



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

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

DECISION
MKB/165698

PRELIMINARY RECITALS

Pursuant to a petition filed April 27, 2015, 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 regarding petitioner’s appeal of the denial of her January 15, 2015 Katie Beckett (KB) application, a telephonic hearing was held on May 13, 2015, at Green Bay, Wisconsin.

During that hearing, petitioner’s mother, [Redacted], requested that the record be held open for the submission of additional evidence to the Division of Hearings and Appeals (DHA), and then for that information to be sent to the Katie Beckett Bureau to review the new evidence and issue a reconsideration summary. This Administrative Law Judge (ALJ) sent a June 8, 2015 cover letter to [Redacted] at the Bureau of Long Term Support with a copy of the following Exhibits: a) a detailed 3 page letter by petitioner’s parents arguing that their daughter should be eligible for KB; and b) Six (6) Documents regarding petitioner’s medical and non-medical documents in support of her KB eligibility.

In that same letter, this ALJ requested that [Redacted], review those documents and letters, and submit a reconsideration summary to me at the Division of Hearings and Appeals by June 24, 2015 regarding petitioner’s KB eligibility under any Level of Care with a copy of that reconsideration summary to be sent to petitioner’s mother as her representative. [Redacted] was granted until July 6, 2015 to submit to DHA (with a copy of [Redacted]) any response to the reconsideration summary.

[Redacted] timely submitted a detailed June 24, 2015 reconsideration summary to DHA and to petitioner’s representative. However, [Redacted] failed to submit any response to DHA by July 6, 2015 or even by the date of this decision.

The issue for determination is whether the Katie Beckett Program correctly denied the petitioner’s January 15, 2015 Katie Beckett (KB) MA application, due to not meeting any required Level of Care.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

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

Representatives:

[Redacted] & [Redacted]
parents
[Redacted]
[Redacted]

Respondent:

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

By: [REDACTED], RN, nurse consultant  
Bureau of Long-Term Support  
1 West Wilson  
P.O. Box 7851  
Madison, WI 53707-7851

ADMINISTRATIVE LAW JUDGE:  
Gary M. Wolkstein  
Division of Hearings and Appeals

**FINDINGS OF FACT**

1. Petitioner is a 5 year old resident of Brown County who resides in a private residence with her parents.
2. On or about January 15, 2015, petitioner's parents applied on behalf of the petitioner for benefits under the MA Katie Beckett Program.
3. Petitioner is diagnosed with Congenital Hemiplegia, Diplegic Cerebral Palsy, Strabismus Esotropia, muscle spasms, contracture of ankle and foot joints, and Congenital Talipes Equinovarus.
4. Petitioner needs assistance with the following Activities of Daily Living (ADLs): bathing, dressing and toileting. She is able to walk independently, but requires braces. She is unable to stand up from the floor without holding onto a stationary object or a hand. She is also unable to walk down stairs without assistance. Petitioner does have some delays in mobility, but those delays are not substantial functional limitations because she is able to maneuver around her environment.
5. The petitioner does not take any oral medications, but does receive Botox injections into her thigh and calf muscles every three months. She does not require any daily or frequent medical or skilled nursing interventions.
6. The petitioner attends the Green Bay Area Public Schools. Through the school, [REDACTED] receives occupational therapy (OT) three times per month for a total of 2 hours, and Physical therapy (PT) four times per month for a total of about 3 hours. [REDACTED] also receives physical therapy through St. Vincent Hospital.
7. While petitioner does have cognitive challenges, her standard score of 79 for receptive language skills and an 88 for her expressive language skills are above the full scale IQ score of 75 or below to be determined cognitively or developmentally disabled (2 or more standard deviations below the mean or 30% or greater cognitive delay).
8. On March 15, 2015, the Department, by the Division of Long Term Care – Katie Beckett Program, issued a letter Notice to the petitioner's parents informing them that petitioner's January 15, 2015 Katie Beckett application was denied due to petitioner not meeting the required level of care criteria. See Exhibit 2.
9. After reviewing petitioner's new evidence while the record was held open, Katie Beckett Nurse consultant [REDACTED] [REDACTED] sent a detailed June 23, 2015 reconsideration summary to DHA

confirming that while petitioner does have a long term disability, [REDACTED] does not have one substantial daily nursing intervention and does not have substantial functional impairments in at least **two** areas necessary to meet the Nursing Home or any other Katie Beckett Program Level of Care. See Preliminary Recitals above.

10. The petitioner's representative did not submit any response to the Department's June 23, 2015 reconsideration.

### 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, issued in January, 1993, which defines and describes childhood care levels. See, Katie Beckett Program Policies and Procedures. The level of care criteria were amended most recently in 2007. There currently are four levels of care: hospital, SED, nursing home, and care facility for the developmentally disabled (ICF-DD). While the four levels essentially remain as defined in 2007, the 1993 Manual is now completely obsolete. The so-called "narratives" for these levels of care have been restated in a new written policy document called the *Institutional Levels of Care – Children's Long Term Support Programs In Wisconsin*, effective January, 2010.

