



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

In the Matter of

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

DECISION

MKB/163396

PRELIMINARY RECITALS

Pursuant to a petition filed July 23, 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 or Bureau) in regard to Katie Beckett Medical Assistance (MA), a hearing was held on February 24, 2015, at Green Bay, Wisconsin. At the petitioner's request, the hearing record was held open for additional documentation; that documentation was received.

The issue for determination is whether the petitioner is disabled for MA purposes.

There appeared at that time 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: No Appearance
Disability Determination Bureau
722 Williamson St.
Madison, WI 53703

ADMINISTRATIVE LAW JUDGE:

Nancy J. Gagnon (telephonically)
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner is a resident of Brown County.

2. The petitioner applied for MA under the Katie Beckett subset of that program on December 2, 2013. The Department denied that application, due to lack of disability, on June 11, 2014. The petitioner requested reconsideration, and an unfavorable reconsideration decision from the Department's Disability Determination Bureau (DDB) was made on January 16, 2015.
3. DDB determined that the petitioner is not disabled because, although her impairment is "severe," it does not meet, medically equal, or functionally equal the severity of a listed impairment. More specifically, her impairments allegedly do not cause marked or extreme functional limitations.
4. The petitioner, age 17, has been diagnosed with bipolar disorder with psychosis, intermittent explosive disorder, depression, and anxiety. She resides at home with her adoptive parents. Her birth mother tested positive for cocaine and alcohol during pregnancy. The petitioner currently attends special education classes at a public school, following a history of private schools and home schooling services. She has an IEP for learning disability and behavioral issues, with services that include preferential seating, extended time on tests, and small group or one-to-one instruction for math. The petitioner is *not* successfully completing grade level work.

Bipolar listing information

5. The petitioner's most serious impairment is her bipolar disorder. Because of this impairment, the petitioner is sometimes socially inappropriate, sometimes depressed, and poor at self-regulating her behavior. She takes the five medications, including Lithium. The record does not confirm documented persistence of appetite increase/decrease, fatigue, guilt, suicidal acts, hallucinations, delusions, or paranoid thinking. There has been suicidal ideation in the past (*e.g.*, November 2013, July 15, 2014), with a new episode in January 2015. There is no recent documentation of regular sleep disturbance or psychomotor agitation. The petitioner has not displayed pressure of speech, flight of ideas, inflated self-esteem, decreased need for sleep, or involvement in dangerous activities. She does not have qualitative deficits in verbal communication.

Functional equivalence information

6. In the domain of acquiring and using information, the petitioner has academic skills that are in the low average range. Reading skills are generally average; math skills are in the low range. Her full scale IQ is 71. For the fall 2014 semester, the child was failing all classes, with the exception of history, where she was earning a D+. A significant component of her academic failure is due to her unwillingness to do homework. When she did turn in homework, its quality was at a "passing" level. The DDB has concluded that the petitioner has a "less than marked" limitation in this domain.
7. In the domain of attending and completing tasks, the petitioner is bothered by learning disabilities. She is able to follow simple instructions and organize materials. However, she is inconsistent with respect to sustaining attention and completing homework. A psychologist's evaluation from June 2014 found her focus and concentration to be adequate. The DDB has correctly concluded that the petitioner has a "less than marked" limitation in this domain.
8. In the domain of interacting and relating with others, the petitioner has deficits. Her speech is intelligible. She is able to initially find friends, but inevitably alienates and loses them. At the time of hearing, she had no friends. The petitioner has a **marked** limitation in this domain (the DDB concluded that the petitioner has a "less than marked" limitation in this domain).
9. In the domain of moving about and manipulating objects, the petitioner has fine motor skills that are within normal limits. She walks, runs, and climbs stairs. Her gross motor skills are within normal limits. There are is no limitation in this domain.
10. In the domain of caring for herself, the petitioner is physically able to perform age-appropriate physical self-care skills (*e.g.*, dressing, self-feeding). The DDB has concluded that the petitioner has a **marked** limitation in this domain. She is impatient and has serious difficulty with handling frustration appropriately. The petitioner has historically experienced suicidal thoughts multiple

times, with the most recent being in January 2015. She was hospitalized in connection with this episode. The child also has a history of cutting herself.

