



**STATE OF WISCONSIN
Division of Hearings and Appeals**

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

DECISION
Case #: MKB - 213737

PRELIMINARY RECITALS

Pursuant to a petition filed on June 11, 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 regarding Medical Assistance (MA), a hearing was held on July 9, 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:

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

Petitioner's Representative:

[REDACTED]

Respondent:

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

By: Cindy Anderson
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 Waukesha County.
2. Petitioner is now 4 years old and resides with his family.
3. On December 18, 2023 petitioner applied for Katie Beckett MA.
4. On January 4, 2024, a Functional Screen was completed with the petitioner as part of his application for Katie Beckett MA. It found that he met a Psychiatric Hospital level of care (LOC).
5. By a letter dated May 31, 2024, the agency informed petitioner's parents that petitioner did not meet the eligibility requirements necessary for Katie Beckett MA.
6. The petitioner's diagnoses include history of speech delay, pediatric feeding disorder, and anemia.

DISCUSSION

The agency, through its Bureau of Clinical Policy and Pharmacy (BCPP), denied the petitioner's application for 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. Petitioner appealed from the denial of his application.

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).

There are six domains developed by the Social Security Administration (SSA) to determine if an applicant meets a functional limitation. To be eligible for this finding, an applicant must have a marked finding in two domains or an extreme finding in one domain. Those domains are (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. *See* 20 C.F.R. §416.926a(b)(1).

The agency reviewed the Listings for “growth failure due to any digestive disorder”, “somatic symptom and related disorders” and “communication impairment”. The agency determined that petitioner does not present with a severe disability or functional limitations that very seriously interfere with his daily functioning or well-being. The agency found that the evidence shows that petitioner demonstrates proper growth and a stable weight, that he has no identified mental health concerns, although there are issues with his lack of acceptance to new foods and his diet remains restricted with some advances. His medical and speech records indicate no concern with communication.

Petitioner’s mother testified as to petitioner’s continued aversion to certain foods and how he struggles at every meal. He has also developed some anxious behaviors with picking himself. She testified that petitioner will take in certain high calorie foods but that it is not quality/nutritious food. Petitioner also takes vitamins to avoid anemia and provide him with nutrients. He also in on Miralax daily due to the impact his diet has on him. Petitioner struggles with interactions with others and runs out of energy quickly. He sleeps about 15 hours a day. He struggles with brushing his teeth as well, likely due to his oral aversions. His doctor and former teacher submitted letters further corroborating these issues. Petitioner’s mother rightly explains that he is only at stable weight and not anemic because of their interventions and they are simply trying to avoid a feeding tube. 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 records support such a finding. The record does not demonstrate that petitioner has any marked or extreme limitations in any domain, 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.

If his conditions worsen or if he develops better evidence, he may reapply at any time.

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.

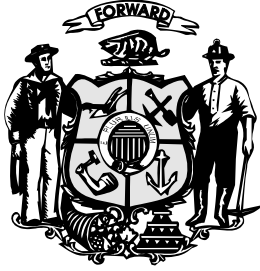
APPEAL TO COURT

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 22nd 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 22, 2024.

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

