



FH
[REDACTED]

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

In the Matter of

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

DECISION

MKB/158462

PRELIMINARY RECITALS

Pursuant to a petition filed June 20, 2014, under Wis. Stat. § 49.45(5), and Wis. Admin. Code § HA 3.03(1), to review a decision by the Bureau of Long-Term Support in regard to Medical Assistance, a hearing was held on October 06, 2014, at Appleton, Wisconsin.

The issue for determination is whether petitioner meets the level of care for Katie Beckett eligibility.

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, Room 651
Madison, Wisconsin 53703

By: Peg Corp, RN (in writing)
Bureau of Long-Term Support
1 West Wilson

Madison, WI

ADMINISTRATIVE LAW JUDGE:

John P. Tedesco
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Outagamie County.
2. Petitioner was enrolled in the Katie Beckett Program under the SED level of care.

3. The Department reviewed eligibility and found that she was no longer eligible under the SED level of care because her condition appeared to have improved based on the documentation.
4. Petitioner appealed.
5. Petitioner has shown recent behaviors outlined in testimony that support eligibility.

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. Sec. 49.47(4)(c)1m, Wis. Stats. The agency 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. Petitioner continues to meet this first standard. 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 agency determined that petitioner does not require this level of care. (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.)

The Department developed a policy manual which defines and describes childhood care levels. See Katie Beckett Program Policies and Procedures. There currently are four levels of care: hospital, SED, nursing home, and care facility for the developmentally disabled (ICF-DD).

Petitioner was eligible for the program on the basis that she met the SED care level. That is the only one that she would possibly qualify for. The hospital and nursing home levels are almost exclusively for individuals with physical impairments, and the ICF-DD is for individuals with extreme cognitive impairments similar to mental retardation.

The SED Level of Care requires (1) a diagnosis of an emotional and/or behavioral problem diagnosed under the American Psychiatric Association classification system, (2) diagnosis/symptoms that have lasted at least six months and are expected to last for one year or longer, (3) the child must receive or require services from at least two of a number of listed service systems (one system if the intensity is expected to be three hours or more per week), and (4) the child must have severe symptomology or substantial impairments in behavior or functioning. Petitioner meets the first three criteria. The third is met based on her receiving counseling as well as having psychiatric medication services.

The fourth criterion, severe symptomology, includes several standards in descending order. This was the basis for the Department's denial. The first standard is that the child will be found to have severe symptoms if he has one of four symptoms either currently, within the past three months, or twice within the past year: psychosis, suicidality, violence, or anorexia/bulimia. Suicidality equals a suicide attempt in the past three months or significant suicidal ideation or plan in the past month. Violence means threatening acts that endanger another person's life such as use of weapons, serious injury to another causing hospitalization, or arson/bomb threats.

Petitioner has had passive suicidal ideation, but I am not sure I would call it significant. She has had violent outbursts, but has not actually used a weapon and she has not seriously injured anybody. She does not meet this standard.

But, Standard II requires the child to have **two behaviors in four categories**: high-risk behaviors such as substance abuse, running away, or dangerous sexual contact, self-injurious behaviors, aggressive/offensive behaviors toward others, and lack of behavioral controls such as destruction of property, stealing, or obsessions. I find that petitioner meets this standard based on evidence of sexual behaviors and aggressive/offensive behaviors. The Department's decision is understandable based on the record and

documentation submitted. But, recent events support maintained eligibility. Episodes of high-risk sexual behavior with strangers and aggression toward others were testified to credibly by petitioner's counselor. Given the testimony and the details provided I find that she remains eligible under the SED level of care.

CONCLUSIONS OF LAW

Petitioner continues to meet the SED level of care for Katie Beckett purposes.

NOW, THEREFORE, it is ORDERED

That the matter be remanded to the Katie Beckett Program with instructions to classify petitioner as meeting the SED level of care and to continue her Katie Beckett eligibility retroactively based on that finding, if all other Katie Beckett criteria continue to be met. These actions shall be completed within 10 days.

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 23rd day of October, 2014

\sJohn P. Tedesco
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

Brian Hayes, Administrator
Suite 201
5005 University Avenue
Madison, WI 53705-5400

Telephone: (608) 266-3096
FAX: (608) 264-9885
email: DHAmail@wisconsin.gov
Internet: <http://dha.state.wi.us>

The preceding decision was sent to the following parties on October 23, 2014.

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