



Rhode Island Executive Office of Health and Human Services  
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Docket #15-920  
Hearing Date: June 25, 2015

Date: July 28, 2015



### **ADMINISTRATIVE HEARING DECISION**

The Administrative Hearing that you requested has been decided against you upon a de novo (new and independent) review of the full record of hearing. During the course of the proceeding, the following issue(s) and Agency regulation(s) were the matters before the hearing:

**EXECUTIVE OFFICE OF HEALTH AND HUMAN SERVICES (EOHHS)  
MEDICAID CODE OF ADMINISTRATIVE RULES (MCAR)  
SECTION: 0394.35 DISABLED CHILD-KATIE BECKETT  
SECTION 0394.35.05 SPECIAL ELIGIBILITY CONDITIONS  
SECTION 0306.15 ELIGIBILITY BASED ON DISABILITY  
SECTION: 0352.15 ELIGIBILITY BASED ON DISABILITY**

The facts of your case, the Agency rules and regulations, and the complete administrative decision made in this matter follow. Your rights to judicial review of this decision are found on the last page.

Copies of this decision have been sent to the following: You (the appellant), and Agency representatives: Caridad Ramos, Michelle Bouchard, and Sharon Kernan.

Present at the hearing were: The Appellant's mother (on behalf of the appellant minor child), Michelle Bouchard, RN (Agency representative), and Margaret Kozel, MD (consultant pediatrician) and Frank Canino, PhD (consultant psychologist).

#### **EOHHS RULES AND REGULATIONS:**

Please see the attached APPENDIX for pertinent excerpts from the Executive Office of Health and Human Services Medicaid Code of Administrative Rules (MCAR).

#### **APPEAL RIGHTS:**

Please see attached NOTICE OF APPELLATE RIGHTS at the end of this decision.

**ISSUE:** Does the appellant child meet the level of care (LOC) criteria of the Katie Becket (KB) Medical Assistance (MA) coverage group?

**DISCUSSION OF THE EVIDENCE:**

**The Agency representative, assisted by consulting physicians, testified:**

- The Agency performed a clinical review for redetermination of eligibility in February 2015.
- Copies of all records received were reviewed and submitted as evidence.
- Evidence needed to establish that the child met the disability criteria as well as institutional level of care.
- The child has been receiving KB benefits since 2010.
- The case underwent clinical review for redetermination of eligibility in 2012.
- The Agency review began in March 2015 with a report submitted by [REDACTED]
- Diagnoses included ADHD, Asperger's disorder, Mood disorder, and Anxiety.
- [REDACTED] was prescribing medications for the disorders, and recommended CEDARR participation and some psychosocial groups.
- A parent questionnaire was also reviewed.
- At that time ADLs were fine, he experienced some sleep difficulty, and had problems with socialization.
- He was able to learn well, and had a PASS plan from 2/14 to present.
- He had difficulty taking responsibility for his behavior.
- He has difficulty getting along with others, and has hit an adult.
- The IEP supports are minimal.
- He sees a social worker weekly for organizational skills support.
- Otherwise, he is very intelligent.
- [REDACTED] has completed a neuropsychological evaluation.

- Although there was some variation in his IQ score, his cognitive skills had remained the same, and his memory and language skills were good.
- [REDACTED] continued to endorse ADHD and cited executive function disorder, and non-verbal learning disorder.
- Asperger's is now part of an overall diagnosis of autism which is not really new.
- At the time of the 2012 review, the question of whether or not he had Asperger's was left open, but now it has been accepted.
- Recommendations of [REDACTED] included IEP, and some skills groups, but no mention of more intensive therapies was found.
- The PASS plan did not appear to address any of the child's core issues.
- There was limited information from [REDACTED].
- He was doing well on medications.
- Evidence did not reveal a level of intervention that would meet the requisite level of care.
- PASS offers supportive services, but the records do not identify sources offering more intensive treatment.
- Evidence has not established the existence of significant dysregulation, or that the minor's behavior was potentially dangerous to himself or others.
- There needs to be some plan for interventions of his bad behaviors as opposed to additional evaluations.
- He agrees that the child is not better, but wants to see a plan of care that will help him in the future.
- The information is limited and so fragmented that it is not evident that his needs are being addressed.
- If his treating sources would argue that he meets level of care, than they should be able to provide information about treatment that rises to that level.

**The appellant minor's mother testified:**

- The minor is currently 16 years of age.

