

**STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS
EXECUTIVE OFFICE OF HEALTH AND HUMAN SERVICES
APPEALS OFFICE - LP Bldg.
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Docket #14-832
Hearing Date: August 14, 2014

Date: August 25, 2014

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 policy reference(s) were the matters before the hearing:

**THE DHS POLICY MANUAL: Medical Assistance
SECTION: 0394.35 Disabled Child-Katie Beckett
SECTION: 0352.15 Eligibility Based on Disability**

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 mother), and Agency representatives Caridad Ramos SCW, Michelle Bouchard RN, Sharon Kernan, and Maggie Kozel MD.

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

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.

ISSUE: Does the appellant child continue to meet the level of care (LOC) criteria of the Katie Becket (KB) Medical Assistance (MA) coverage group as of April 2014?

DISCUSSION OF THE EVIDENCE:

The Agency representatives testified:

- A copy of agency policy 0394.35.05 was mailed to the appellant with the denial letter dated May 12, 2014.
- Two reviewers, a registered nurse and a pediatrician, reviewed all of the information submitted during the re-determination process to determine if the KB disability and LOC criteria were met.
- The appellant submitted an initial application for MA in April 2013.
- The child had been diagnosed with a small intestinal ischemia, and underwent a small bowel resection and anastomosis in January 2013.
- He required insertion of a g-tube (gastrostomy tube) for nutrition, and required skilled nursing care at that time.
- He was approved for MA as a Katie Beckett (KB) child for a period of one year.
- The Agency conducted their redetermination review as planned in April 2014 subsequent to requesting additional information.
- A review of the available records revealed that he was making steady progress with growth skills.
- In December 2013 he was able to take half a bottle of formula, and the remainder was given through the g-tube.
- A feeding specialist was going to the home regularly.
- He was on target for all of his developmental milestones.
- He was very engaged and comfortable in social settings.
- Nursing summaries from the attending nursing agency also indicated that he was on target developmentally, was ambulating well, and had good receptive language skills.
- He was still being followed by the nutrition specialist, and a nutrition consult had been ordered.

- He is now able to eat on his own, although nutrition can still be supplemented through the g-tube as needed.
- Safety measures based on his age are indicated.
- Nursing notes documented that the child's mother was very knowledgeable about his needs, and no special teaching was required.
- The pediatrician for the KB unit completed an independent review of the available records of the child's surgeon, and of skilled nursing care.
- The primary issue at the present time appeared to be food aversion and the need for g-tube supplemental feedings.
- