

**STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS
EXECUTIVE OFFICE OF HEALTH AND HUMAN SERVICES
APPEALS OFFICE - LP Bldg.
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Date: August 13, 2014

Docket # 14-624
Hearing Date: June 24, 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 POLICY MANUAL: MEDICAL ASSISTANCE
SECTION: 0306.05.15 Eligibility Based on Disability
SECTION: 0394.35 Disabled Child-Katie Beckett
SECTION: 0394.35.05 Special Eligibility Condition**

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: You (minor child in c/o your father), and Agency representatives: Michelle Bouchard, Dr. Maggie Kozel, and Ann Murphy.

Present at the hearing were: appellant's father (on behalf of the appellant minor child), and Agency representatives: Michelle Bouchard (Katie Beckett Unit), and Dr. Maggie Kozel.

ISSUE: Does the appellant child fail to meet the Disability and LOC criteria of the Katie Beckett (KB) Medical Assistance (MA) coverage group as of March 17, 2014?

DHS POLICIES: Please see the attached APPENDIX for pertinent excerpts from the Rhode Island Department of Human Services Policy Manual.

APPEAL RIGHTS:

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

DISCUSSION OF THE EVIDENCE:

The Agency representative testified:

- The appellant was due for a clinical redetermination by January 2014, and by March there was very little to review as a result of a lack of submitted clinical information, so he was denied due to the lack of clinical information.
- Since that time, there have been some conversations between the parents and Rhode Island Parent Information Network (RIPIN) consultant which resulted in intermittent receipt of the requested information which was clinically reviewed ongoing for eligibility.
- The final submissions and subsequent eligibility reviews took place in July.
- Following the clinical reviews by the psychologist and the pediatrician, the denial stands, as it was determined that he (the appellant) did not meet the disability criteria.
- There are two prongs to Katie Beckett (KB) which need to be met, both the clinical disability criteria, and the level of care (LOC), and he did not meet the Social Security criteria for level of disability which is very black and white.
- The second review was completed without benefit of the first review.
- Autism diagnosis is not considered a disability in itself, as specified in the Social Security listings. These include certain criteria and specific language, and communication problems as well.

- There are very few conditions which automatically qualify for disability. These would often be extreme medical conditions.
- The KB reviews and criterion used are unfortunately different than what parents worry about, as they are based upon a level of care allowed for a 16 year old boy- and he does not meet it.
- This last evaluation took into consideration the previous certification, and there was a sense that the appellant was evolving and doing better as determined by the provider information.
- The IEP records discussed academic strengths as well as some executive functioning weaknesses.
- The use of only 5 hours per week of Special Education with support from the school Psychologist indicates how well he (the appellant) is doing, and the minimal amount of support he needs.
- He sees a Psychiatrist whose reports include indications of medication stabilization.
- He also saw the outpatient Psychologist about six times over a five month period, and those notes indicate that he (the appellant) is somewhat responsive to the strategies they are using, and he appears as stable as he can be.
- He has remained on the same dosage of medication for some time, and it appears to be working.
- Katie Beckett (KB) services and most of his services stopped in January.
- The interventions suggest a child who has challenges, but they did not indicate that if an extraordinary amount of care and support was not given, the child would need hospitalization or institutionalization.
- An Acute episode and subsequent hospitalization were significant factors in the previous certification which was conducted somewhere around 2010.
- PASS services (Personal Assistance Services and Supports) are under Medicaid benefits, but some insurance like Blue Cross will cover behavioral therapies.
- If he is denied, he could reapply for KB especially if he worsens, or he needs assistance in the future, like hospitalizations.

- He could apply for Social Security benefits around the age of 18 under the Adult criterion.