- He has been eligible for Katie Beckett program benefits in the past based on his disabilities, and his disabilities have worsened.
- She does not agree that his case should be closed based on the institutional level of care criteria.
- She had filed a Wayward Child petition because he has been disobedient, refuses to follow rules, does not want to attend school, he swears, and he has hit adults (including her).
- He had been diagnosed with ADHD and had experienced socialization issues in the past.
- He was suspended seven times during grade school years for fighting.
- He currently has an IEP (individualized education program).
- He has had a high IQ, which has declined according to his last evaluation.
- He has new diagnoses of autism and anger management issues.
- Due to his behavioral issues, his clinician was questioning whether or not he had bipolar disorder.
- The new diagnoses were made by [REDACTED], MD.
- A new therapist (a licensed mental health counselor) is taking over for [REDACTED], and she feels that he does better with a male.
- He is due to complete some additional evaluations.
- She often works six days per week and cannot always access services that are compatible with her work schedule.
- She has another evaluation scheduled.
- He often wants to remove his medication patch sooner than recommended.
- She does not believe he needs institutional level therapies at this point.
- His new treating source begins on Monday and a main goal is to help him to stay on his medication schedule.
- She requested to hold the record of hearing open for the submission of additional evidence.

**FINDINGS OF FACT:**

- The appellant minor's case was reviewed for redetermination of eligibility for Medical Assistance (MA) through the Katie Beckett (KB) coverage group in August 2014.
- Following a clinical review of the evidence submitted, the Agency issued a letter of denial dated April 10, 2015 indicating that the child met the disability requirements according to applicable Social Security regulations, but that he did not meet the requisite level of care (LOC) criteria for KB Medical Assistance (MA).
- The appellant's mother filed a timely request for hearing on his behalf, which was received by the Agency on April 22, 2015.
- The agency found sufficient evidence that the appellant minor's conditions continued to meet the disability requirements of the Social Security Administration's childhood disability regulations, and therefore, he is disabled for the purpose of the KB evaluation.
- Evidence has not established that in addition to being disabled, the minor child presently requires the LOC provided in a hospital, a nursing facility, or an ICF-MR.
- The mother of the appellant requested to hold the record of hearing open for the submission of additional evidence after the hearing.
- The record was held open through the close of business on July 23, 2015.
- As of the close of business on July 23, 2015, no new evidence had been received by the Appeals Officer or by the Katie Beckett unit.
- There is no evidence that interventions or therapies offered in a hospital setting have been required.
- Educational and community services have been the primary sources of support.
- The record provides no indication that if current services ceased, the appellant minor would be at immediate risk for institutionalization.
- The appellant has not met the LOC requirements for continued eligibility for Medical Assistance through the KB coverage group.

**THE EVIDENCE RECORD:**

- ✓ A Parent/Guardian Questionnaire dated January 28, 2015 signed by the mother of the appellant minor.
- ✓ A Physician Evaluation for Katie Beckett Coverage Group (AP-72-1) dated January 15, 2015 and signed by pediatrician, Raymond P. Zarlengo, MD.
- ✓ A [REDACTED] School Department Individualized Education Program dated May 8, 2014-May 8, 2015.
- ✓ A letter regarding and IEP review meeting schedule for January 30, 2015 and signed by Dr [REDACTED].
- ✓ Records of Quality Behavioral Health psychiatrist, [REDACTED]; MD dated July 1, 2013 to March 16, 2015.
- ✓ A neuropsychological Evaluation summary for January 22-29, 2015 from the Center for Neuropsychology & Learning Disorders, Inc, signed by [REDACTED] PhD.
- ✓ Hearing Testimony.

The record of hearing was held open for four weeks per the appellant's request to submit additional evidence establishing that the minor child's impairments do rise to the requisite level of care. At the close of business on the agreed upon date, no new evidence had been received. No requests for extension of the held open period had been made, and the evidence record was closed as presented at hearing. The appellant has not withdrawn the appeal. Therefore, according to 20 CFR 416.916, this decision is based on a review of the available evidence.

The appellant has been diagnosed with Autism Spectrum Disorder (ASD), and ADHD (Attention Deficit Hyperactivity Disorder). His pediatrician also noted mood disorder and anxiety. Recent records have indicated that his symptoms may indicate Asperger's syndrome within the autism spectrum that has been monitored for several years. He has been treated and/or evaluated by a psychiatrist, a neuropsychologist, a mental health counselor, a pediatrician, and education professionals. He participates in various group programs through community resources such as CEDARR and PASS. While his school IEP (individualized education program) includes minimal supports, he works with a social worker weekly to develop and implement organizational skills. He has been described as intelligent, cognitively stable, and has good memory and language skills. A neuropsychologist evaluation had identified specific challenges with executive functioning and non-verbal learning. Other than school and community supports, his treating sources have not prescribed more intensive treatments, or behavioral interventions. The agency noted that the records lacked information that would establish the existence of significant dysregulation, or of behavior that would endanger the appellant minor or others. In the absence of a detailed plan of care, they found that his condition was being maintained at a level of care that did not rise to the need of therapies offered within an institutional setting.

