



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

In the Matter of

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

DECISION

MKB/156162

PRELIMINARY RECITALS

Pursuant to a petition filed February 06, 2014, 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 telephone hearing was held on April 08, 2014.

The issue for determination is whether the Disability Determination Bureau correctly determined that the petitioner is no longer “disabled” for MA – Katie Beckett Program eligibility purposes.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

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

Respondent:

Department of Health Services
1 West Wilson Street, Room 651
Madison, Wisconsin 53703

By: No Appearance
Disability Determination Bureau
722 Williamson St.
Madison, WI 53703

ADMINISTRATIVE LAW JUDGE:

Peter McCombs
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner is a resident of Green County.
2. Petitioner is a six year old boy who had been a recipient of Katie Beckett MA since 2012.

3. By a letter dated January 2, 2014, the DDB found that petitioner was no longer disabled. Petitioner sought reconsideration, but the DDB affirmed its determination on or about March 3, 2014.
4. Petitioner has a medical history that is significant for reactive airway disease, dilated cardiomyopathy and a heart transplant April 18, 2012.
5. DDB determined that the petitioner is not disabled because he has no disability that meets, medically equals, or functionally equals the severity of a listed impairment. More specifically, his impairment allegedly does not cause sufficiently marked and severe functional limitations.
6. In the domain of acquiring and using information, the petitioner has a “less than marked” limitation. The record indicates that his cognition is not two standard deviations below the mean. He has adequate vocabulary, intelligibility, and auditory comprehension abilities. The petitioner does grade level school work, and does not have an Individualized Education Plan.
7. In the domain of attending and completing tasks, the petitioner has a less than marked limitation. He is able to follow instructions and complete school assignments on time. However, his Kindergarten teacher has reported that he has a serious problem providing organized oral explanations and adequate descriptions, as well as expressing his ideas in written form.
8. In the domain of interacting and relating with others, the record demonstrates that petitioner has no limitations.
9. In the domain of moving about and manipulating objects, the petitioner has no limitations.
10. In the domain of caring for himself, the record demonstrates that petitioner has no limitations..
11. In the domain of health and physical well-being, the petitioner has a “less than marked” limitation. The petitioner relies upon immunosuppressant drugs, which have resulted in petitioner having an unusual degree of school absenteeism due to illness. The record indicates that petitioner missed 10.5 days in his first trimester, 10 days in the second trimester, and 7 days in the third trimester which has not yet concluded. The record further reveals that petitioner is doing well medically post-transplant.
12. Petitioner’s mother reported that petitioner was recently seen at [REDACTED] in [REDACTED], which found an issue with petitioner’s weightloss.

DISCUSSION

The Children’s Long Term Support (CLTS) program started on January 1, 2004 after the federal Department of Health and Human Services informed the state department that federal MA funding would no longer be available for in-home autism services. The department drafted and released the Interim Medicaid Home and Community-Based Waivers Manual (“the Manual”) that became effective with the start of the CLTS program. It can be found on the internet at <http://dhs.wisconsin.gov/bdds/waivermanual/index.htm>.

The Manual provides that an individual must meet several eligibility criteria for these programs, one of which is that he must be disabled under social security standards. Manual, §2.05B.

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, medically equal or functionally equal the requirements of the listings [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. Since this is discontinuance, petitioner must be found to meet or equal a listing described in number (1).

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, at his very young age, is not working, so he passes 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). The DDB determined that petitioner did not meet this step as his combination of impairments were not considered to be severe.

Third, 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. Petitioner was found not to meet this requirement as it was determined none of his impairments met or equaled an impairment listed in appendix 1 in the Code of Federal Regulations.

The purpose of the Listing of Impairments is to describe impairments that are considered severe enough to result in "marked and severe" functional limitations without additional review. The phrase in quotation marks is a term of art in the 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. §416.926(a)(c)(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 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.

The factual findings set forth above are based on the record accumulated by the DDB, testimony by petitioner's mother, and exhibits submitted by petitioner's parents prior to hearing. 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.

