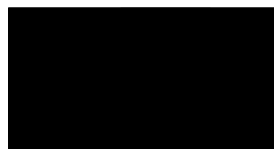




**STATE OF WISCONSIN
Division of Hearings and Appeals**

In the Matter of



DECISION
Case #: MKB - 212148

PRELIMINARY RECITALS

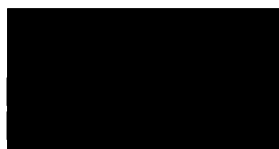
Pursuant to a petition filed on February 14, 2024, under Wis. Stat. § 49.45(5), and Wis. Admin. Code § HA 3.03(1), to review a decision by the Bureau of Long-Term Support regarding Medical Assistance (MA), a hearing was held on May 14, 2024, by telephone. The hearing was first scheduled for March 13, 2024 but rescheduled at the request of Respondent. The hearing was then scheduled for March 28, 2024 and then for April 25, 2024 and rescheduled each of those times at Petitioner's request.

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:



Petitioner's Representative:



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:

Teresa A. Perez
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner is a twelve-year old resident of Oconto County who was diagnosed with Type 1 Diabetes Mellitus on July 23, 2023.
2. Petitioner suffered from diabetic ketoacidosis and was hospitalized from July 23 – 25, 2023. It was at that time that he was first diagnosed with Type 1 diabetes.
3. Petitioner has been found eligible for a Section 504 plan at school which allows him to carry a phone with him to monitor his blood glucose level, to delay taking tests or to have longer to take tests when his blood glucose is not in an appropriate range, to carry a water bottle and snacks, to go to the health office as needed for management of his blood glucose and the administration of insulin, etc.
4. Petitioner attends school and participates in lacrosse.
5. Petitioner goes to the health office multiple times per week to attend to his blood sugar and contacts his parents multiple times a day for guidance on how to best manage his blood sugar. He has not however had any further episodes of diabetic ketoacidosis or hospitalizations nor has he suffered from severe hypoglycemia.
6. Petitioner has a continuous glucose monitor and has been evaluated for an insulin pump which is expected to help him better manage his blood glucose levels.
7. Petitioner applied for Katie Beckett in August 2023 and was found to be functionally eligible but to not be disabled.
8. By notice dated January 12, 2024, Petitioner was informed that he was found ineligible for Katie Beckett.
9. Petitioner filed an appeal with the Division of Hearings and Appeals on February 14, 2024.

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 Department has found that Petitioner requires an institutional level of care but that he does not meet the legal standard for disability.

The federal regulations provide the following basic definition of a disabling impairment for children:

If you are under age 18, we will consider you disabled if you have 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. We discuss our rules for determining disability in children who file new applications in §§ [416.924](#) through [416.924b](#) and §§ [416.925](#) through [416.926a](#).

20 C.F.R. §416.906.

The process of determining whether a child meets this basic 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 in this matter was eleven years old when he applied for Katie Beckett and not employed. He therefore passes this step. 20 C.F.R. §416.924(b).

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).

The **third step** in the disability evaluation process requires the Department to consider whether the child 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 (Listings). See 20 C.F.R. §416.924(d).

A claimant's impairment or combination of impairments functionally equals the listings when s/he has marked limitations in two or an extreme limitation in one of the following six domains of functioning or an extreme limitation in one of the following six domains: (i) Acquiring and using information; (ii) Attending and completing tasks; (iii) Interacting and relating with others; (iv) Moving about and manipulating objects; (v) Caring for yourself; and, (vi) Health and physical well-being. 20 C.F.R. §416.926a(a) and (b)(1). The federal regulations provide detailed definitions of the six domains of functioning. *See* 20 C.F.R. §416.926a(g) – (l).

The question of how a child's impairment affects their functioning is thus considered at both the second and the third step of the sequential disability evaluation process. See 20 C.F.R. §416.924a(b). If the impairment(s) causes something more than minimal functional limitations, it is considered severe at the second step and the agency must then proceed to evaluate whether the impairment is meets, medically equals, or functionally equals a listing. To demonstrate that the impairment functionally equals a listing, the functional limitations must be marked or severe. In addition, a severe impairment that functionally equals the listing must have lasted or be expected to last for 12 months or to end in death. 20 C.F.R. §§416.906 and 416.909.

The Department provided a copy of a "Katie Beckett Disability Evaluation Form" completed by Dr. Steven Tyska, a medical consultant with whom the Department contracts to help evaluate childhood disability claims. See pp. 439-447 of Department's Appeal Response. That form shows that Dr. Tyska determined that Petitioner does not have a severe impairment at step two of the sequential disability evaluation. See p. 440 of Department's Appeal Response (p. 2 of 6 of Evaluation Form). I disagree.

Petitioner's school has determined that he requires a "Section 504 plan" to receive a free, appropriate public education. See 34 C.F.R. Part 104 Subpart D. See also, "Protecting Students with Disabilities" U.S. Department of Education, Office for Civil Rights (available at <https://www2.ed.gov/about/offices/list/ocr/504faq.html>). To qualify for a 504 plan, a student must have a physical or mental impairment which substantially limits one or more major life activities. See 34 C.F.R. § 104.3(j)(1). Major life activities include but are not limited to caring for one's self, learning, concentration, thinking, and eating. 34 C.F.R. §104.3(j)(2)(ii). In addition, Petitioner's medical records, school records, and the credible testimony of his parents showed that he is still learning to manage his blood sugars and insulin dosing and that, multiple times per week while at school, he has to leave class to self-administer insulin injections under supervision of a nurse, and that he daily contacts his parents to help determine what steps he should take to address blood sugar highs and lows. The evidence thus established that Petitioner's Type 1 diabetes causes him more than minimal functional limitations.

Although the Katie Beckett Evaluation Form and the Department's written response to Petitioner's appeal indicated that the Department concluded Petitioner does not have a severe impairment (and that he thus does not pass the second step of the disability evaluation process), the Department indicated that it considered whether Petitioner has an impairment(s) that meets, medically equals, or functionally equals a listed impairment. Specifically, the Department considered whether Petitioner's impairment(s) meets or medically equals Listing 109.00B5 *Diabetes mellitus and other pancreatic gland disorders* and applied the considerations included in 109.00C which states, in relevant part:

The management of DM in children can be complex and variable from day to day, and all children with DM require some level of adult supervision. For example, if a child age 6 or older has a medical need for 24-hour-a-day adult supervision of insulin treatment, food intake, and physical activity to ensure survival, we will find that the child's impairment functionally equals the listings based on the example in §416.926a(m)(2) of this chapter.

Although the evidence in the record demonstrated that Petitioner relies on the guidance and cooperation of his parents, teachers, and school nurse to manage his blood glucose, that is not the same as 24-hour-a day adult supervision to ensure survival. I thus concur with the Department that Petitioner's diabetes does not meet or medically meet a listed impairment.

The next question is whether Petitioner's impairment functionally equals a listed impairment. As noted above, a child's impairment functionally equals a listed impairment if s/he has a severe impairment in one of the following domains or functioning or a marked impairment in two of the following domains of functioning: **(i)** Acquiring and using information; **(ii)** Attending and completing tasks; **(iii)** Interacting and relating with others; **(iv)** Moving about and manipulating objects; **(v)** Caring for yourself; and, **(vi)** Health and physical well-being. 20 C.F.R. §416.926a(a).

The federal childhood disability regulations provide the following general explanations of the six domains:

(g) *Acquiring and using information.* In this domain, we consider how well you acquire or learn information, and how well you use the information you have learned. . .

(h) *Attending and completing tasks.* In this domain, we consider how well you are able to focus and maintain your attention, and how well you begin, carry through, and finish your activities, including the pace at which you perform activities and the ease with which you change them . . .

(i) *Interacting and relating with others.* In this domain, we consider how well you initiate and sustain emotional connections with others, develop and use the language of your

community, cooperate with others, comply with rules, respond to criticism, and respect and take care of the possessions of others . . .

(j) *Moving about and manipulating objects.* In this domain, we consider how you move your body from one place to another and how you move and manipulate things. These are called gross and fine motor skills. . . .