The appellant minor's mother spoke of his strengths and weaknesses, and alleged that his problems have worsened over the past five years. She was particularly concerned about his poor social skills, tendency to become involved in fights at school, incidents of hitting adults, irritability, and his lack of reason and good judgment leading to unsafe

choices. While she was able to describe circumstances that caused concern, she agreed that the evidence had not supported a need for institutional level of care at this point in time. Evidence documented by treating and examining sources did not identify or elaborate on dangerous behavior as described by the mother. She revealed, however, that she had filed a Wayward Child petition with the state for fear that his circumstances were likely to lead to escalation of disobedience or unlawful behavior, and hoped that action would provide protection for his welfare. In the meantime, she had arranged a meeting and counseling plan with a new mental health therapist that was taking over for his psychiatrist. In addition, a complete, updated psychological evaluation was planned. In order to provide more detail from treating and evaluating professionals, the appellant's representative requested time to submit additional information, and a date was stipulated.

The Agency review for medical improvement had concluded that evidence supported a continuing impact on functioning from impairments that did rise to the level of a disability as described by the Social Security regulations. However, in order to support a need for more interventions or aggressive therapies, additional behavioral health information would be essential.

The parameters of the program indicate that the child must require a level of care that would ordinarily be available at a hospital or skilled nursing facility, which the reviewers determined had not been demonstrated by the available evidence, and the mother of the appellant minor child agreed does not describe his present condition. The Agency found that based on the information submitted at the time of application, it was not proven that he requires the skilled services as indicated by the LOC criteria for KB MA. Additional testimony added during the hearing, has not compelled them to reverse the original findings as of the date of this decision. Although the mother representing the appellant child requested time to obtain additional evaluations and submit new evidence which could impact the LOC findings, she has allowed the record of hearing to close without submitting the supportive evidence she requested additional time to complete.

**CONCLUSION:**

The issue to be decided is whether the available clinical evidence establishes that the appellant minor, who continues to meet the disability criteria, has also proven that the requisite LOC standards have been met to justify continuing eligibility for the Katie Becket (KB) Medical Assistance (MA) coverage group.

A review of the Agency's policies regarding MA finds that the KB coverage group consists of certain disabled children under the age of eighteen (18) who are living at home but who require the level of care provided in a Hospital, a Nursing Facility, or an ICF/MR (Intermediate Care Facility/Mentally Retarded). The letter of denial issued in this case indicated that KB used the Social Security Administration's definition of disability. They were mandated to redetermine disability for Medical Assistance in accordance with the applicable law, including the Social Security Act and regulations (20 CFR 416.901-416.998). Federal regulations define a disabled child as a minor child who has a medically determinable physical or mental impairment or combination of impairments that could be expected to cause marked and severe functional limitations for at least twelve months. In this matter, the Agency medical improvement review resulted in a finding that the appellant minor's impairments continued to meet that criteria as in previous years. Consequently, eligibility for KB MA benefits at the time of the 2014 redetermination depended upon production of medical evidence that would support that the child currently meets the LOC characteristics as indicated above. The LOC is evaluated by determining if, in the absence of appropriate home and community interventions and supports, the child would either reside in an institutional facility or be at immediate risk for such placement. The reviewers typically look for types of intensive therapies normally given inside an institution.

There is no dispute that the appellant child is under the age of 18, living in his parent's home, and has been diagnosed with conditions which rise to a level of impairment as defined by the Social Security listings. To be eligible for KB program benefits, however, evidence must establish that he would not only benefit from additional supportive services, but actually require the LOC provided in a hospital, a nursing facility, or an ICF-MR in order to remain in his home setting.

At the current time, all records indicate that while he is still challenged, his impairments are being managed with community and educational supports. He is intellectually competent, despite poor social skills. At no time within the past year, has evidence documented a need for emergency treatment, nor has skilled care been prescribed or arranged. The lack of interventions or more aggressive therapies gives the appearance that his impairments are being adequately managed with school and community resources. The record provides no indication that the current level of services is such that if these services ceased, the appellant child would be at immediate risk for institutionalization.

An Agency representative was present to consider testimony offered at hearing, but has not withdrawn the decision that, although the minor child meets a Social Security listing for disability, he does not meet the LOC criteria for KB coverage. The mother of the appellant had requested to hold the evidence record of hearing open for additional

information. The record was held open for four weeks. At the close of business on July 23, 2015, no new evidence had been submitted. Consequently, the record, as it exists, does not include proof that his conditions have escalated to meet the requisite institutional level of care.

After a careful review of the Agency's policies, as well as the evidence and testimony given, this Appeals Officer finds that based on the available information, the Agency made accurate findings relative to the LOC criteria of the Katie Becket Medical Assistance coverage group. While the appellant remains disabled, evidence has not established that his impairments currently rise to the LOC required for eligibility in the KB, MA program. The appellant's request for relief is therefore denied.