11. In the domain of health and physical well-being, the petitioner has no limitation. The child does have diagnoses of asthma and being overweight. She does not require an organ transplant, require surgery, have a frequent need for a life-sustaining device, or require 24-hour daily supervision for medical reasons. She ambulates without the use of a mechanical device. The petitioner does not have a combination of physical and mental impairments “causing complete inability to function independently outside the area of one’s home within age-appropriate norms.”

DISCUSSION

The purpose of the "Katie Beckett" subset of MA certification 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. Sec. 49.47(4)(c)1m, Wis. Stats. The Department’s Bureau of Long-Term Support is required to review "Katie Beckett" 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 Division by the Disability Determination Bureau. 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.

I. DEFINITION OF CHILDHOOD DISABILITY.

To be eligible for MA as a disabled person, an applicant must meet the tests used by the Social Security Administration to determine disability for Supplemental Security Income (SSI) benefits. For SSI purposes, a disabled child must have a medically determinable physical or mental impairment, or combination of impairments, that causes marked and severe functional limitation, and that can be expected to last for at least a year. 20 C.F.R. §416.906. More specifically, 20 C.F.R. §416.911(b) declares:

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, [appendix 1 of Subpart P of 20 C.F.R, Part 404], or (2) Would result in a finding that you are disabled under sec. 416.994a ...

[§416.994a pertains to a child who has been previously found to be disabled by DDB]

A sequential process is used to apply these definitions to a specific case. 20 C.F.R. §416.924. The first test in the sequence is whether the claimant is performing “substantial gainful activity.” Because the petitioner is not working, she passes this first test.

The second sequential test is whether 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 is not severe. 20 C.F.R. §416.924(c). The Disability Determination Bureau (DDB) has conceded that the petitioner’s impairment is severe, so she passes the second test.

The third sequential test element is the heart of the dispute here. The third test considers whether the child 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 (Listings). 20 C.F.R. §416.924(d). DDB determined that the petitioner did not meet this requirement, and that she is therefore not disabled for SSI/MA Katie Beckett purposes.

II. THE PETITIONER’S CONDITION DOES NOT *MEET OR MEDICALLY EQUAL* THE LISTINGS AT SECTION 112.04.

The petitioner is diagnosed with bipolar disorder and anxiety. The Mood Disorder Listing at sec.112.04 of Appendix 1 requires the following:

- A. Medically documented persistence, either continuous or intermittent, of one of the following:
 - 1. Major depressive syndrome, characterized by at least five of the following, which must include either depressed or irritable mood or markedly diminished interest or pleasure:
 - a. Depressed or irritable mood; or
 - b. Markedly diminished interest or pleasure in almost all activities; or
 - c. Appetite or weight increase or decrease, or failure to make expected weight gains; or
 - d. Sleep disturbance; or
 - e. Psychomotor agitation or retardation; or
 - f. Fatigue or loss of energy; or
 - g. Feelings of worthlessness or guilt; or
 - h. Difficulty thinking or concentrating; or
 - i. Suicidal thoughts or acts; or
 - j. Hallucinations, delusions, or paranoid thinking;
 - or
 - 2. Manic syndrome, characterized by elevated, expansive, or irritable mood, and at least three of the following:

- a. Increased activity or psychomotor agitation; or
- b. Increased talkativeness or pressure of speech; or
- c. Flight of ideas or subjectively experienced racing thoughts; or
- d. Inflated self-esteem or grandiosity; or
- e. Decreased need for sleep; or
- f. Easy distractibility; or
- g. Involvement in activities that have a high potential of painful consequences which are not recognized; or
- h. Hallucinations, delusions, or paranoid thinking;

or

3. Bipolar or cyclothymic syndrome with a history of episodic periods manifested by the full symptomatic picture of both manic and depressive syndromes (and currently or most recently characterized by the full or partial symptomatic picture of either or both syndromes);

and

B. For older infants and toddlers (age 1 to attainment of age 3), resulting in at least one of the appropriate age-group criteria in paragraph B1 of 112.02; or, for children (age 3 to attainment of age 18), resulting in at least two of the appropriate age-group criteria in paragraph B2 of 112.02.

