



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

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

DECISION
Case #: MKB - 213619

PRELIMINARY RECITALS

Pursuant to a petition filed on June 3, 2024, 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 (the agency) regarding Medical Assistance (MA), a hearing was held on July 24, 2024, by telephone.

The issue for determination is whether petitioner is disabled for Katie Becket MA purposes.

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

By: Cynthia Anderson, Katie Beckett Program Lead
Bureau of Long-Term Support
PO Box 7851
Madison, WI 53707-7851

ADMINISTRATIVE LAW JUDGE:

Kelly Cochrane
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner is a resident of Racine County.
2. Petitioner is now 15 years old and resides with his family.

3. Petitioner has been receiving Katie Beckett MA.
4. In July 2023, a Functional Screen was completed with the petitioner as part of his recertification for his Katie Beckett MA.
5. By a letter dated May 30, 2024, the agency informed petitioner's parents that petitioner no longer meets the eligibility requirements necessary for Katie Beckett MA and that his eligibility would end on November 30, 2024.
6. The petitioner's diagnoses include Saethre-Chotzen Syndrome, Chiari One Malformation, Developmental Delay, Papilledema, Hypotonia, Narcolepsy and Hearing Loss Disorder. He uses a CPAP daily for obstructive sleep apnea, takes medication for his Narcolepsy and wears hearing aids.
7. Petitioner needs no assistance with his Activities of Daily Living (ADLs) except for bathing where he requires cueing and hair washing due to pain.
8. Petitioner's most recent sleep study demonstrated normal results with use of the prescribed CPAP machine.
9. Petitioner has a 504 Plan through his school district due to his hearing loss and he wears hearing aids. He has 100% correction in hearing and excellent speech reception with his hearing aids.

DISCUSSION

The agency, through its Bureau of Clinical Policy and Pharmacy (BCPP), seeks to terminate the petitioner's MA 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 MA while living at home with their parents. See 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 agency uses a multiple-step process to review Katie Beckett waiver decisions. The agency found that the petitioner does not meet the step that is required to determine if he is disabled according to standards outlined in the Social Security Act. The agency determined that the petitioner does not demonstrate or present with a severe disability or functional limitations that significantly interfere with his daily functioning or well-being and therefore is not considered disabled.

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 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). 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).

The agency reviewed him under the Listing at 102.10 (hearing loss not treated with cochlear implantation for children from age 5-18) but the evidence shows that he has 100% correct unaided speech perception, with word recognition noted as excellent at 50dB HL in both ears. The agency also reviewed him under the Listing at 110.08 (catastrophic congenital disorder with death usually expected within the first months of life or very serious interference with development or functioning). However, the evidence shows him as a normal functioning adolescent, attending school regularly and on target with learning with same age peers. He has a 504 Plan. This 504 plan notes that he has not needed to visit the health office in the past year, has not needed to use hearing assistive listening technology since second grade and that he is on a 504 due to his mild hearing loss. Standard interventions are noted for the teacher to call his name before asking a question, repeating peers question in group discussions, providing for smaller or alternate testing environment, limiting background noise, having captions on for media if he requests, having foreign language assessment given verbally instead of through media, and allowing for a flexible seating arrangement. It is noted that he may miss “softly spoken speech sounds”. He is ambulant, able to perform ADLs, and has no mental health concerns. He has daily use of his CPAP machine to correct his sleep apnea. He has prescription medication to manage his narcolepsy. It was determined that both of these interventions help him to experience a relatively normal lifestyle and abilities. He had not been reassessed for a disability determination since 2014 due to the COVID Public Health Emergency and he has undergone significant growth and development. During that 10-year time he also underwent several surgeries and procedures which have promoted significant health improvements. The agency determined that the petitioner does not have a severe disability or functional limitations that significantly interfere with his daily functioning or well-being based on the evidence it received.

Petitioner’s mother testified as to petitioner’s missed days of school (approximately 40 per school year) due to his multiple doctor’s appointments, and that he still struggles with his narcolepsy. She testified that he can still fall asleep on the toilet, in the shower, or at school. She also testified as to how she assists with his hair care due to the pain he experiences given the status of his skull. While I found petitioner’s mother’s testimony credible, that does not equate to finding marked or extreme limitations in his functioning. This is not meant to diminish the challenges petitioner faces, but neither the testimony, nor petitioner’s medical or educational records support such a finding. The record does not demonstrate that petitioner has any marked or extreme limitations in any area, and as such, I must affirm the agency’s determination.

I add, assuming petitioner finds this decision unfair, that it is the long-standing position of the Division of Hearings & Appeals that the Division’s hearing examiners lack the authority to render a decision on equitable arguments. *See, Wisconsin Socialist Workers 1976 Campaign Committee v. McCann*, 433 F.Supp. 540, 545 (E.D. Wis.1977). This office must limit its review to the law as set forth in statutes, federal regulations, and administrative code provisions.

CONCLUSIONS OF LAW

The petitioner does not meet the childhood disability standards because he has no marked limitations or extreme limitations in any identified area of functioning (domain).

THEREFORE, it is ORDERED

That petitioner’s appeal 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, 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.

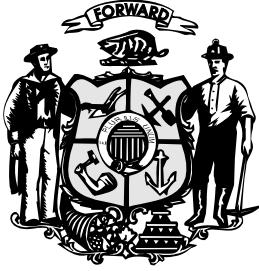
APPEAL TO COURT

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 Milwaukee,
Wisconsin, this 12th day of August, 2024

\s _____
Kelly Cochrane
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 August 12, 2024.

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