(k) *Caring for yourself.* In this domain, we consider how well you maintain a healthy emotional and physical state, including how well you get your physical and emotional wants and needs met in appropriate ways; how you cope with stress and changes in your environment; and whether you take care of your own health, possessions, and living area.

(l) *Health and physical well-being.* In this domain, we consider the cumulative physical effects of physical or mental impairments and their associated treatments or therapies on your functioning that we did not consider in paragraph (j) of this section. When your physical impairment(s), your mental impairment(s), or your combination of physical and mental impairments has physical effects that cause “extreme” limitation in your functioning, you will generally have an impairment(s) that “meets” or “medically equals” a listing . . .

20 C.F.R. §416.926a(g)-(l).

The federal regulations also provide the following detailed standards for assessing whether a limitation is marked or extreme:

(e) *How we define “marked” and “extreme” limitations—*

(1) General. (i) When we decide whether you have a “marked” or an “extreme” limitation, we will consider your functional limitations resulting from all of your impairments, including their interactive and cumulative effects. We will consider all the relevant information in your case record that helps us determine your functioning, including your signs, symptoms, and laboratory findings, the descriptions we have about your functioning from your parents, teachers, and other people who know you, and the relevant factors explained in §§ [416.924a](#), [416.924b](#), and [416.929](#). . . .

(2) *Marked limitation.* **(i)** We will find that you have a “marked” limitation in a domain when your [impairment\(s\)](#) interferes seriously with your ability to independently initiate, sustain, or complete activities. Your day-to-day functioning may be seriously limited when your [impairment\(s\)](#) limits only one activity or when the interactive and cumulative [effects](#) of your [impairment\(s\)](#) limit several activities. “Marked” limitation also means a limitation that is “more than moderate” but “less than extreme.” It is the equivalent of the functioning we would expect to find on standardized testing with scores that are at least two, but less than three, standard deviations below the mean

(3) *Extreme limitation.* (i) We will find that you have a “extreme” limitation in a domain when your [impairment\(s\)](#) interferes very seriously with your ability to independently initiate, sustain, or complete activities. Your day-to-day functioning may be very seriously limited when your [impairment\(s\)](#) limits only one activity or when the interactive and cumulative [effects](#) of your [impairment\(s\)](#) limit several activities. “Marked” limitation also means a limitation that is “more than marked.” “Extreme limitation is the rating we give to the worst limitations. However, “extreme limitation” does not necessarily mean a total lack or loss of ability function. It is the equivalent of the functioning we would expect to find on standardized testing with scores that are at least three standard deviations below the mean. . . .

20 CFR §416.926a(e)(2)(i) and (e)(3)(i).

The Department's medical consultant, Dr. Tyska, found that Petitioner had less than marked limitations in the domains of caring for yourself and health and physical well-being.

Type 1 diabetes is a chronic disease and the evidence shows that Petitioner is primarily impaired episodically – i.e, when his blood glucose is high and when it is low. The evidence also shows that Petitioner has to take special steps to monitor his blood glucose, food intake, and activity level; that he is still adapting to how to effectively manage his diabetes; and that he relies on adults in his life to guide him as he learns.

There is no question that Petitioner's diagnosis is serious and that he is dealing with profound changes to his lifestyle that he will need to maintain. And, there is no question that this is a daunting task for him and for his family. However, there is not sufficient evidence to establish that he has marked or severe limitations in any of the domains of functioning. Moreover, based on the evidence in the record regarding Petitioner's cognitive and physical abilities, it is more likely than not that he will continue to learn how to manage his disease and that, as he does so, his functional limitations will diminish.

CONCLUSIONS OF LAW

There is insufficient evidence in the record to establish that Petitioner satisfies the legal definition of childhood disability set forth in 20 C.F.R. §416.924, et. seq.

THEREFORE, it is

ORDERED

Petitioner's appeal 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

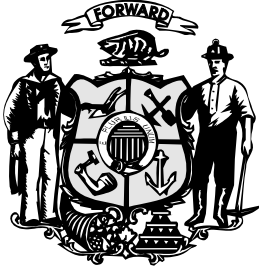
You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Health Services, 1 West Wilson Street, Room 651, **and** on those identified in this decision 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 18th day of June, 2024


s _____

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 June 18, 2024.

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

