



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of:

[Redacted]
c/o [Redacted]

DECISION

MKB- 174200

PRELIMINARY RECITALS

On May 6, 2016 the above petitioner filed a Hearing request, under Wis. Stat. § 49.45(5) and Wis. Admin. Code § HA 3.03(1), to challenge a decision by the Wisconsin Department of Health Services ["DHS"] regarding Medical Assistance ["MA"]. The Hearing was held via telephone from Madison, Wisconsin on June 14, 2016.

The issue for determination is whether or not petitioner satisfies the Level Of Care ["LOC"] criteria of the MA Katie Beckett Program ["KBP"].

There appeared at that time via telephone the following persons:

PARTIES IN INTEREST:

Petitioner:

[Redacted]
c/o [Redacted]

Represented by:

[Redacted], petitioner's mother

( [Redacted] was not present at the June 14, 2016 Hearing)

Respondent:

Department of Health Services

[Redacted], RN, Nurse Consultant
Wisconsin Department of Health
Services ["DHS"]
PO Box 7851
Madison, WI 53707-7851

ADMINISTRATIVE LAW JUDGE:

Sean Maloney
Division of Hearings and Appeals

## FINDINGS OF FACT

1. Petitioner (5 years old) is a resident of Dane County, Wisconsin.
2. Petitioner has a diagnosis of Autism Spectrum Disorder ["ASD"]; he requires no medical or nursing care at home or at school. Exhibits #1, #2 & #3.
3. Petitioner attends 4K school 4 days per week for ½ days; he has unevenly developed cognitive abilities but a broad estimate of his general cognitive ability based on standardized test is that he is average in comparison to his same age peers (he is a very fast learner but only if things are presented in progressive, hierarchical manner); he exhibits substantial deficits in his verbal cognitive abilities (he often does not understand things and must be watched when he goes out; people not familiar with him do not understand him when he speaks) and is likely to require continued therapy, specialized academic instruction, and additional support through school (but not institutionalization or inpatient treatment). Exhibits #1, #2 & #4.

## DISCUSSION

The purpose of the Katie Beckett waiver program is to encourage cost savings to the taxpayer by permitting disabled children, who would otherwise be institutionalized, to receive MA while living at home with their parents. 42 U.S.C. 1396a(e)(3); 42 C.F.R. § 435.225 (2016); Wis. Stat., § 49.46(1)(d)4. (2013-14). Therefore, for a child to be eligible for MA under the Katie Beckett Program the Level Of Care ["LOC"] required by the child's condition must be a Level Of Care that would normally be provided in an institution. 42 U.S.C. § 1396a(e)(3)(b)(i); 42 C.F.R. § 435.225(b)(1) (2016); *The Katie Beckett Program: Policies and Procedures* ["KBPPP"], 3.04A3; See also, Wis. Stat. § 49.46(1)(d)4 (2013-14). The Wisconsin Department of Health Services ["DHS"] determined that petitioner does not require an institutional LOC.

As per Katie Beckett Program Policies and Procedures there currently are four levels of institutional LOC.

First is the Intermediate Care Facility ["ICF/MR"] LOC. Children in this LOC must have all of the following: (1) a diagnosis of a cognitive disability that substantially impairs learning and that is expected to continue indefinitely; and, (2) demonstration of substantial functional limitations when compared to age appropriate activities that are expected to last a year or longer; and, (3) the need for active treatment. The intensity and frequency of required interventions to meet the child's functional limitations must be so substantial that without the intervention, the child is at risk for institutionalization. *Institutional Levels of Care: Children's Long Term Support Programs in Wisconsin*, updated February 2011 ["ILC"], page 3. Petitioner does not meet all 3 of the above required criteria. In particular, he does not have a cognitive disability. Therefore, petitioner does not meet the ICF/MR LOC.

Second is the Psychiatric Hospital -- Severe Emotional Disturbance ["SED"] LOC. Children in this LOC must have a long-term severe mental health condition diagnosed by a licensed psychologist or psychiatrist. The child must demonstrate persistent behaviors that create a danger to self or others, requiring ongoing therapeutic support in order to be able to live at home and in the community. The intensity and frequency of the required ongoing therapeutic support must be so substantial that without the support the child is at risk of inpatient psychiatric hospitalization.

A child must have all 4 of the following in order to be in the SED LOC:

1. a diagnosis of a mental health condition; and,
2. the mental health diagnosis or symptoms related to the diagnosis have existed and are expected to persist for a specific duration of time; and,
3. the need of involvement with service systems related to mental health support; and,

4. the exhibition of severe symptomology or dangerous behaviors at a specific intensity and frequency of required interventions such that without this direct, daily community-based intervention, the child is at risk for institutionalization within a psychiatric hospital.

See, ILC, page 8.

Petitioner does not exhibit the required severe symptomology or dangerous behaviors at the specific intensity and the frequency of required interventions such that without this direct, daily community-based intervention, he is at risk for institutionalization within a psychiatric hospital. Therefore, petitioner does not meet the SED LOC.

Third is the Nursing Home -- Physical Disabilities ["NHPD"] LOC. Children in the NHPD LOC must have a long-term medical or physical condition, which significantly diminishes his/her functional capacity and interferes with the ability to perform age appropriate activities of daily living at home and in the community. The child must require an extraordinary degree of daily assistance from others to meet everyday routines and special medical needs. The special medical needs must warrant skilled nursing interventions that require specialized training and monitoring that is significantly beyond that which is routinely provided to children. The intensity and frequency of required skilled nursing interventions must be so substantial that without direct, daily intervention, the child is at risk for institutionalization within a nursing home.

A child may be assigned the NHPD LOC if the child meets both of the criteria listed below for Physical Disability. The criteria are:

1. The child has a diagnosis of a medical/physical condition resulting in needs requiring long term care services; and,
2. The child requires skilled nursing interventions and/or has substantial functional limitations requiring hands on assistance from others throughout their day.

See, ILC page 22.

Petitioner does not require skilled nursing interventions and does not have substantial functional limitations requiring hands on assistance from others throughout his day. Therefore, petitioner does not meet the NHPD LOC.

Fourth is the Hospital -- Physical Disabilities ["HPD"] LOC. Children in this LOC must have needs that are typically meant in an inpatient medical hospital setting. See, ILC page 29. Petitioner does not have needs that are typically meant in an inpatient medical hospital setting. Therefore, petitioner does not meet the HPD LOC.

Based upon the above review of the LOC criterion, petitioner's level of care is not at any of the institutional levels of care. Therefore, petitioner does not meet the Level Of Care ["LOC"] requirement of the MA Katie Beckett Program. DHS's decision is affirmed.

If petitioner's condition changes he may reapply for the MA Katie Beckett Program.

### **CONCLUSIONS OF LAW**

Petitioner does not satisfy the Level Of Care ["LOC"] criteria of the MA Katie Beckett Program.

**NOW, THEREFORE, it is**

**ORDERED**

That 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, **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 28th day of June, 2016

\s \_\_\_\_\_  
Sean Maloney  
Administrative Law Judge  
Division of Hearings and Appeals



## State of Wisconsin \DIVISION OF HEARINGS AND APPEALS

Brian Hayes, Administrator  
Suite 201  
5005 University Avenue  
Madison, WI 53705-5400

Telephone: (608) 266-3096  
FAX: (608) 264-9885  
email: [DHAmail@wisconsin.gov](mailto:DHAmail@wisconsin.gov)  
Internet: <http://dha.state.wi.us>

The preceding decision was sent to the following parties on June 28, 2016.

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