

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS
DEPARTMENT OF HUMAN SERVICES
APPEALS OFFICE
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Docket # 14-203
Hearing Date: March 27, 2014

Date: July 9, 2014

ADMINISTRATIVE HEARING DECISION

The Administrative Hearing that you requested has been decided against you. During the course of the proceeding, the following issue(s) and Agency policy reference(s) were the matters before the hearing:

THE DHS PROVIDER MANUAL: Medical Assistance
SECTION : 0394.35 Disabled Child – Katie Beckett
0394.35.05 Special Eligibility Conditions

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

Copies of this decision have been sent to the following: the Appellant's parents, the Agency representative, and the Policy Unit.

Present at the hearing were: the Appellant's mother, Michelle Bouchard, RN, and Dr. Frank Canino Agency Representatives.

ISSUE: Did the Appellant meet the Level of Care required to be eligible for Katie Beckett services?

DHS POLICIES:

Please see the attached APPENDIX for pertinent excerpts from the Rhode Island Department of Human Services Policy and Provider Manuals.

APPEAL RIGHTS:

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

DISCUSSION OF THE EVIDENCE:**The Agency Representatives testified:**

- The Appellant applied for the Katie Becket Program and after careful review by the agency it was determined that although the child meets the definition of disability used by Social Security, he did not require the Level of Care (LOC) required and a denial Notice issued January 15, 2014.
- On behalf of the Appellant, his mother filed a Request for a Hearing on January 24, 2014, appealing the agency's action.
- The Appellant had filed his application for the Katie Beckett Program on November 6, 2013 and Dr. Canino conducted the clinical review, which found that the Appellant did meet the Social Security definition of disability but the Appellant did not meet the Level of Care required for services.
- The agency presented materials and were entered into as evidence, labeled Agency I, consisted of: the Parent/Guardian Questionnaire, signed by Appellant's mother and dated November 6, 2013; a three page letter from the Appellant's mother; the Physician Evaluation for Katie Beckett Coverage Group and the Outpatient Developmental History Questionnaire forms completed by Rowland Barrett, Ph.D. dated August 6, 2009; a list of medication that the Appellant is taking, completed by the Appellant's mother; a three page document regarding "General Recommendations for Children with Asperger's Disorder" source is not known; a web site printout for a Bedwetting Alarm; a three page letter from Pediatric Neurology, Inc., by Dr. Younes and addressed to Dr. Teixeira, dated September 10, 2009; an Outpatient Neuropsychological Consultation Report by Dr. Karen Holler at Neuro-Psychology Associates, Inc. regarding the Appellant's testing done on October 26, 2011; an Outpatient Neuropsychological Consultation Report by Dr. Karen Holler at Neuro-Psychology Associates, Inc. regarding the Appellant's testing done on November 30, 2012; a letter from Dr. Younes explaining why the Appellant missed particular dates from school; the Appellant's NECAP scores for the Fall of 2012; and a copy of an IEP from the North Providence School System for the Appellant as an 7th grader.
- Dr. Canino concluded his testimony with due to the fact that the child does not need/require a hospital, a nursing facility or a psychiatric hospital, ICF/MR that the child does not require to the LOC required by Katie Beckett; the child definitely has problems but there has been nothing presented that addresses the level of care.

The Appellant's Mother testified:

- The Appellant is a very different boy on paper compared to how he actually is.
- The Appellant isn't harmful to himself.
- The Appellant's school does not follow the IEP and the Appellant's mother is in the process of drafting a letter to have this issue addressed with the school; he should be receiving social skills class twice a week but it doesn't happen, he should be receiving some services for a certain number of times per week but doesn't get due to being short staffed.
- The Appellant's parents and grandparents try to teach the Appellant social ques.
- The Appellant has been seen by Dr. Dawn Nero at Providence Behavior Health Associates for a short period of time and a report should be issued shortly. Dr. Nero had evaluated the Appellant for cognitive behavioral services and tried helped to build confidence of the Appellant.
- The Appellant can handle one or two instructions at a time but is not able to handle more than that at one time without becoming frustrated.
- The Appellant's mother is hoping to be eligible for the Katie Beckett program so that the Appellant will be able to have access other programs that he currently not eligible for. There are some classes at the Autism Project that deal with social groups that would benefit the Appellant tremendously.
- The Appellant is going to be evaluated by a new doctor at Memorial Hospital in April 2014 and the school is going to re-evaluate the IEP in October 2014, it has been three years since it was last done.
- The parents do not agree with Dr. Holler, who thinks that the Appellant will be like everyone else within the next few years. The parents believe that the Appellant needs guidance, which he gets from the parents/grandparents but he needs more tools/knowledge on how to deal in certain situation over time. Whereas Dr. Holler thinks that things will turn around sooner for the Appellant.