On January 15, 2015, petitioner's parents applied on behalf of the petitioner for eligibility under the MA Katie Beckett Program.

The child does not receive any nursing cares other Botox injections into her thigh and calf muscles every three months. She does not meet the hospital level of care. Likewise, there is no diagnosis of any severe mental illness other than ADHD, so the Severe Emotional Disturbance (SED) level is not applicable at this time. Finally, there is no evidence of substantial cognitive impairment or mental retardation, so the ICF-Developmentally Disabled level of care is also not applicable. See Finding of Fact # 7 above. Therefore, if the child was to be found eligible for the Katie Beckett Program, she would need to meet the nursing home level of care.

To do so, she must meet the standards enumerated in the *Institutional Levels of Care – Children's Long Term Support Programs In Wisconsin*, at pp. 22 -26, as Standard I and Standard II. She does not meet Standard II, which requires "substantial functional limitations in at least 4 of 7 categories for learning, communication, bathing, grooming or dressing, eating, toileting and mobility. At this time, she has substantial functional limitations in only three (3) categories: bathing dressing and toileting.

That leaves only Standard I. To meet it, she must demonstrate that she needs and receives at least one skilled nursing intervention from a list therein, that must be performed **daily** and is reasonably expected to continue for at least six months **OR** two skilled nursing interventions or therapeutic interventions, from a list therein, that must be performed at least weekly and expected to continue for at least six months **PLUS** two substantial functional limitations from the list of 7 (different) categories for learning, communication, self care, mobility, severe behavioral issue, or work for children over 16. *Institutional Levels of Care – Children's Long Term Support Programs In Wisconsin*.

The petitioner's representative was unable to establish that she has any **daily** skilled nursing intervention, but does require Botox injections every three months. In reviewing the remaining criteria for substantial functional limitations under this seven category list, there is no evidence of impairment of learning, self cares normal for a 5 year old, mobility, and no severe behavioral issues. The work category only applies to minors over 16 years old.

During the hearing, petitioner's mother testified regarding [REDACTED]'s many medical and physical problems. However, as explained above in the Preliminary Recitals, the record was held open for the petitioner to submit additional medical evidence to establish that the Department incorrectly denied the petitioners' Katie Beckett application. While petitioner did submit the new evidence to the Department, [REDACTED]'s June 23, 2015 Reconsideration summary persuasively refuted that petitioner met any required Katie Beckett Level of Care.

Petitioner's May 11, 2015 Individual Education Plan (IEP) indicted that she is determined to be as independent as possible. She has a good vocabulary and readiness skills. She is friendly, cooperative, polite, and is starting to show her independence more at school. She has limited stamina both physically and mentally, and at the end of her stamina she may begin to whimper or cry. However, breaks are built into her day in a quiet environment to help her collect herself and refocus. She does need to wear glasses at all times, and her vision problems are built into her achieving her goals at school. She receives physical therapy and occupational therapy at school, and additional PT at St. Vincent Hospital. See Finding of Fact #6 above.

While petitioner does have cognitive challenges, her standard score of 79 for receptive language skills and an 88 for her expressive language skills are above the full scale IQ score of 75 or below to be determined cognitively or developmentally disabled (2 or more standard deviations below the mean or 30% or greater cognitive delay).

The petitioner's parents are very involved, caring parents who are clearly attempting to provide the best medical care for their daughter. However, petitioner's parents did not submit any response to the [REDACTED]'s June 23, 2015 Reconsideration summary to DHA by the July 6, 2015 deadline or even by the date of this decision. At this time, the petitioner's parents were unable to establish that petitioner meets any level of care for Katie Beckett eligibility. While [REDACTED] does have medical, physical, and cognitive needs, she does not have the significant functional impairments or significant developmental delays necessary to meet any level of care for the Katie Beckett Program. Accordingly, based upon the above, I must conclude that Department correctly denied the petitioner's January 15, 2015 application for the Katie Beckett MA Waiver program, due to not meeting the level of care requirement.

As dicta, if [REDACTED]'s medical, physical and/or cognitive conditions worsen, her parents may want to re-apply for the Katie Beckett MA program.

### **CONCLUSIONS OF LAW**

1. Petitioner does not meet any level of care for Katie Beckett Program eligibility at this time.
2. The Department correctly denied the petitioner's January 15, 2015 application for the Katie Beckett MA Waiver program, due to not meeting the level of care requirement.

**THEREFORE, it is**

**ORDERED**

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 22nd day of September, 2015.

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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 22, 2015.

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