**Pursuant to DHS Policy General Provisions section 0110.60.05, action required by this decision, if any, completed by the Agency representative must be confirmed in writing to this Hearing Officer.**



Carol J. Ouellette  
Appeals Officer

## APPENDIX

### MEDICAL ASSISTANCE

#### 0394.35 DISABLED CHILD-KATIE BECKETT

REV:08/2006

This coverage group consists of certain disabled children under the age of nineteen (19) who are living at home and who would qualify for Medical Assistance if in a medical institution.

"Katie Beckett" coverage requires that the child meet special eligibility conditions in addition to financial eligibility.

A child under 19 years of age who is living at home but who is in need of the level of care provided in a hospital, Nursing Facility, or Intermediate Care Facility for Mental Retardation, has his/her Medical Assistance financial eligibility determined as if s/he were actually institutionalized. ONLY THE CHILD'S OWN INCOME AND RESOURCES ARE USED IN THE DETERMINATION OF FINANCIAL ELIGIBILITY. THE INCOME AND RESOURCES OF THE CHILD'S PARENTS ARE NOT DEEMED TO BE AVAILABLE TO THE CHILD. A "Katie Beckett" child is deemed Categorically Needy for the full scope of medical services. The purpose of "Katie Beckett" coverage is to make Medical Assistance for home care available to children who might otherwise be disqualified due to the parents' income.

#### 0394.35.05 Special Elig Conditions

REV:08/2006

To be eligible for Katie Beckett coverage, it must be determined that:

- o **The child requires the level of care provided in a hospital, a Nursing Facility, or an ICF-MR.** The DHS worker must assure that a completed assessment of the child's needs is sent to the Center for Child and Family Health (CCFH). This unit has the responsibility of determining the level of care and disability status for the child and the specific time frame for re-evaluation.
- o The level of care provided at home is appropriate for the child;
- o The estimated cost to Medical Assistance for providing the appropriate level of care at home does not exceed the cost to Medical Assistance for providing care in an institutional setting.

If the child meets these special eligibility conditions and is otherwise eligible, the DHS worker authorizes medical coverage.

Children eligible for Medical Assistance under this coverage group may be enrolled in a Rite Care Health Plan in accordance with provisions contained in Section 0348, if they are not otherwise covered by a third party health insurance plan.

### 0306.15 Eligibility Based on Disability

REV:06/1994

To be eligible for Medical Assistance because of permanent or total disability, a person (adult or child) must have a permanent physical or mental impairment, disease or loss, other than blindness, that substantially precludes engagement in useful occupations within his/her competence.

A physical or mental impairment is an impairment which results from anatomical, physiological, or psychological abnormalities which are demonstrable by medically acceptable, clinical and laboratory diagnostic techniques.

For purposes of eligibility, an individual is disabled if s/he is unable to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment which can be expected to result in death, or which has lasted, or can be expected to last for a continuous period of not less than twelve (12) months or, **in the case of a child, if s/he suffers from any medically determinable physical or mental impairment of comparable severity.**

Statements of the applicant, including the individual's own description of the impairment (symptoms) are, alone, insufficient to establish the presence of a physical or mental impairment.

### 0352.15 ELIGIBILITY BASED ON DISABILITY

REV:07/2010

- A. To qualify for Medical Assistance, an individual or member of a couple must be age 65 years or older, blind or disabled.
- B. The Department evaluates disability for Medical Assistance in accordance with applicable law including the Social Security Act and regulations (20 C.F.R sec. 416.901-416.998).**
1. For any adult to be eligible for Medical Assistance because of a disability, he/she must be unable to do any substantial gainful activity by reason of any medically determinable physical or mental impairment which can be expected to result in death, or which has lasted, or can be expected to last for a continuous period of not less than twelve (12) months (20 C.F.R. sec. 416.905).
  2. The medical impairment must make the individual unable to do his/her past relevant work (which is defined as "work that you have done within the past 15 years, that was substantial gainful activity, and that lasted long enough for you to learn to do it" (20 C.F.R. sec. 416.960(b)) or any other substantial gainful employment that exists in the national economy (20 C.F.R. sec. 416.905).
  3. The physical or mental impairment must result from anatomical, physiological, or psychological abnormalities which can be shown by medically acceptable clinical and laboratory diagnostic techniques. The individual's statements alone are not enough to show the existence of impairments (20 C.F.R. sec. 416.908).

## NOTICE OF APPELLATE RIGHTS

This Final Order constitutes a final order of the Department of Human Services pursuant to RI General Laws §42-35-12. Pursuant to RI General Laws §42-35-15, a final order may be appealed to the Superior Court sitting in and for the County of Providence within thirty (30) days of the mailing date of this decision. Such appeal, if taken, must be completed by filing a petition for review in Superior Court. The filing of the complaint does not itself stay enforcement of this order. The agency may grant, or the reviewing court may order, a stay upon the appropriate terms.