At the close of Hearing, the Appellant's mother requested additional time to submit a report form Dr. Nero, a report from Dr. Holler dated December 2, 2013, a neurological report and an evaluation from Memorial Hospital. It was mutually agreed to keep the record open until May 29, 2014 to allow the Appellant to submit these records.

On May 2, 2014, the Appellant's mother wrote, requesting additional time to submit records due to the Appellant had an evaluation with Memorial Hospital scheduled for May 24, 2014 and copies of the evaluation may not be complete by May 29, 2014. The record was held open at the request of the Appellant's mother until July 1, 2014 to submit the needed documents.

FINDINGS OF FACT:

- The Appellant applied for the Katie Becket Program and after careful review by the agency it was determined that although the child meets the definition of disability used by Social Security, he did not require the Level of Care (LOC) required and a denial Notice issued January 15, 2014.
- On behalf of the Appellant, his mother filed a Request for a Hearing on January 24, 2014, appealing the agency's action.

- The Appellant had filed his application for the Katie Beckett Program on November 6, 2013 and Dr. Canino conducted the clinical review, which found that the Appellant did meet the Social Security definition of disability but the Appellant did not meet the Level of Care required for services.
- The Parent/Guardian Questionnaire signed by the Appellant's mother and dated November 6, 2013 indicates that the Appellant is dependent on bathing, dressing and grooming; needs some help with skin care, toileting, eating and sleeping; can understand and respond to others but loudly; prefers to be alone; will blink his eyes or rock while asking questions; has difficulty with conversations; difficulty with running; loud noises set him off; lacks the ability to take another's perspective/see the big picture. It has been recommended that the Appellant receives counseling and occupational, speech/language and behavior therapy at least once per week but receives only academic support through his IEP, no outpatient services or social skills groups. Medications are Tenex 1 mg ½ a tablet three times daily, Prozac 10 mg tablet ½ tablet daily, Risperdal .05 mg tablet 1 tablet twice daily, Ranitidine 150 mg capsule 1 capsule twice daily, Zrytec 10 mg tablet 1 tablet daily, Flonase 50 mcg nasal spray 1 spray in each nostril daily, Flovent 44 mcg inhalation aerosol 2 puffs daily, ProAir/Venolin 90 mcg inhalation aerosol 1-2 puffs every 4-6 hours or as needed, Levaluterol HCl 0.63 mg/3 ml every 4-6 hours or as needed and EpiPen 0.3 mg epinephrine for allergic emergencies. Appellant is enrolled in the eighth grade, where he has an IEP, receives special education, has major problems in school and is absent from school more than one day per month. The Appellant is under the care of his pediatrician, neurologist, neuropsychologist and dermatologist. Appellant's mother describes the typical day for the Appellant as being very anxiety filled and having difficulty dealing with it. Appellant wakes up snapping or ticking, having difficulty following 1-2 step directions, causing impaired time management, will often have outbursts regarding getting ready for school and going to school, on one occasion the outburst lasted 90-minutes and another time the police had been called by a neighbor, the Appellant grunts/screams while getting ready and will calm down after his back is rubbed, needs to be coaxed from car to get into school, occasionally he becomes lost in his thoughts and develops a "glazed" look in his eyes.
- Physician Evaluation for Katie Beckett Coverage Group completed by Dr. Younes (neurologist) stating that the primary diagnoses is Aspergers, ADHD, GAD and OCD; medications are Risperdal .5 mg, Tenex 1 mg, Prozac 10 mg; needs help getting ready to go to school and does no school work at home; has sensory issues and social skills are poor; is in need of social skills groups through the Autism Project along with community and home base services.
- Medical records from Bradley Hospital dated August 7, 2009 by Dr. Barrett. Chief complaint being poor social pragmatics, anxiety, rigid and inflexible behavior, sensory issues, stereotype, narrow and restricted areas of interest, motor skill deficits. Presents with an age appropriate vocabulary and demonstrates no evidence of language impairment; reads at a 6th grade level; has walked independently since 14 months old; struggled to master the fine motor element required to zipper/button; has not mastered tying shoelaces; is known to have good handwriting; bladder and bowel training were completed by the age of 4; Appellant is excited he flaps hands, body rocks and occasionally