The appellant's father testified:

- He (the appellant) will most likely never live on his own because of his Aspergers.
- Specifically, as a result of his decision making process, he would most likely not drive as he would put other people at risk.
- He could not live alone, as he must be reminded daily to brush his teeth, comb his hair, and take a shower.
- He will most likely work, but will be a Human Resources nightmare, due to his classic Asperger symptoms which affect how he interacts with other people.
- I worry about him because he sees the world differently, and his social interactions, his ability to make decisions, his ability to count money, and his ability to tell time-all prevent him from living alone.
- He will not be in a group home, but will possibly end up living with his father, or his mother, or grandmother.
- Additionally, his emotions are all over the place including depression, and chronic chronic anxiety, constant worrying about the future and the present and the past.
- He is not in a wheelchair, and does not have classic Autism, and is verbal, so you don't always see his issues, but you see a behavioral problem.
- There are much more severe cases than him (the appellant), but he will have life time challenges of dealing with his emotions and social issues.
- He does not hurt other people.
- Katie Beckett (KB) has been a big help to him and to his brother, who has classic Autism and will most likely be in a group home and need constant care.
- He (the appellant) is not at that level, but still needs support and extra care.

- He had KB for a long time and it provided coverage for prescriptions, a therapist at home to assist with social issues such as reminders to do things, as well as help with school work and finally-guiding and support.
- His long time PASS worker helped him flourish, and especially in the community setting, he was learning shopping skills, and an understanding of money.
- He had HBTS (Home Based Therapeutic Services) through Gateway for a limited amount of time, as child's mother chose not to utilize the remaining time he had been offered.
- His mother knows the support systems as she worked for RIPIN (Rhode Island Parents Information Network) and he (the father) is hoping they will locate additional services.
- He (the appellant) had been receiving about 2 hours nightly of PASS totaling 9 hours per week mostly after school, but his mother initially stopped because she did not like the worker, and the other son was taking up a lot of her time.
- I am aware of the Katie Becket criterion regarding the hospitalizations, and long term care needs, and I think he will eventually need a certain percentage of that.
- There have been no hospitalizations prior to, and since the episode in 2010, which led to Gateway intervention, but he is always on the verge of a potential breakdown and threatens he does not want to live.
- There is currently not a concern for hospitalization, but there is a worry that he will need it in the future as there is always a fine line.
- There have been many breakdowns in which he might have twitching, crying, melt downs, and saying he does not want to live.
- He gets therapy at school and from a private Psychologist where he still goes.
- In school, he has 5 hours of Special Education per week and will be a junior at Tollgate High school.
- He has attended main stream level classes since his freshman year, with some special education classes for gym and math.
- Managing his anxiety and emotions is most difficult, and he is sometimes verbally disruptive in class and demands a lot of attention.
- He can do his daily living skills, but just needs reminders and someone on him all the time.

- His time is split between two homes, and when we had PASS, we worked collaboratively towards his care, monitoring him all the time, and reminding him about hygiene and being aware of his surroundings like crossing the street.
- He was receiving about 9 hours per week with the PASS worker who used to spend a couple of hours on homework, and who was especially helpful with taking him into the community and working on life skills like shopping.
- Since he lost his PASS worker in January he has regressed just in his ability to focus both at home and in school as the homework assistance helped him from falling behind.
- The family now fills some of that role, but his sibling utilizes so much attention it is difficult.
- His brother has his own PASS worker for about 20 hours per week.
- His (the appellant's) fine and gross motor skills aren't the best, but he gets around, and can walk, and ride a bike.
- Recreationally, he swims, and likes the beach and the pool, and he tries to play catch which is difficult.
- He has no friends, and socially, he is going to have a tough time interacting, and making friends and holding down a job.
- He will self-direct by doing some activities on his own, such as reading.
- He communicates well, but sometimes inappropriately.
- He probably does not fall into KB criteria, but I'm hopeful he will continue to get skills.
- He is in a grey area, because he has unquestionably made progress.
- I'm concerned about his future.

