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STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

██████████
██████████
██████████
██████████

DECISION
Case #: MKB - 207607

PRELIMINARY RECITALS

Pursuant to a petition filed on February 6, 2023, under Wis. Stat. § 49.45(5), and Wis. Admin. Code § HA 3.03(1), to review a decision by the Bureau of Clinical Pharmacy and Policy regarding Medical Assistance (MA), a hearing was held on March 9, 2023, by telephone.

The issue for determination is whether Petitioner meets the legal standard for disability required to establish eligibility for Medical Assistance benefits through the Katie Beckett program.

There appeared at that time the following persons:

PARTIES IN INTEREST:

Petitioner:

██████████
██████████
██████████
██████████
██████████

Respondent:

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

Written Submission Filed by:
Bureau of Clinical Pharmacy and Policy
PO Box 7851
Madison, WI 53707-7851

ADMINISTRATIVE LAW JUDGE:

Teresa A. Perez
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner is a twelve-year old resident of Juneau County who was diagnosed with scoliosis in approximately December 2021. Petitioner receives BadgerCare Plus benefits.
2. Petitioner has been wearing a brace to treat her scoliosis since February 2022. Since at least October 2022, she has been wearing it approximately 18 – 20 hours per day and typically removes it only during volleyball practice and gym class. (Medical records and Testimony of [REDACTED])
3. During an orthopedic examination on October 11, 2022, Petitioner was noted to have a “35 degree right thoracic curvature from T6 – T11, with a slightly abnormal T7 that is trapezoidal shaped [with] 2 pedicles present . . . elongated pars of L5 bilaterally with a dysplastic listhesis, [and no] pars fractures.” She was further noted to have “no significant left-sided rotation above or below the right curve”, was able to “demonstrate normal gait pattern as well as toe walk heel walk and tandem gait without any balance or coordination deficits”, had “normal strength and tone in bilateral lower extremities in all distributions”, tight hamstrings, “painless range of motion of bilateral hips, knees, and ankles”, and “no limb length inequality.” (Medical Records)
4. While wearing her brace, Petitioner is not able to bend over. She therefore wears special shoes that she can put on herself and has “reachers” that help to accommodate her inability to bend. (Testimony of [REDACTED]).
5. In addition to her primary diagnosis of scoliosis, Petitioner has mild intermittent asthma, without complications, seborrheic dermatitis of the scalp, and as of the date of the hearing was undergoing evaluation for ADHD. (Medical records and Testimony of [REDACTED])
6. Petitioner applied for Katie Becket Medical Assistance in February 2022.
7. Petitioner is a student in the [REDACTED] where she has an approved 504 plan based on her scoliosis diagnosis. Petitioner is unable to sit on the bus for an extended period of time due to discomfort caused from sitting while wearing her brace; the 504 plan therefore authorizes van transportation from school to home. In addition, the plan identifies the following accommodations for Petitioner: seat cushions and foot stool, sitting on a stable chair at all times, extended attendance days due to appointments / pain, and extended time to get from class to class if needed.
8. By notice dated January 4, 2023, the Department of Health Services (“the department”) informed Petitioner’s parents that she did not meet the legal standard for childhood disability. They filed a request for reconsideration in September 2020 which was denied.
9. On February 6, 2023, Petitioner filed an appeal with the Division of Hearings and Appeals regarding the Katie Beckett denial.

DISCUSSION

The Katie Beckett Program allows certain children with long-term disabilities who reside at home with their parents to receive Medical Assistance. Wis. Stat. §49.46(1)(d)4; 42 USC 1396a(e)(3); 42 C.F.R. §435.225; *Medicaid Eligibility Handbook (MEH)* §29.1. To qualify for Katie Beckett benefits, a child must be under the age of 19, capable of receiving appropriate care in his or her home, *meet Social Security standards for childhood disability*, require a level of care that is typically provided in a hospital, nursing home, or ICF-MR, and meet certain financial eligibility criteria. See *Id.*

The issue in this case is whether Petitioner meets the required legal standard to be considered disabled. The federal regulations provide the following definition of a disabling impairment for children:

(b) 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 [Listing of Impairments in appendix 1 of subpart P of part 404], or
- (2) *Would result in a finding that you are disabled under § 416.994a.*

[Emphasis added.] 20 C.F.R. §416.911(b).

The process of determining whether an individual meets this definition involves several steps. See 20 C.F.R. §416.924. The first step requires a determination as to whether the claimant is working and performing "substantial gainful activity" (SGA). Petitioner is an 11-year old child and not performing SGA.

The second step entails evaluating whether the claimant has physical and mental impairments that alone or in combination are severe. If the impairment(s) 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's medical records demonstrated that she has been diagnosed with scoliosis but that diagnosis was discovered incidentally while she was visiting the doctor regarding unrelated concerns. There is no indication in the record that she was experiencing any functional limitations caused by her scoliosis prior to diagnosis.

Following diagnosis, Petitioner began to wear a brace and continues to do so for most of the day, every day, but she is permitted to remove it to play volleyball and in gym class. Wearing the brace causes Petitioner some functional limitations (e.g., putting shoes and socks on) since the brace inhibits her ability to bend over. However, her mother, who appeared on her behalf at hearing, explained that Petitioner has "special shoes" and "reachers" that she uses to accommodate those limitations. I also note that Petitioner is not currently receiving any kind of physical or occupational therapy services.

There is no question that scoliosis is a serious condition but the evidence in the hearing record does not demonstrate that Petitioner has more than minimal functional limitations as a result of her scoliosis. Petitioner also has diagnoses of mild asthma and dermatitis but Petitioner's mother did not mention those diagnoses during hearing and the medical records indicate that those conditions do not, fortunately, cause Petitioner significant functional limitations. Accordingly, I find that Petitioner does not have a severe impairment or a severe combination of impairments for purposes of meeting the legal standard of disability.

Finally, I note that Petitioner's mother expressed understandable confusion regarding how her daughter could be found to be functionally eligible for the Katie Beckett Program but also be found to not meet the legal standard for disability. Functional eligibility and a finding of disability are two distinct eligibility requirements; each must be met to be found eligible for Katie Beckett Medical Assistance. And, the criteria for determining functional eligibility are different than the criteria for establishing disability.

CONCLUSIONS OF LAW

Petitioner does not meet the legal standard for disability required to establish eligibility for Medical Assistance benefits through the Katie Beckett program.

THEREFORE, it is

ORDERED

That the petition for review 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.

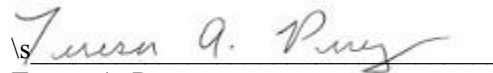
The process for requesting a rehearing may be found at Wis. Stat. § 227.49. A copy of the statutes may be found online or at your local library or courthouse.

APPEAL TO COURT

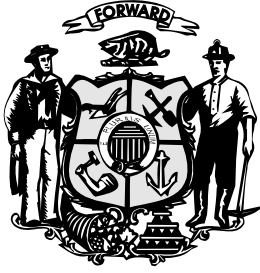
You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Health Services, 1 West Wilson Street, Room 651, **and** on those identified in this decision 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 28th day of April, 2023



Teresa A. Perez
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 April 28, 2023.

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