walks on his toes; covers his ears and cries in response to loud noises; demands seamless socks, tagless shirts; refuses to walk barefoot on grass or sand; has a fascination with trains, Legos and video games; is very rigid and inflexible; highly intolerant of unannounced changes to his schedule; refuses to leave the house unless he is wearing long sleeves, long pants, boots and a winter coat regardless the season; socially, he is anxious and has poor social pragmatics; he is well liked by his peers but prefers to play with younger peers; becomes frustrated very easily and has difficult time self-regulating his moods, at times acting similar to a pre-schooler; has done well in school, receiving satisfactory to outstanding reports in all subjects, due to the dedicated teachers/staff. No history of physical or sexual abuse, exposure to drugs or alcohol. Recommendations are: contacting Dr. Holler's office to schedule a comprehensive neuropsychological evaluation to identify relative intellectual strengths and weaknesses; meet with school dept. to discuss IEP and ensure that speech therapy and occupational therapy is addressed; general recommendations for children with Asperger's Syndrome

- Outpatient Developmental History Questionnaire completed by the Appellant's mother who states that she has been searching for help for the Appellant since he was 2 ½ years old, runs in circles, has difficulty communicating when frustrated, has difficulty with transition; was diagnosed with Asperger's in March of 2008; Appellant lives with both his biological parents and has no siblings; enjoy video games and any sport; has poor eye contact, is socially withdrawn, hand flaps, head bangs, bites, sensitive to sounds, smells, touches and tastes; dislikes crowds; prefers rigid routines; interprets help as criticism; and is obsessive.
- Pediatric Neurology, Inc.'s evaluation by Dr. Younes dated September 10, 2009 addressed to Dr. Teixeira. This referral addressed clarification to the Appellant's diagnoses due to his wandering around, seems confused and spins around a lot. A head MRI, DNA for fragile X, 48 hour EEG, and referral to Dr. Roland Barrett at Bradley Hospital to confirm the diagnosis of Asperger's Syndrome was ordered.
- Neuro Psychology Associates, Inc., Dr. Holler's consultation Rpt. from testing done on October 26, 2011. Appellant willingly participated in this evaluation, seemed anxious at times, gross motor abilities appeared normal, receptive single word vocabulary was within the average range, ability to learn and remember was low average, he likes school and thinks most other kids think he's fun but doesn't understand why he needs to go to school. Appellant is low average intellect (IQ score 81, low average) but with variability, reading disability, executive deficits consistent with ADHD and social/emotional pattern indicating ongoing conformity with Anxiety and Asperger's
- Neuro Psychology Associates, Inc., Dr. Holler's consultation Rpt. from testing done on November 30, 2012. Appellant required 20 minutes to be convinced to enter and become evaluated, conversation speech was clear and understandable, intellectual screening remains in the low average range (IQ score 83), word reading, word spelling and math computation skills were solidly within the average range for age although reading comprehension was in the low average range, a number of strengths in neurocognitive functions were noted such as good abilities in bilateral dexterity, receptive/expressive vocabulary and visual-motor control. Appellant's behavioral concerns have improved, less

aggression towards his mother and going to school with less fuss, is very high functioning, is interested in other people and sense of humor is expanding. Although there are periods of frustration, he is learning to manage these moments more effectively.