20 C.F.R. 404, Appendix 1, Section 112.04. Per the information in Finding #5, the petitioner does not meet the criteria at A1 or 2 above, as she has not displayed enough of the listed symptoms.

The cross-referenced criteria at paragraph B2 refer to the four functional areas of cognition/communication, social functioning, personal functioning, and deficiencies of concentration/persistence/pace. The petitioner does not medically equal the mood disorder listing because her verbal skills are in the average range. The child's social functioning is impaired, but not at a "marked" level, because she has periods of time when her social functioning is appropriate. She does have a marked impairment in age-appropriate personal functioning. Finally, although she sometimes has difficulties in maintaining concentration or pace, this is a "less than marked" deficit. Thus, her deficits in these categories do not meet the test at §112.04B.

The next question is whether she *functionally equals* an appropriate Listing standard.

III. THE PETITIONER'S CONDITION DOES *FUNCTIONALLY EQUAL* THE SECTION 112.04 LISTINGS.

The Listings describe impairments that are significant enough to cause "marked and severe" functional limitations. This phrase is a term of art in children's disability rules. 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. 20 C.F.R. §416.925.

"Marked" and "extreme" limitation are defined at 20 C.F.R. 416.926a(e). 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). Or, for children from age three to age eighteen, it means "more than moderate" and "less than extreme." Marked limitations must be present in two "domains."

In comparison, "extreme" limitation means a score three standard deviations below the norm or, for children age three to age eighteen, no meaningful function in a given area. See 20 C.F.R. §416.926a(e)(3). Fortunately, the petitioner does not have the extreme limitation of "no meaningful function" in a given domain.

To return to a discussion of whether the petitioner has "marked" limitations in two domains, the SSI rule identifies six domains to be reviewed: (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 yourself, and (6) Health and physical well-being. 20 C.F.R. §416.926a(b)(1). I conclude that the petitioner does not have a marked limitation in the domains of "acquiring and using information," "attending and completing tasks," "moving about and manipulating objects," and "health and physical well-being." She does have a marked limitation in the domains of "interacting and relating with others" and "caring for herself."

For the domain of *acquiring and using information*, a child between the ages of thirteen and eighteen should be able to use what he has learned in daily living situations without assistance. Examples in the federal rule of functional limitations in this category are as follows:

- (i) You do not demonstrate understanding of words about space, size, or time;
- (ii) You cannot rhyme words or the sounds in words.
- (iii) You have difficulty recalling important things you learned in school yesterday;
- (iv) You have difficulty solving mathematics questions or computing arithmetic answers.
- (v) You talk only in short, simple sentences and have difficulty explaining what you mean.

20 C.F.R. §416.926a(g)(3).

Per the information in Finding #6, I conclude that the petitioner has a “*less than marked*,” rather than a marked, limitation in the domain of acquiring and using information.

Regarding the domain of ***attending and completing tasks***, the child must focus and maintain attention, and begin and finish activities. *Id.*, (h), intro. A partial description of the skill limitations considered within this domain are as follows:

- (i) You are easily startled, distracted, or overreactive to sounds, sights, movements, or touch.
- (ii) You are slow to focus on, or fail to complete activities of interest to you, e.g., games or art projects.
- (iii) You repeatedly become side-tracked from your activities or you frequently interrupt others.
- (iv) You are easily frustrated and give up on tasks, including ones you are capable of completing.
- (v) You require extra supervision to keep you engaged in an activity.