FINDINGS OF FACT:

- The appellant child had been receiving Medical Assistance through the Katy Beckett (KB) coverage group until closure on March 17, 2014.
- The Agency determined the appellant no longer met the Disability and LOC criteria for KB medical assistance.
- A closure notice dated March 6, 2014 was sent to the appellant, c/o his mother.
- She filed a timely request.
- The appellant has a diagnosis of PDD, NOS and Anxiety Disorder (D/O), NOS.
- The appellant is 16 years old, and will be entering his junior year in a regular school setting with some special educational services.
- The appellant last utilized his PASS services in August 2013, but remained open to services until January 2014.

CONCLUSION:

The issue to be decided is whether the appellant child fails to meet the Disability and LOC criteria of the Katie Beckett (KB) Medical Assistance (MA) coverage group as of March 17, 2014.

A review of policy finds that Katie Beckett coverage group consists of certain disabled children under the age of nineteen who are living at home and who would qualify for a level of care (LOC) provided in a hospital, Nursing Facility, or Intermediate Care Facility for Mental Retardation. The Agency determines disability by standards in the Social Security Act; and also requires a LOC, that without, community and home interventions would result in institutionalization or hospitalization.

There is no dispute that the Agency had previously determined the appellant to be eligible for Katy Beckett services as a result of meeting the disability and the level of care criteria. There is also agreement that the 16 year old has a shared living arrangement between his parents' two homes. Per policy, the Katy Beckett recipients have re-evaluation determinations periodically. In January 2014 the appellant was re-evaluated. Upon receipt of all the documentation, he was found to be no longer eligible under the disability and LOC criteria. The Agency argues that the appellant's initial determination followed an acute episode and subsequent hospitalization, which significantly contributed to his eligibility finding. His IEP now demonstrates an 80% participation in main stream classes, as well as minimal supportive services. Additionally, they cited current academic reports indicating a minimal use of special education services and excellent testing grades. The Agency testified to evidence submitted in Psychiatric reports which indicated ongoing stability regarding medication

maintenance; outpatient therapist notes documenting visits every few weeks, with an indication of responsiveness to strategies utilized; and, the previous use of the PASS program for supportive assistance in the areas of cuing for hygiene and safety, homework assistance, and community exposure. They affirmed that the appellant had not been using the PASS services since January 2014, and continues to remain stable.

They opined that there was an overall sense that the appellant was “evolving and doing better”, and that he had improved to the extent that he no longer meets either the disability or LOC criteria for KB coverage. They summarized that although the child had challenges, these challenges did not “indicate that if an extraordinary amount of care and support was not given, the child would need hospitalization or institutionalization”. The Agency contends that the appellant has medically improved to the point the he no longer meets either the disability or the LOC criteria for Katy Beckett coverage.

The Agency reviewed and submitted the following evidence testifying that this was used as the basis for their decision:

- A Child Psychiatry consult Service Intake Form from the Autism Spectrum Disorders Clinic, by Todd Levine, MD dated July 6, 2009.
- Autism Spectrum Disorders Clinic Follow-up Notes by Psychiatrist Todd Levine, MD dated January 20, 2011 through March 5, 2014 (5 sessions).
- Pediatric Progress Notes from Mary Murray, MD dated September 2012, and April 2013.
- Observations by the caregiver attending the appellant’s brother, dated March 6, 2014.
- AP-72-1 Physician Evaluation Form by Todd Levine, MD dated March 5, 2014.
- AP-72-1 Physician Evaluation Form by Mary Murray, MD dated March 25, 2014.
- Parent/Guardian Questionnaire dated March 14, 2014.
- CEDARR Family Care Plan Review and Revision dated January 9, 2014. This includes reports and clinical recommendations from 2002 to the present.
- Warwick Public Schools Eligibility of Determination summary-includes Student Diagnostic Report, dated 3.18.14, a diagnosis, and an eligibility statement.
- Warwick Public Schools Individualized Education Program (IEP) effective from 3.20.14 to 3.19.15.

- Unidentified Client Progress Notes dated February 21, 2014-May 16, 2014 (6 sessions).