- NECAP Test Results for the Appellant for the beginning of the 7th grade (Fall 2012). Scores for reading was 723, substantially below average and for mathematics 724, substantially below proficient.
- North Providence School Dept. IEP annual meeting review held on May 17, 2013 stating that the Appellant's social language skills continue to be below grade level, not always able to stay focused, is in the low average range in the area of math applications, struggles with reading comprehension, reading level is 3.7 and comprehension is a 4.0 grade level.

On June 30, 2014, the Appellant's mother called requesting additional time to submit the evaluation from Memorial Hospital, a follow up to the evaluation is scheduled for July 15, 2014. All other reports and documents have been sent to the Katie Beckett Unit. Due to time restraints, the Appellant's request to keep the record open further was denied.

CONCLUSION:

The issue to be decided is whether the Appellant meets the Level of Care criteria of the Katie Beckett Program.

A review of the Agency's policies regarding Medical Assistance (MA) eligibility under the Katie Beckett Program finds that the program covers certain disabled children under the age of nineteen (19) living at home and who would qualify for Medical Assistance if in a medical institution. Therefore, the Applicant must first be determined disabled. Then, in addition, the Katie Beckett Program requires that he/she meet other special eligibility conditions. The special eligibility condition that this applicant was found not to meet is the Level of Care (LOC) criteria.

An application for MA under the Katie Beckett Program was filed on behalf of the Appellant by his parents on November 6, 2013 with the Agency's Katie Beckett Unit. As required by policy, the caseworker forwarded the medical assessments of the child to the Center for Child and Family Health (CCFH) Unit for review. After the clinical reviewed was been performed, a denial of service was issued on January 15, 2014 stating that although the child was found to meet the Social Security definition of disabled, he did not meet the level of care required and an Appeal was filed on January 24, 2014.

To be eligible for the Katie Beckett Program, the Appellant must require the LOC as provided in a hospital, a nursing facility, psychiatric hospital or an ICF (Intermediate Care Facility/Mentally Retarded).

The Appellant isn't in need of medical monitoring, assessment and intensive medication regimen for the child's medical condition; recognition of changes in the child's condition that require prompt interventions to avert complications; provision of hands-on comprehensive medical interventions and treatments; or modification of treatment plans throughout the day based on the child's condition that is the LOC criteria for a hospital.

The Appellant doesn't require specialized professional training and monitoring beyond those ordinarily expected of parents; requires skilled observation and assessment several times daily due to significant health needs; have unstable health, functional limitations, complicating conditions, cognitive or behavioral conditions, or is medically fragile such that there is a need for active care management; have needs restorative and rehabilitative or other special treatment; needs complex care management and/or hands on care that substantially exceeds age appropriate assistance; child's daily routine is substantially altered by the need to complete these specialized, complex and time consuming treatments and medical interventions or self-care activities; child's impairment substantially interferes with the ability to engage in everyday activities and perform age appropriate activities of daily living at home and in the community, including but not limited to bathing, dressing, toileting, feeding, and walking/mobility; or has unstable health, functional limitations, complicating conditions, cognitive or behavioral conditions, or is medically fragile such that there is a need for active care management in which one would receive the LOC from a nursing facility.

This Appellant does not demonstrates a serious deterioration in the ability to safely and adequately care for herself; exhibits thought processes that are impaired and interfere significantly with daily life; displays severe and persistent dysregulated mood and/or severe disturbance of affect; emotional control is disruptive and incapacitating such that emotional responses are inappropriate most of the time; or exhibits a serious and imminent risk of harm to self or others due to a psychiatric illness that one would receive the LOC that a psychiatric hospital would provide.

The Appellant isn't in need of having to have the degree of structure, supervision, training and/or supports necessary to ensure safety and promote attainment of objectives is equal to that which would be provided in an ICF/MR which regards to the LOC. Dr. Canino stated during Hearing that he felt that the Appellant may be close to this point but there wasn't enough documentation presented that would allow him to conclude this point.

The LOC guidelines for psychiatric hospitalization are met when the intensity of the child's mental health needs are so severe that without proper home and/or community interventions, the child would be at immediate risk for hospitalization. This may relate to failed outpatient treatment or barriers to care that would otherwise have improved a child's functioning.

