



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

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

DECISION

MKB/151411

PRELIMINARY RECITALS

Pursuant to a petition filed August 17, 2013, under Wis. Stat. § 49.45(5), and Wis. Admin. Code § HA 3.03(1), to review a decision by the Division of Long Term Care ["DLTC"] in regard to Medical Assistance ["MA"], a Hearing was held via telephone on September 19, 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:

[Redacted] (not present at
September 1909, 2103 Hearing)
c/o [Redacted] & [Redacted]
[Redacted]
[Redacted]

Represented by:

[Redacted], petitioner's mother
[Redacted]
[Redacted]

Respondent:

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

By: Barbara Behrend, MS, RN, Nurse Consultant [Ms. Behrend did not appear at
the September 19, 2013 Hearing, but submitted a letter dated August 21, 2013
with attachments.]

Division of Long Term Care
Department of Health Services
1 West Wilson Street
P.O. Box 7851
Madison, WI 53707-7851

ADMINISTRATIVE LAW JUDGE:

Sean P. Maloney
Division of Hearings and Appeals

### FINDINGS OF FACT

1. Petitioner (23 months old) is a resident of Marathon County.
2. Petitioner has diagnoses of Cystic Fibrosis ["CF"] (diagnosed by her newborn screen), pancreatic insufficiency, feeding difficulties, and failure to thrive.
3. Petitioner has gastrostomy supported nutrition (i.e., she is fed via G-tube; the tube was placed in March 2012), has vest chest therapy at least 2 times per day, uses a nebulizer 2 times per day, and takes pancreatic enzymes; she has a difficult time eating enough food via mouth to support her nutritional needs and vomits an average of once per day; she pockets her food in her cheeks and does not swallow; meals take about 2 hours from start to finish; she develops constant mucus in her lungs that must be loosened, although her lung function is good; she has had recurrent ear infections; she has received speech therapy and has seen a psychiatrist.
4. Petitioner is developmental age-appropriate in self-care (with the exception of eating), movement, communication and understanding, learning<sup>1</sup>, and social competency/relationships (she attends a private day care with some other children, although her ability to interact with other children is restricted because of her decreased immune system); she does not have any behavioral or mental health issues.

### 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 Wisconsin Department of Health Services ["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: (1) a diagnosis of a cognitive disability that substantially impairs learning and that is expected to continue indefinitely; and, (2) demonstration of substantial functional limitations when compared to age appropriate activities that are expected to last a year or longer; and, (3) the need for active treatment. The intensity and frequency of required interventions to meet the child's functional limitations must be so

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<sup>1</sup> For unknown reasons, on petitioner's *Recertification For Katie Beckett Program Wisconsin Medicaid*, dated July 17, 2013, the box for "No" is checked for the question "Is your child currently working at grade level?" - there is no evidence in the record of this matter to support this.

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 February 2011 ["ILC"], page 3. Petitioner does not have a cognitive disability. 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 demonstrate persistent behaviors that create a danger to self or others, requiring ongoing therapeutic support in order to be able to live at home and in the community. The intensity and frequency of the required ongoing therapeutic support must be so substantial that without the support the child is at risk of inpatient psychiatric hospitalization.

A child must have all 4 of the following in order to be in the SED LOC:

1. a diagnosis of a mental health condition; and,
2. the mental health diagnosis or symptoms related to the diagnosis have existed and are expected to persist for a specific duration of time; and,
3. the need of involvement with service systems related to mental health support; and,
4. the exhibition of 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 not have any behavioral or mental health issues. Therefore, petitioner does not meet the SED LOC.

Third is the Nursing Home -- Physical Disabilities ["NHPD"] LOC. Children in the NHPD LOC must have a long-term medical or physical condition, which significantly diminishes his/her functional capacity and interferes with the ability to perform age appropriate activities of daily living at home and in the community. The child must require an extraordinary degree of daily assistance from others to meet everyday routines and special medical needs. The special medical needs must warrant skilled nursing interventions that require specialized training and monitoring that is significantly beyond that which is routinely provided to children. The intensity and frequency of required skilled nursing interventions must be so substantial that without direct, daily intervention, the child is at risk for institutionalization within a nursing home.

A child may be assigned the NHPD LOC if the child meets both of the criteria listed below for Physical Disability. The criteria are:

1. The child has a diagnosis of a medical/physical condition resulting in needs requiring long term care services; and,
2. The child requires skilled nursing interventions and/or has substantial functional limitations requiring hands on assistance from others throughout their day.

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 exhibit the necessary

substantial functional limitations in at least 2 of those areas. 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 she 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 16th day of October, 2013

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\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 October 16, 2013.

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