The father testified that the appellant was diagnosed with Asperger's and has benefited from the PASS program for many years. The record indicates the first diagnosis of PDD, NOS most likely occurred around the age of four. The appellant has utilized the CEDARR services since that time. The father testified that the appellant has flourished with the assistance of the PASS providers specifically. They were most effective in the areas of socialization through community exposure, and homework assistance. The father noted a brief period of Home Based Therapeutic services around the time of the last evaluation and the subsequent PASS services which have been successful. He acknowledged as well, that although his son might not appear to meet Katy Beckett criterion at this time, he was concerned about his future. He argues that the appellant's decision making around crossing the street, his inability to interact with others, and safety concerns around the issue of driving would most likely mean that the appellant would not be living independently in the future. He further expressed that he would most likely present with great difficulties holding down a job. He opined that the appellant is not at a hospitalization level, nor has this been a concern for some time. However, he is always on the "edge" as he continues negative and self-deprecating language and thoughts. The father further stated that the appellant would not aggress towards others but he continues to be verbally disruptive in school. He identified that the appellant has ongoing therapeutic support every three to four weeks, but has not had the benefit of PASS services since January. Since then, his focus appears to have declined in school most likely attributable to the worker's support around academic concerns-organizational skills and homework. Additionally, the father testified that although the family attempts to coordinate efforts, the second son requires a substantial amount of time and energy from the parents as a result of his Autism diagnosis and subsequent needs. The father further argues that the PASS services allow the appellant to have continued community exposure, and that without the Katy Beckett medical assistance he is fearful that the appellant will not gain or increase to a skill level needed for his future.

DHS evaluates disability for the purposes of MA including MA within the KB coverage group, in accordance with Federal Social Security disability regulations. Federal regulations define a disabled child as "a child under age 18 with a medically determinable physical or mental impairment or combination of impairments that causes marked and severe functional limitations ...or that has lasted or can be expected to last for a continuous period of not less than 12 months. Determination of whether a disability continues or ends is made in accordance with 20 CFR 416.9941, which outlines the evaluative process.

Step 1: Has there been medical improvement in the child's condition(s)? Medical improvement is defined as any decrease in the medical severity of the impairment that

was present at the time of the most recent favorable disability decision. The Agency indicated the most favorable decision took place around 2010. At that time, they determined the appellant's diagnosis of PDD, NOS; Anxiety D/O, NOS; and Depressive D/O, NOS to be disabling. A review of the evidence submitted indicates that the appellant was previously in a special education Inclusive curriculum. The appellant had "multiple successive stressors which could have exacerbated" his condition as well. He displayed inappropriate social behaviors, and was using threatening language both towards himself and others. At the time, an Emergency service utilization plan was developed in case of emerging threatening behaviors. Provider reports identified behaviors centered on impulsivity, concentration, disruptive and some self-destructive behaviors. Currently, the appellant participates in a high school curriculum in which he is "on track" for college. The appellant will enter 11th grade in a regular education school setting in the fall. He spent 80% of the current year in mainstream classrooms with 5 hours weekly in a special education math setting, and with minimal supports including one half hour per week of time with the school psychologist. The record establishes that the appellant has participated in a regular education classroom for two years and continues to maintain grade level and above grade level work. His NECAP testing scores were labeled "outstanding". Supportive services both in the school and the community are minimal, and the appellant is described by the academic community as having made stride in awareness, and as having the potential for success if he takes responsibility for himself.

The record establishes through Psychiatry notes, CEDARR plan reviews, and parental reports, that the appellant had made significant progress by August 2011. Psychiatry reports indicate an increase in maturity, and social regulation, an improvement in behavioral issues particularly in the area of self-care, and an age appropriate interest in his pubertal development. The appellant continues to express anxiety around social issues and around homework completion, and began outpatient therapy in February 2014, to develop strategies to cope with his negativity and self-esteem issues. The appellant's PASS plan was kept open until January 2014, but he had not received any actual services since last August 2013. A full review of the record establishes that he continued to maintain emotional stability with minimal supportive services.