A child is considered to have functional limitations when extreme in one or marked in two or more of the following:

- The child demonstrates a serious deterioration in the ability to safety and adequately care for himself (e.g. – unable to initiate and maintain grooming, hygiene, toileting or eating);
- The child exhibits thought processes that are impaired (e.g. – distorted perceptions, poor judgment, inability to distinguish reality or poor communication) and interfere significantly with daily life: or
- The child displays severe and persistent deregulated mood and/or severe disturbance of affect. Emotional control is disruptive and incapacitating such that emotional responses are inappropriate most of the time: or
- The child exhibits a serious imminent risk of harm to self or to others due to a psychiatric illness as evidenced by:
 - Recent or history of suicidal ideation;
 - Recent or history of suicide attempts;
 - Recent or history of self-mutilation that is medically significant and dangerous;
 - Recent or history of assaultive behaviors that can lead to serious injury to others;
 - Recent or history of serious physically destructive acts;
 - The child demonstrates a chronic destructive pattern such as repeated unprovoked violence toward family members that severely limits his functioning in the family.

There has been nothing presented, during the clinical review or at Hearing that would suggest that the Appellant demonstrates functional limitations and would be a candidate for psychiatric hospitalization.

Dr. Canino did state, that during his clinical review of this case and again during the Hearing, that “he was on the fence” on his decision, that it could go either way and that he really wished that there was more information provided. In particular, Dr. Canino would have liked to have been able to review a neurological evaluation and that there just was not enough documentation to indicate that the Appellant had reached the LOC required.

The Appellant’s mother did indicate that the Appellant is a different boy that what has been written in the reports review, that he struggles with daily life. It’s common for the Appellant to have trouble following more than a two-step instructions, so as his parents, they talk slower in order to let him process information and gentler to avoid anxiety/frustration. The child has an IEP but the services didn’t begin until January due to lack of staffing. There is an IEP meeting scheduled for some time in October 2014 because an IEP is reviewed every three years but the issue is that so much time going by and not much is getting done.

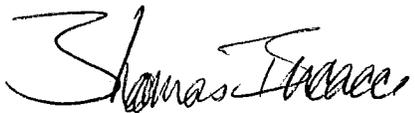
The Appellant’s parents work with the Appellant on social queues, as well as his grandparents and they participate with the Autism Project, although not enrolled. The Appellant has been seen by Dr. Dawn Nero from Providence Behavioral Health, who informed them of some cognitive behavioral services but without Katie Beckett, the Appellant cannot access these programs. The parents are looking to help the Appellant and strengthening the abilities that he has and having Katie Beckett will allow this to

happen. The Appellant's mother stated that she and her husband took a class from the Autism Project called "Aspire" and at the end, children did presentations. The Appellant's mother believes that if her son has an opportunity, he can flourish, do anything. But he just needs an opportunity.

At the close of Hearing, the Appellant's mother requested an opportunity to present more medical reports and evaluations, her request was granted and the record was held open for five week, until May 1, 2014. On April 22, 2014 the Appellant's mother called the Appeals Office and requested additional time due to a need for another medical appointment, the record was then held open until May 29, 2014. On May 2, 2014 the Appellant's mother wrote requesting more time due to a doctor's appointment scheduled for June 24, 2014, the record was then held open until July 1, 2014. On June 30, 2014, the Appellant's mother called the Appeals Office indicating that the Appellant has a doctor's appointment scheduled for July 15, 2014; unfortunately, due to time restraints a fourth extension on keeping the record open was denied.

In conclusion, the Appellant is scheduled to receive some services while at school through his IEP, when there is sufficient staffing and the plan is followed. The Appellant's parents are going everything that they can with the resources that they have. The decision in this matter sides with the agency, the Appellant may qualify for the services requested but presently, there just isn't enough documentation, be it evaluations and/or medical reports, that show the LOC required. So it is highly encouraged for the Appellant and his parents to obtain all the necessary documentation possible and to reapply.

After a careful review of the Agency's policies, as well as the evidence and testimony given, this Appeals Officer finds that the appellant does not meet the Level of Care required by the Katie Beckett Program. The appellant's request for relief is therefore denied.

A handwritten signature in black ink, appearing to read "Thomas Bucacci". The signature is written in a cursive, flowing style.

Thomas Bucacci
Appeals Officer