Id., (h)(3). Per the information in Finding #7, I conclude that the petitioner has a “*less than marked*,” rather than a marked, limitation in the domain of attending and completing tasks.

The code language for the next domain of ***interacting and relating with others***, contains the following examples of limitations:

- (i) You do not reach out to be picked up and held by your caregiver.
- (ii) You have no close friends, or your friends are all older or younger than you.
- (iii) You avoid or withdraw from people you know, or you are overly anxious or fearful of meeting new people or trying new experiences.
- (iv) You have difficulty playing games or sports with rules.
- (v) You have difficulty communicating with others; e.g., in using verbal and nonverbal skills to express yourself, carrying on a conversation, or in asking others for assistance.
- (vi) You have difficulty speaking intelligibly or with adequate fluency.

See, *id.*, (I)(3). The petitioner currently has no peer-age friends. She does not pick up on social cues, and is too physically close to other teens when talking. She had a brief, inappropriate sexual relationship with a man of nearly 30. The petitioner's mood can change from friendly to angry, hostile and violent very quickly. The child has been charged in the juvenile justice system for criminal damage to property and threatening to harm her mother. Per the information in Finding #8, she has a *marked* limitation in this domain.

Regarding the domain of ***moving about and manipulating objects***, the child must be able to move his body from one place to another and have adequate fine motor skills:

As an adolescent, you should be able to use your motor skills freely and easily to get about your school, the neighborhood, and the community. ...

Id., (j)(2)(v).

The petitioner's fine and gross motor skills are within normal limits. Per the information contained in Finding #9, I conclude that the child has no limitation in this domain.

For the domain of ***caring for yourself***, a child can take care of his/her health, possessions and living area. The federal rule identifies the following limitations for consideration:

- (i) You continue to place non-nutritive or inedible objects in your mouth.
- (ii) You often use self-soothing activities showing developmental regression (e.g., thumbsucking, re-chewing food), or you have restrictive or stereotyped mannerisms (e.g., body rocking, head-banging).
- (iii) You do not dress or bathe yourself appropriately for your age because you have an impairment(s) that affects this domain.
- (iv) You engage in self-injurious behavior (e.g., suicidal thought or actions, self-inflicted injury, or refusal to take your medication), or you ignore safety rules.
- (v) You do not spontaneously pursue enjoyable activities or interests.
- (vi) You have disturbance in eating or sleeping patterns.

Id., (k)(3). The petitioner has age-appropriate physical skills for self-care. However, she has other deficits, as described in Finding #10. Her limitations are at the "marked" level for this domain, and eth DDB agrees with that determination.

Finally, in the domain of *health and physical well-being*, the child must have a disorder or be taking medications/treatments with physical effects that make it difficult to perform activities independently. Examples in the rule of marked physical effects include the need for an organ transplant, or other major surgery, the need for a life-sustaining device, the need for 24 hour per day medical supervision, the need for bilateral upper limb assistance in order to ambulate, and gastrostomy. *Id.* (l),(m). Fortunately, the petitioner has none of these enumerated needs. No physical problems were noted. Thus, I conclude that the petitioner has no limitation in the domain of health and physical well-being.

CONCLUSIONS OF LAW

1. The petitioner's condition does not meet or medically equal the bipolar disorder listing at Section 112.04.
2. The petitioner's condition *does* functionally equal the bipolar listing because the petitioner has a marked limitation in two domains; marked limitation in two domains is required for functional equivalence to a listing standard.
3. The DDB incorrectly determined that the petitioner is not disabled for Katie Beckett MA purposes at this time.

THEREFORE, it is

ORDERED

That the petition is remanded to the Department with instructions to continue the processing of the petitioner's Katie Beckett MA application in accord with the Conclusions of Law above.

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 20th day of April, 2015

\sNancy J. Gagnon
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 20, 2015.

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