In summary, the appellant transitioned from an Inclusive curriculum to a mainstream curriculum where he is "on track for a high school diploma," although he continues to experience great difficulty with math proficiency. He is successfully completing grade level work, with strengths in reading and writing. His IEP demonstrates some progress in classes outside his "comfort zone", as well as participation in the drama club and a musical production. He has maintained a consistent medication level since 2011. The appellant began supportive outpatient therapy in February which takes place every three to five weeks. This is the only current non-school related support he receives, as he discontinued the PASS last August. At the time, the PASS plan was geared towards support services which included exploration of services needed for Adulthood, an increase in opportunities for exposure to social experiences, and goals of increasing awareness around personal control (verbal) and continued improvement around safety skills, such as crossing the street, accessing 911, and reading food labels. Despite the

minimal supports both in and out of the academic setting, and absence of intense treatment or medication, the record demonstrates good behavioral progress, a decrease in incidents of behavioral disruption, and emerging social skills. In conclusion, the record establishes medical improvement since the last favorable decision by the Agency and the evaluation therefore continues to Step 2.

Step 2: Despite medical improvement, does the appellant's impairment still meet or equal the severity of the listed impairment that it met or equaled before? The Social Security childhood Listings 112.10 Autistic Disorder and Other Pervasive Disorders, and 112.06 Anxiety Disorders were reviewed. A review of the record finds that the appellant does not currently meet or equal the listings. The testimony and evidence submitted including CEDARR Family Care Plan, Psychiatric notes, and the current IEP establish that the appellant's deficits in social interactions, and behavioral considerations due to Autism and/or Anxiety Disorders, are not to the degree which would "markedly" restrict the child's activities and interests as required to meet the listings. The appellant does not demonstrate "marked" restrictions in any of the areas including cognitive/communicative skills, social, personal concentration, persistence, or pace; and, therefore does not meet at least two of the appropriate age group criteria for children ages 3 to 18. Since the appellant's impairment no longer meets the Social Security listing, the evaluation continues to Step 3.

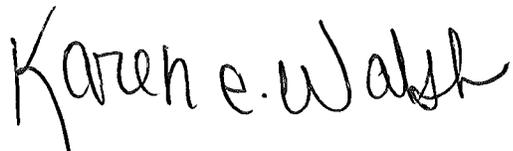
Step 3: Is the child currently disabled per 20 CFR 416.924 (c) and (d) considering all impairments the child currently has even if such conditions did not exist at the time of the most recently favorable disability determination? The prior disabling conditions are no longer considered disabling, and the appellant does not present with any new or additional medical impairments since the last favorable disability determination. Thus, in making a determination as to whether the disability continues or ends, the child is considered no longer disabled.

Per DHS policy, to qualify for Katy Beckett MA coverage, a child must require a LOC provided in a hospital, a Nursing Facility, or an ICF-MR. A child under 19 may be living at home but is in need of a level of care that without the appropriate community and home interventions would require institutionalization. The Agency determined the appellant did not meet that level of care. This finding is moot, as the appellant did not meet the first prong of the Katy Beckett determination-disability.

The appellant's father argues that he will most likely meet the hospitalization requirement in the future, and he further testified to concerns about the youth's future. Despite the concerns, the current services are minimal in nature, and the record provides no indication that without reinstating the Katy Beckett services, the appellant child would be at immediate risk for hospitalization.

After a careful review of the Agencies policies, as well as the evidence and testimony presented, this Appeals Officer finds that the appellant child no longer meets the

Disability and/or Level of Care criteria of the Katie Beckett Medical Assistance coverage group as of March 17, 2014. The appellant's request for relief is therefore denied.

A handwritten signature in black ink that reads "Karen e. Walsh". The signature is written in a cursive, lowercase style.

Karen E. Walsh
Appeals Officer