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STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

██████████ ██████████
c/o ██████████ And ██████████ ██████████
██████████ ██████████
██████████ ██████████

DECISION
Case #: MKB - 200405

PRELIMINARY RECITALS

Pursuant to a petition filed on November 5, 2020, 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 regarding Medical Assistance (MA), a hearing was held on December 3, 2020, by telephone.

The issue for determination is whether the respondent correctly determined that petitioner is not disabled, as that term is defined for enrollment in the Katie Beckett MA program.

There appeared at that time the following persons:

PARTIES IN INTEREST:

Petitioner:

██████████ ██████████
c/o ██████████ And ██████████ ██████████
██████████ ██████████
██████████ ██████████

Respondent:

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

By: Bureau of Long-Term Support
PO Box 7851
Madison, WI 53707-7851

ADMINISTRATIVE LAW JUDGE:

Peter McCombs
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES #) is a resident of Marathon County. He lives at home with his family .

2. Petitioner is five years old. His diagnoses include arginase deficiency transaminitis and urea cycle disorder.
3. Petitioner applied for a disability determination seeking to enroll in the MA Katie Beckett program In January of 2020.
4. By a letter dated June 12, 2020, the respondent informed petitioner that he did not qualify for Medicaid - Disability. Petitioner sought reconsideration, but the DDB affirmed its determination on or about November 3, 2020.
5. Records provided to the respondent by petitioner's medical and education providers demonstrate no functional limitations that meet the listings and no learning deficits at this time. He was noted to experience severe separation anxiety. As he had not started school at the time of the respondent's evaluation, it was noted that he has not been fully evaluated academically.
6. Petitioner has problems with focus and attention, and is being evaluated for attention deficit-hyperactivity disorder.
7. Petitioner is age-appropriately independent in his activities of daily living. Petitioner's physical health is good, but at severe risk due to his diagnoses. The petitioner has no limitations in his ability to move about and moves objects without limitation

DISCUSSION

The Department denied the petitioner's application for medical assistance through the Katie Beckett waiver. This program seeks to save government funds by allowing disabled children who would otherwise be in an institution to receive medical assistance while living at home with their parents. 42 U.S.C. § 1396a(e)(3)(b)(i); 42 C.F.R. § 435.225(b)(1); Wis. Stat. § 49.46(1)(d)4.

The Division uses a multiple-step process to review Katie Beckett waiver decisions. If the criteria of the first step are not met, the process ends and the application is denied. The Department found that the petitioner does not meet the first step, which is to determine whether he is under 19 years old and disabled according to standards outlined in the Social Security Act. A child is disabled "if a medically determinable physical or mental impairment or combination of impairments substantially reduces...the child's ability to function independently, appropriately, and effectively in an age-appropriate manner." In addition, the disability must be expected to last at least one year or end in death. *Katie Beckett Program: Policies and Procedures*, p.32.

Current standards for childhood disability were enacted following the passage of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996. A disabling impairment for children is defined 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). The reference in § 416.994a subsection (2) describes disability reviews for children found disabled under the prior law. Since the petitioner's disability began after the new law was passed, he must meet or equal a listing described in subsection (1).

The process for determining whether an individual meets this definition is sequential. *See* 20 C.F.R. § 416.924. First, if he is doing "substantial gainful activity," he is not disabled and the evaluation stops. The petitioner is 5 years old and not working, so he passes this step.

Second, physical and mental impairments are considered to determine whether the claimant has an impairment or combination of impairments considered 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). The respondent concluded that petitioner's impairment is severe.

An applicant functionally equals a listed disability if he proves that he has an extreme limitation in one broad area of functioning or marked limitations in two broad areas of functioning. 20 C.F.R. § 416.925. An extreme limitation interferes very seriously with the child's ability to "independently initiate, sustain, or complete activities." It does not necessarily mean a total lack or loss of ability to function. *See* 20 C.F.R. § 416.926a(e)(3). A marked limitation "interferes seriously with [the] ability to independently initiate, sustain, or complete activities." 20 C.F.R. § 416.926a(e)(2).

SSI rules require review of the following six domains when determining whether the petitioner has limitations: (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 respondent initially determined that petitioner had a marked limitation in health and physical well-being, but on reconsideration concluded that his limitation in that area was less than marked. No other limitations were identified in the other five domains, and no domain limitations were found to be extreme.

Petitioner's mother testified that he requires more help than he is presently receiving, and that he qualified for assistance similar to that offered through the Katie Beckett program when they resided in Mississippi. She stated that he does have limitations in acquiring and using information, as he is delayed in alphabet and number recognition. She also noted that he is being assessed for ADHD, as he has a very low attention span. With regard to interacting and relating to others, she has found that petitioner can be prone to outbursts, and has kicked a neighbor. I found petitioner's mother to be credible, but not demonstrative of an incorrect assessment of the petitioner's limitations in these domains. While limitations may be identifiable in these domains, petitioner has not established limitations in these areas that interfere seriously with the petitioner's ability to independently, as age-appropriate, initiate, sustain, or complete activities

Petitioner's mother further indicated that his health and physical well-being should properly be considered marked and noted that on many days she considers it extreme. I cannot conclude, however, that the record entirely corroborates this assessment. Petitioner's health and well-being require constant vigilance in order to be maintained and a health crisis avoided. Yet, while I found petitioner's mother's testimony credible, that does not equate to finding of extreme limitations in his health and physical well-being. The record does not demonstrate that petitioner has an extreme limitation in any area, though I agree that he does have a marked limitation in health and physical well-being. As such, I must affirm the respondent's determination.

I note to petitioner, for purposes here, focus is on the functional limitations that may persist. If the petitioner's condition were to worsen or if he obtains new or different clinical evidence, he

would be well-advised to re-apply and provide new clinical documentation. He may also apply for Medicaid generally, not specific to the Katie Beckett program.

CONCLUSIONS OF LAW

The preponderance of the evidence shows that petitioner is not disabled for Katie Becket MA purposes as he does not have an extreme limitation in any domain, and has a marked limitation in only one domain.

THEREFORE, it is ORDERED

The petition for review herein is 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, 4822 Madison Yards Way, 5th Floor North, 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.

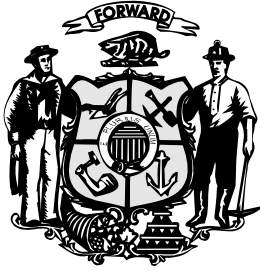
APPEAL TO COURT

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 6th day of January, 2021

\s _____
Peter McCombs
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 6, 2021.

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