



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[Redacted]
[Redacted]
c/o [Redacted]
[Redacted]
[Redacted]

DECISION
Case #: MKB - 200264

PRELIMINARY RECITALS

Pursuant to a petition filed October 21, 2020, under Wis. Stat., §49.45(5), to review a decision by the Disability Determination Bureau (DDB) to deny disability for Medical Assistance (MA) purposes, a hearing was held on December 16, 2020, by telephone. A hearing set for November 11, 2020 was rescheduled at the petitioner's request. The record was held open 20 days for petitioner's submission of a brief; the brief was received January 5, 2021.

The issue for determination is whether petitioner is disabled.

PARTIES IN INTEREST:

Petitioner:

Petitioner's Representative:

[Redacted]
[Redacted]
c/o [Redacted]
[Redacted]
[Redacted]

[Redacted]
[Redacted]
[Redacted]
[Redacted]

Respondent:

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

By: No appearance

ADMINISTRATIVE LAW JUDGE:

Brian C. Schneider
Division of Hearings and Appeals

FINDINGS OF FACT

- 1. Petitioner (CARES [Redacted]) is a 13-year-old resident of Marathon County.
2. Petitioner has Turner Syndrome, ADHD, epilepsy, hearing loss, anxiety, and celiac disease. On February 13, 2020, an application for Katie Beckett MA was filed on her behalf. By a letter dated July 21, 2020, the DDB found that petitioner was not disabled. Petitioner sought reconsideration, but the DDB affirmed the denial on October 16, 2020.

3. The DDB found that petitioner had a marked impairment in physical health, but that she had less than marked impairments in cognitive functioning (acquiring and using information), maintaining concentration, persistence, and pace (attending and completing tasks), and personal functioning (caring for herself). It found no limitations in motor control or social functioning.
4. In 2019 testing, when petitioner was at 6th grade age level, she scored 2nd grade level in the Fast Bridge math assessment, and 2nd/3rd grade level on the reading level assessment. In a functional screening done in March, 2020, the screener found that petitioner did not know her address, phone numbers, or how to read a clock. The screener noted that petitioner had limited problem solving skills and that she could not remember and apply steps in self-care skills.

## 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 Division of Medicaid 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 Division 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", 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 will not address the listings further because of my findings at the next step.

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's explanation for its findings described in Finding of Fact no. 3 is bereft of detail. With regard to cognitive functioning, the note reads: "Academically noted behind peers and struggles in math." However, actual testing shows that petitioner is 4 grades below her peers in math, and 3-4 grades behind her peers in reading. Add in that, at age 13, she did not know basic household information such as her address, family phone numbers, how to read a clock, and how to complete basic self-care functions, and it follows that petitioner is two standard deviations below the norm in cognitive functioning.

I conclude that petitioner has marked limitation in at least two of the six areas of functioning in the childhood disability evaluation. She thus is considered disabled. I will remand the matter to the Division of Medicaid Services, Katie Beckett Office, to continue the evaluation of petitioner's application with the finding that she is disabled.

### CONCLUSIONS OF LAW

Petitioner is disabled because she has marked limitations in the areas of cognitive functioning and physical health.

**THEREFORE, it is**

**ORDERED**

That the matter be remanded to the Division of Medicaid Services, Katie Beckett Office, to continue the evaluation of petitioner's application with the finding that she is disabled. The DMS shall do so within 10 days of this decision.

### **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, 5<sup>th</sup> 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.

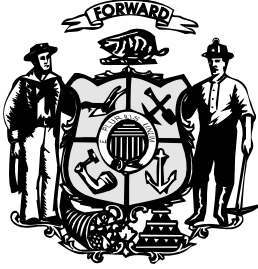
## **APPEAL TO COURT**

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 11th day of January, 2021

\s \_\_\_\_\_  
Brian 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 11, 2021.

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

