, 2013, Childhood Disability Evaluation (form SSA-538-F6), Dr. [REDACTED], MD and [REDACTED], Ph.D confirmed the evaluation that petitioner had a “Less than Marked” rating in the Domains #1 - #5 and a “No limitation” in domain #6. The petitioner had no “Marked” or “Extreme” ratings in his evaluation.
11. The Department sent a July 10, 2013 Reconsideration notice to the petitioner confirming that after reviewing petitioner’s request for reconsideration and his disability file, it concluded that the Department correctly determined petitioner to no longer be disabled for KB eligibility purposes.

## 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", he is not disabled and the evaluation stops. Petitioner is not working, so he 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 purpose of the Listing of Impairments is to describe impairments that are considered severe enough to result in "marked and severe" functional limitations. This is a term of art in the new disability rules for children, and "severe", when coupled with "marked" in this phrase, has a different meaning than "severe" as used in the second step above. In general, a child's impairment(s) is of "listing-level severity" if it results in marked limitations in two broad areas of functioning, or extreme limitations in one such area. 42 C.F.R. §416.925(b)(2).

"Marked" limitation and "extreme" limitation are defined in the regulations at 20 C.F.R. §§416.926a(e)(2), (3). 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.

I have reviewed the information in the file and compared that information to the Listings. I must agree with the DDB determination that petitioner does not meet or medically equal any of the Listings.

During the hearing, petitioner's mother admitted that [REDACTED] has made improvements. However, she asserted accurately that he continues to have many medical problems. She explained that he continues to have anxiety issues and does not play well with kids his own age. He continues to have some speech delays and has other problems related to his autism.

However, for purposes of continued KB eligibility, Mrs. [REDACTED] was unable to refute the Department's case that he no longer met the disability criteria with his improvements. In domain #1 (Acquiring and Using Information), petitioner has made improvement in his expressive and receptive language. For his February, 2013 testing, in WPPSI-III, he had VIQ of 80 - PIQ of 86 (low average ranges), FSIQ of 80 (below average range of functioning). His March, 2013 indicated that petitioner had slight limitations in most of the areas of this domain with thus a "Less than Marked" rating.

In domain #2 (Attending and Completing Tasks), due to his ADHD, petitioner shows variability in his ability to attend and complete tasks. However, he is generally able to make transitions independently. In a May, 2012 Children's Hospital exam, it stated about petitioner that he was: "somewhat overactive, restless and fidgety." However, during the February, 2013 WEAP testing exam, petitioner was very attentive and was generally able to complete multi-step instructions and work without distracting self or others. Thus he received a "Less than Marked" rating.

In domain #3 (Interacting and Relating with Others), petitioner made the substantial improvement which basically changed his eligibility for KB (rating reduced from "extreme" to "less than marked." See Finding of Fact #7 above.

In domain #4 (Moving About and Manipulating Objects), his April, 2012 IEP did indicate that petitioner had some difficulty with fine motor skills, including writing his name and required OT series in school. However, his September, 2012 Waisman Center exam indicated that petitioner had generally normal neurological status with normal muscle bulk, tone and power, but did show some tremor in his finger to nose testing. There is a history of an occasional tremor, although his teacher comments suggest that this occasional tremor does not significantly affect his functioning at this time. "Less than Marked" rating.

In domain #5 (Caring for Yourself), petitioner has some problems with responding appropriately to frustration, and sometimes does not do what friends want but wants to do thing his own way. His parents indicated that petitioner has some difficulty discerning or avoiding unsafe situations. However, [REDACTED] has not had any noted disciplinary action at school and he does have some friends his own age. While he does have some problems in this area, they are not acute. "Less than Marked" rating.

Finally, domain #6 (Health and Well-Being), No limitations at this time documented in medical evidence.

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.

To be found disabled, the child must have “marked” limitations in two of the six domain areas, or an “extreme” limitation in one of the areas. 20 C.F.R. §416.926a(b)(2).

The DDB found that petitioner has “no limitations” in “health and physical well-being (domain #6). The DDB further found that he has a “less than marked” rating in all the other five domains (domains #1 - #5): a) acquiring and using information (domain #1); b) Attending and Completing tasks (domain #2); c) Interacting and Relating with Others (domain #3); d) Moving about and Manipulating Objects (domain #4; and e) Caring for Yourself – (domain #5). I agree with those findings. The medical evidence as of 2013 does not support “marked” or “extreme” ratings in any of the six domains. Overall, these ultimate findings must be affirmed as correct assessments of his skills and problems at this time.

Thus, ██████ presents with no “marked” rating and no “extreme” rating, and does not present with the requisite two “marked” ratings or one “extreme” rating to meet the disability test. In 2009, when petitioner was approved to KB eligibility, he was rated “extreme” in domain #3. The hearing record confirms that ██████ has made substantial improvement in that area, and thus is rated “Less than Marked” in that domain area. Accordingly, based upon the above, I must concur with the Disability Determination Bureau’s finding that he is “not disabled” and therefore no longer eligible for continued Katie Beckett Program benefits as of October 1, 2013.

If the petitioner’s condition were to worsen, he would be well-advised to re-apply and provide new clinical documentation.

### **CONCLUSIONS OF LAW**

1. Petitioner is no longer “disabled” as that term is used for Katie Beckett MA eligibility purposes.
2. The Department correctly discontinued the petitioner’s Katie Beckett (KB) Program benefits effective October 1, 2013 because he is no longer “disabled” for KB eligibility purposes.

**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 13th day of September, 2013

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\sGary M. Wolkstein  
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 September 13, 2013.

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