



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

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c/o █
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DECISION

MKB/169593

PRELIMINARY RECITALS

Pursuant to a petition filed August 17, 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) purposes, a hearing was held on January 13, 2016, by telephone. Hearings set for November 10 and December 8, 2015 were rescheduled at the petitioner's request.

The issue for determination is whether petitioner is disabled.

PARTIES IN INTEREST:

Petitioner:

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c/o █
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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 5-year-old resident of Lincoln County.
2. An application for Katie Beckett MA was filed on petitioner's behalf on April 15, 2015. By a letter dated July 23, 2015, the DDB concluded that petitioner was not disabled. Petitioner sought reconsideration, but the DDB affirmed the decision on October 21, 2015.

3. Petitioner has spastic left hemiparetic cerebral palsy. His cognitive functioning is unaffected. He is able to walk with a mid-toe gait on the left but is prone to falling; he wears an ankle foot orthosis. He gets periodic Botox injections and also is put in a cast occasionally (but not since 2014). He has mild dystonic posturing of his left fingers. He has moderate deep tendon reflexes in his biceps, patella, and Achilles. He has full passive range of motion in his upper extremities, but his active range of motion is at 65-75 degrees. He shows increased body asymmetry as he gets older.
4. Petitioner is able to run, play baseball, and fish. He is in his age appropriate grade at school.

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.

“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.

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", he is not disabled and the evaluation stops. Petitioner is not working, so he 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.

The listing for cerebral palsy is no. 111.07. A person must meet one of two criteria under that listing. 111.07A requires persistent disorganization or deficit of motor function involving two extremities that interferes with age appropriate major daily activities and disrupts fine and gross movements or gait and station. 111.07B allows a disability finding if there is less severe motor dysfunction (but more than slight) and one of the following: IQ of 70 or less, seizure disorder, significant interference with communication, or significant emotional disorder.

Petitioner does not meet 111.07A because his motor function deficits are not sufficiently disrupting. He is able to move his body from one place to another, and has no major limitations in strength, coordination, or dexterity. Clearly his dysfunction is less severe as noted in 111.07B, but he does not have the low IQ, seizure disorder, communication interference, or emotional disorder required under that subsection. I agree with the DDB that petitioner does not meet the listing.

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 found that petitioner had a marked limitation in physical health due to the Botox injections, casting, and ongoing need for physical therapy. The DDB found no limitations in cognitive functioning, concentration/persistence/pace, social functioning, or personal functioning. Petitioner's mother disagreed only with the finding of no limitation in personal functioning. She reported that petitioner needs help with dressing and in the bath tub. However, I would find that at most petitioner's limitations in personal functioning are less than marked. All 5-year-olds require some assistance with dressing and bathing, and while there is no doubt that petitioner requires more assistance, it does not rise to the level of marked seriousness.

The key issue is whether petitioner's deficit in motor control is marked. The DDB concluded that while petitioner has a deficit, it is less than marked. The DDB noted that petitioner is able to ambulate and to run, he has full passive range of motion in his upper extremities, and there is only mild dystonic posturing of his left fingers. Although falling is a problem, he does not fall frequently.

Petitioner's mother reported that petitioner cannot extend his left elbow, and he has problems grasping with his left thumb because he holds it into his fist. The problem with the thumb appears to be recent. Petitioner's physical therapist, in a letter dated December 30, 2015, says that Mom notes the problem; the therapist apparently has not seen the problem.

In addition, the school district now has found petitioner disabled in a Section 504 determination. However, it is evident that the determination was made on the basis of how petitioner's current school year would be affected. Emphasis was given to anticipated Botox injections that will result in petitioner's having his leg casted. A short term cast will leave petitioner limited in his mobility this school year. However, the determination here is permanent disability, and there is no evidence that the anticipated Botox injection will result in a permanent impairment.

I reviewed the DDB determination thoroughly. It is evident that the reviewers put substantial consideration into petitioner's disability status, and I cannot find that the result was incorrect. Petitioner's mother reports that his condition is worsening, but the medical record in the file supports the DDB determination. I conclude, therefore, that the DDB determination that petitioner is not disabled is affirmed.

CONCLUSIONS OF LAW

The DDB correctly determined that petitioner is not disabled as required for Katie Beckett MA eligibility.

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 20th day of January, 2016

\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 January 20, 2016.

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