



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

In the Matter of

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

DECISION

MKB/168638

PRELIMINARY RECITALS

Pursuant to a petition filed August 03, 2015, under Wis. Stat. § 49.45(5), and Wis. Admin. Code § HA 3.03(1), to review a decision by the Disability Determination Bureau in regard to Medical Assistance, a hearing was held on October 27, 2015, at West Bend, Wisconsin.

The issue for determination is whether Petitioner is disabled for Medicaid purposes.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

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

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Respondent:

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

By: No Appearance, submission of medical file
Disability Determination Bureau
722 Williamson St.
Madison, WI 53703

ADMINISTRATIVE LAW JUDGE:

David D. Fleming
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner is a resident of Washington County.
2. Petitioner applied for Medicaid as a disabled person, as a condition of satisfying Katie Beckett Medical Assistance (MA) eligibility criteria in January 2015. The Department denied that application, due to lack of disability. Petitioner timely requested reconsideration, and an

unfavorable reconsideration decision from the Department’s Disability Determination Bureau (DDB) was issued in August 2015.

3. DDB determined that 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 impairment allegedly does not cause sufficiently marked or extreme functional limitations.
4. Petitioner is 5 years of age (DOB 05/19/2010) and lives in the community with her parents. They were her foster parents and then adopted her. She has been with them since about age 6 months. She has a diagnosis of autism. She does attend school and has a full time aide assigned to her. She does receive physical therapy in school. Petitioner has frequent episodes of kicking, biting and screaming.
5. Petitioner’s condition does not meet the Listing criteria for §112.10 (mental health – here, specifically autistic disorder). Thus it is the functional Equivalence” Domain Criteria that are at issue here.
6. The DDB concluded that Petitioner has ‘no limitations’ in the domain of health and physical well-being and ‘marked limitations’ in the domain of attending and completing tasks but ‘less than marked limitations’ in each of the following domains:
 - a. acquiring and using information,
 - b. interacting and relating with others,
 - c. moving about and manipulating objects and
 - d. caring for yourself.

DISCUSSION

Petitioner desires to be found eligible for disability as a condition of eligibility for Medicaid waiver programs and services. As a condition of eligibility, she must be found “disabled,” at the level required for federal SSI eligibility.

I. DEFINITION OF CHILDHOOD DISABILITY.

To be considered 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 ...

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 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 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 Petitioner did not meet this requirement, and that she is therefore not disabled for SSI/MA purposes.

II. PETITIONER’S CONDITION DOES NOT *MEET OR MEDICALLY EQUAL* THE LISTINGS AT SECTION 112.

There are specific sections of the Listings that deal with Petitioner’s medical issues: § 112.00 - that deals with mental health diagnoses. These sections can be viewed online at www.ssa.gov/disability/professionals/bluebook/112.00-MentalDisorders-Childhood.htm. Petitioner does not meet the specific Listing criteria. The next question is whether she *functionally equals* an appropriate Listing standard and it is the mental health standards at issue here.

III. PETITIONER’S CONDITION DOES *FUNCTIONALLY EQUAL* THE SECTION 112 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). The question here is whether or not Petitioner has marked limitations in the two areas noted above. Marked is defined as:

(2) *Marked limitation.* (i) We will find that you have a “marked” limitation in a domain when your impairment(s) interferes seriously with your ability to independently initiate, sustain, or complete activities. Your day-to-day functioning may be seriously limited when your impairment(s) limits only one activity or when the interactive and cumulative effects of your impairment(s) limit several activities. “Marked” limitation also means a limitation that is “more than moderate” but “less than extreme.” It is the equivalent of the functioning we would expect to find on standardized testing with scores that are at least two, but less than three, standard deviations below the mean.

20 C.F.R. 416.926a(e)(2)(i).

To return to a discussion of whether Petitioner has “marked” limitations in two domains, again, 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).

The DDB concluded that Petitioner has no limitation in the area of health and physical well-being and marked limitations in the area of attending and completing tasks but less than marked in the other 4 domains. Her ability to move about and manipulate objects is not an area of controversy so it this leaves acquiring and using information, interacting and relating with others, and caring for yourself as issue areas. The primary problem here is that Petitioner was receiving early autism services but those services have been discontinued without a finding of disability and with the discontinuance Petitioner’s behavior has deteriorated to the point where it affects all three of these domains. Nonetheless, I cannot conclude that Petitioner’s ability to learn or to be social are marked. That said, while it is a close call, I am concluding that

Petitioner's self-care has deteriorated into the marked category. Petitioner's mother testified credibly that it takes 3 hours to get Petitioner ready for school in the morning. Petitioner bites, kicks, screams and will withhold urine – once for the entire day. She will not bath or wash her own hair. She cannot put on her own shoes. She can only partially dress herself.

While I can understand how the DDB reached the conclusion that it did, in the end I am persuaded by the testimony and evidence offered by Petitioner's mother. She was measured, rational and reasonable and thus credible.

I am, therefore, concluding that Petitioner has marked limitations in the two referenced domains. As I noted at the beginning of Discussion section III, for a child's condition to functionally equal the severity of a Listing, the child must have a marked limitation in two of the six domains. This child has a "marked" limitation in two domains, so I am reversing the DDB decision that she is not disabled for MA purposes at this time.

I do note that:

In order to be eligible for Wisconsin Medicaid through the Katie Beckett Program, a child must meet ALL of the following criteria:

1. Be under 19 years of age;
2. Be disabled by standards in the Social Security Act;
3. Be a United States citizen or have acceptable immigration status;
4. Be a Wisconsin resident;
5. Live at home with their family;
6. Require a [level of care](#) (PDF, 134 KB) at home that is typically provided in a hospital or nursing facility;
7. Be provided safe and appropriate care in the family home;
8. Not have income in their name in excess of the current standards for a child living in an institution;
9. Not incur a cost at home to the Wisconsin Medicaid program that exceeds the cost Medicaid would pay if the child were in an institution.

*Wisconsin Department of Health Services website regarding the Katie Beckett program.
<http://www.dhs.wisconsin.gov/children/kbp/index.htm>*

By concluding that Petitioner does meet the Social Security disability criteria I do not wish to give her parents the impression that she meets all the other eligibility criteria. The other criteria were not, however, the subject of this hearing and are not, therefore, within the Division of Hearings and Appeals scope of authority unless and until the department has evaluated them and made a decision that is adverse to Petitioner and appealed.

CONCLUSIONS OF LAW

1. Petitioner's condition does not meet or medically equal the listing at § 112.
2. Petitioner's condition *does* functionally equal the listing because Petitioner has a marked limitation in two domains.
3. Petitioner is disabled for Katie Beckett MA purposes at this time.

THEREFORE, it is

ORDERED

That the petition is remanded to the Department with instructions to immediately continue the processing of Petitioner's Katie Beckett MA application, in accord with Conclusions of Law #2 and #3 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 Milwaukee,
Wisconsin, this 4th day of November, 2015

\sDavid D. Fleming
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 November 4, 2015.

Washington County Department of Social Services
Bureau of Long-Term Support
Division of Health Care Access and Accountability