So, again, 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. Petitioner was found not to meet this requirement.

This administrative law judge reviewed the listings and found one related to petitioner's most recent alleged impairment.

100.01 Category of Impairments, Growth

100.02 *Growth impairment*, considered to be related to an additional specific medically determinable impairment, and one of the following:

- A. Fall of greater than 15 percentiles in height which is sustained; or
- B. Fall to, or persistence of, height below the third percentile.

100.03 *Growth impairment*, not identified as being related to an additional, specific medically determinable impairment. With:

- A. Fall of greater than 25 percentiles in height which is sustained; and
- B. Bone age greater than two standard deviations (2 SD) below the mean for chronological age (see 100.00B).

Childhood Listings (Part B) § 100.01, et. seq.

(And see the text listed at: <http://www.ssa.gov/disability/professionals/bluebook/100.00-GrowthImpairment-Childhood.htm#100.03%20Growth%20Impairment,%20not%20identified%20as%20being%20related%20to%20an%20additional,%20specific%20medically%20determinable%20impairment.>)

The record does not contain information that the petitioner would meet the growth impairment, in and of itself. And there is no evidence that demonstrates that he continues to have heart problems in any way approaching the level of severity to be considered disabled. Childhood Listings (Part B) § 104.00, et. seq. “Cardiovascular System”. Medical documentation in this case, however, establishes that the petitioner’s cardiac issues were successfully repaired with surgeries in the past. I note that petitioner’s weight loss has recently been addressed by his medical providers, and that he is scheduled for further examination in mid-May, 2014. Depending on the results of that examination, petitioner may wish to reapply for Katie Beckett certification if warranted.

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. The child must have marked impairments in two, or an extreme limitation in one, of the following six domains: (1) acquiring and using information, (2) attending and completing tasks, (3) interacting and relating with others, (4) moving about and manipulating objects, (5) caring for herself, and (6) health and physical well-being. See, 20 C.F.R. §416.926a(b)(2).

Based on the factual findings, I agree with the DDB that the petitioner has no marked limitation in any domain; and has less-than-marked limitations in the domains of acquiring and using information, attending and completing tasks, and health and physical well-being. He, therefore, also would not have an “extreme” limitation in any of the domains. Petitioner’s mother reported that petitioner is not under any doctor-imposed restrictions at present, and that he does well in school academically. While I can sympathize with petitioner’s desire to retain his certification for the Katie Beckett program, his improvement post-transplant has resulted in the fact that he is no longer “disabled,” as that term is defined under social security standards.

CONCLUSION OF LAW

Petitioner is no longer disabled; and the Department correctly discontinued his Katie Beckett certification.

NOW, THEREFORE, it is ORDERED

That the petition for review herein be and the same is hereby dismissed.

REQUEST FOR A REHEARING

You may request a rehearing if you think this decision is based on a serious mistake in the facts or the law or if you have found new evidence that would change the decision. Your request must be **received within 20 days after the date of this decision**. Late requests cannot be granted.

Send your request for rehearing in writing to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400 **and** to those identified in this decision as "PARTIES IN INTEREST." Your rehearing request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and explain why you did not have it at your first hearing. If your request does not explain these things, it will be denied.

The process for requesting a rehearing may be found at Wis. Stat. § 227.49. A copy of the statutes may be found online or 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 filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Health Services, 1 West Wilson Street, Room 651, Madison, Wisconsin 53703, **and** on those identified in this decision as "PARTIES IN INTEREST" **no more than 30 days after the date of this decision** or 30 days after a denial of a timely rehearing (if you request one).

The process for Circuit Court Appeals may be found at Wis. Stat. §§ 227.52 and 227.53. A copy of the statutes may be found online or at your local library or courthouse.

Given under my hand at the City of Madison,
Wisconsin, this 21st day of April, 2014

\sPeter McCombs
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 April 21, 2014.

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