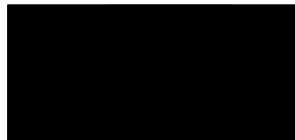




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**STATE OF WISCONSIN
Division of Hearings and Appeals**

In the Matter of



DECISION
Case #: MKB - 214020

PRELIMINARY RECITALS

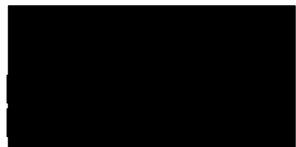
Pursuant to a petition filed on June 27, 2024, under Wis. Stat. § 49.45(5), and Wis. Admin. Code § HA 3.03(1), to review a decision by the Bureau of Long-Term Support regarding Medical Assistance (MA), a hearing was held on October 10, 2024, by telephone.

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
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 Outagamie County.
2. Petitioner is now 5 years old and resides with her family.
3. Petitioner has been receiving Katie Beckett MA.
4. In January 2024, a Functional Screen was completed with the petitioner as part of the recertification for her Katie Beckett MA.
5. By a letter dated May 24, 2024, the agency informed petitioner's parents that petitioner no longer meets the eligibility requirements necessary for Katie Beckett MA and that her eligibility would end on July 31, 2024.
6. The petitioner's diagnoses include Acute B- Lymphoblastic Leukemia (ALL) and neuropathy. Petitioner has since acquired remission and is no longer considered immune-compromised. Peripheral neuropathy and lacrimal stenosis are noted as residual findings secondary to the petitioner's chemotherapy treatment.
7. Petitioner's medical evidence notes that she demonstrates proper growth and stable weight and has no identified mental health concerns. The evidence also reflects that she still experiences intermittent neuropathy, however, she is documented to be in gymnastics, has good energy levels, has no problems with gait or balance, and has no physical limitations.
8. Petitioner's school information reflects that she is above expectations in phonics, phonics awareness and picture vocabulary, meeting expectations with listening comprehension and approaching expectation with print concepts. She has a health plan for nosebleeds, teary eyes, and neuropathy. Her school attendance report from K4 shows she missed seven days first semester and 13 days second semester.

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 she 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 her 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, she must meet or equal a listing described in subsection (1).

A child under age 18 will be considered disabled if he or she has a medically determinable physical or mental impairment or combination of impairments that causes marked and severe functional limitations, and that can be expected to cause death or that has lasted or can be expected to last for a continuous period of not less than 12 months. An individual meets this definition if sequential. *See* 20 C.F.R. § 416.924. 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 she proves that she 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 petitioner was previously approved for Katie Becket MA secondary to a diagnosis of Acute B-Lymphoblastic Leukemia (ALL) at age 6 months, in December 2019. The listing for Leukemia for children (*see* 113.00K2) requires the agency to consider the petitioner under a disability until at least 24 months from the date of diagnosis or relapse, or at least 12 months from the date of bone marrow or stem cell transplantation, whichever is later. After that, the agency is to evaluate any residual impairment(s) under the criteria for the affected body system. Petitioner has since acquired remission and is no longer considered immune-compromised. If someone has achieved remission for a cancer listing, a recertification for a disability determination looks at residual impairments because of the disease or treatment, or on new findings otherwise related. Peripheral neuropathy and lacrimal stenosis are noted as residual findings secondary to the petitioner's chemotherapy treatment. There is no listing that applies here for lacrimal stenosis because there is no evidence presented as to petitioner's loss of vision or visual fields (*see* 102.00A). The listing for neuropathy (*see* 111.14) is characterized by disorganization of motor function in two extremities, resulting in an extreme limitation in the ability to stand up from a seated position, balance while standing or walking, or use the upper extremities. An extreme limitation means the inability to stand up from a seated position, maintain balance in a standing position and while walking, or use one's upper extremities to independently initiate, sustain, and complete age-appropriate activities.

The agency found that the petitioner does not demonstrate or present with a severe disability or functional limitations that significantly interfere with her daily functioning or well-being. She demonstrates proper growth and stable weight and has no identified mental health concerns. She still experiences intermittent neuropathy; however, she is documented to be in gymnastics, has good energy levels and has no physical limitations. There is no evidence she meets a listing.

The disability determination then looks at six established functional domains developed by the Social Security Administration (SSA) to determine if the applicant meets a functional limitation. 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. To be found disabled, the child must have

“marked” limitations in two of the six domain areas, or an “extreme” limitation in one of the areas. 20 C.F.R. § 416.926a(b)(2). These areas 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)(i)-(v). The evidence in this case does not show that petitioner has such limitations. Her school year progress report notes that she is above expectations in phonics, phonics awareness and picture vocabulary, meeting expectations with listening comprehension and approaching expectation with print concepts (how books work). She has a health plan for nosebleeds, teary eyes, and neuropathy. For nosebleeds and tears she is can go to the health office, use tissue to wipe eyes and nose as needed, then clean her hands. If pain to her feet is intense, she may be wheeled to health office. The health office can administer over-the-counter pain medication, allow her to rest and encourage her to rub give herself a foot massage. If her pain not improved after 20 minutes, her parents are to be contacted. Her school attendance report from K4 shows she missed seven days first semester and 13 days second semester. Additional medical documentation shows she has no problems with gait or balance.

Petitioner’s mother testified at hearing as to petitioner’s continued medical issues. She provided additional evidence not provided during the original review. The agency agreed at hearing to review the new evidence and provide a response, which it did. The agency determined that the new evidence did not change its original decision. I must agree. While I understand her mother’s concerns, that does not equate to finding a marked or extreme limitations in petitioner’s 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

Petitioner is not disabled for Katie Becket MA purposes.

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.

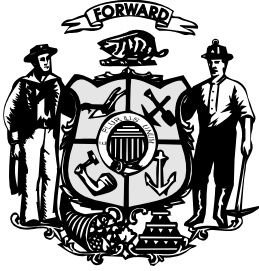
APPEAL TO COURT

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 17th day of October, 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 October 17, 2024.

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

