



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

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In the Matter of

[REDACTED]  
[REDACTED]  
[REDACTED]

DECISION

[REDACTED]

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**PRELIMINARY RECITALS**

Pursuant to a petition filed July 15, 2015, under Wis. Stat., §49.45(5), to review a decision by the Disability Determination Bureau (DDB) to deny disability for Katie Beckett Medical Assistance (MA) and for the Children's Long Term Support (CLTS) program, a hearing was held on September 23, 2015, by telephone. A hearing set for September 17, 2015 was rescheduled at the petitioner's request.

The issue for determination is whether petitioner is disabled.

**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:**

Brian C. Schneider  
Division of Hearings and Appeals

**FINDINGS OF FACT**

1. Petitioner is a 12-year-old resident of Jefferson County.
2. On February 18, 2015, an application was filed on petitioner's behalf for Katie Beckett MA and the CLTS program. The application was forwarded to the DDB to make a disability determination.

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3. The DDB denied disability by a letter dated June 22, 2015. Petitioner sought reconsideration but the DDB affirmed the denial on August 17, 2015.
  4. When the DDB reviewed petitioner's application she was diagnosed with post-traumatic stress disorder (PTSD), attention deficit hyperactivity disorder (ADHD), intermittent explosive disorder, and generalized anxiety disorder (GAD). In addition she may have been diagnosed with bi-polar disorder recently (the only mention of that diagnosis is in a September 22, 2015 letter provided by her Jefferson County social worker).
  5. Petitioner has a marked impairment in personal functioning/caring for herself. She has heightened problems with anxiety and has resorted to self-harm.
  6. Petitioner misses school and assignments, often misplacing homework and forgetting what she did with it.
  7. Petitioner struggles with friendships, but does interact with other children. She reports being bullied but reports also exist that she bullies others as well.

### DISCUSSION

The purpose of the "Katie Beckett" waiver 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. Wis. Stat., §49.47(4)(c)1m. The Bureau of Developmental Disabilities Services 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. The disability determination is made for the Bureau by DDB. 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.

The 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 Waivers Manual") that became effective with the start of the CLTS program. The Manual can be found on the internet at <http://www.dhs.wisconsin.gov/bdds/waivermanual/index.htm>.

The Waivers Manual provides that an individual must meet several eligibility criteria for these programs, one of which is that the child must be disabled when applying for a "state-matched" CLTS slot such as one applied for concurrently with the Katie Beckett program. Waivers Manual, §2.05B.

"Disability" is defined as an impairment or combination of impairments that substantially reduces a child's ability to function independently, appropriately, and effectively in an age-appropriate manner, for a continuous period of at least 12 months. Katie Beckett Program Policies and Procedures Manual, page 32. 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 or medically or functionally equal the requirements of a listing in the 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.

[REDACTED]

20 C.F.R. §416.911(b). §416.994a referenced in number (2) describes disability reviews for children found disabled under the prior law.

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," she is not disabled and the evaluation stops. Petitioner is not working, so she passed 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). Petitioner was determined to meet this step.

Next, 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. The DDB found that petitioner does not meet the listings. I reviewed listings in part 112 for mental disorders. To be eligible under these listings the child must have marked impairments in two of the following: cognitive/communicative functioning, social functioning, personal functioning, and maintenance of concentration, pace, and persistence. I note that the DDB found that petitioner does not meet a listing. If the child does not meet a listing, the review moves to the next step. I will move there immediately because the next step incorporates the listing areas but adds two additional areas (motor control and physical health).

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 of the following six domains: (1) cognitive/communicative functioning, (2) social functioning, (3) personal functioning, (4) maintaining concentration, persistence, and pace, (5) motor control, and (6) physical health. To be found disabled, the child must have marked limitations in two of the six areas, or an extreme limitation in one of the areas. 20 C.F.R. §416.926a(b)(2).

"Marked" limitation and "extreme" limitation are defined in the regulations 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). For children from ages three to age 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 DDB concluded that petitioner had a marked impairment in personal functioning. It found less than marked impairments in cognitive functioning (called "acquiring and using information" on the Disability Evaluation Form), social functioning ("interacting and relating with others"), and maintaining concentration, persistence, and pace ("attending and completing tasks"). It found no impairment in motor control or physical health.

The DDB noted that petitioner's cognitive functioning is intact, but missing school has set back her academic progress. Thus the DDB expert found petitioner to have a cognitive impairment but less than marked. I agree with that assessment.

[REDACTED]

With regard to attending and completing tasks and interacting with others, the DDB expert found clear impairments but noted that both stabilize with proper medication, and as a result neither area can be considered to reach the level of a marked impairment. I have reviewed the records and the additional information provided at the hearing. I cannot conclude that the DDB expert erred in those findings.

There is a report that petitioner's medications were changed in the summer, 2015, but it is unclear whether or not the changes led to an increase or decrease in petitioner's stability. Petitioner does not receive specialized help in school, and thus, at least in the academic sense, any problems with concentration, persistence, and pace do not rise to a marked level. While petitioner's mother reports that petitioner has no friends, she does play with other children (albeit in a potentially dangerous place by a Jefferson dam). She interacts with children electronically. There is a reference to an incident last spring in which petitioner had police contact due to inappropriate and threatening text messages; all parties were found to be at fault, and there is no record of the problem persisting.

The record before is insufficient for me to conclude that the DDB determination was incorrect. The DDB expert who reviewed petitioner's case regularly reviews such applications and thus has expertise in the levels of impairments, and petitioner has not provided evidence to support a contrary conclusion. While petitioner has issues with daily functioning, they do not arise to the level of marked impairments except in the area of personal care.

### CONCLUSIONS OF LAW

Petitioner is not disabled as required for Katie Beckett MA and CLTS because she does not have marked impairments in two of six areas of functioning.

**THEREFORE, it is** **ORDERED**

That the petition for review 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 29th day of September, 2015

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\sBrian C. Schneider  
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 29, 2015.

Jefferson County Department of Human Services  
Bureau of Long-Term Support  
Division of Health Care Access and Accountability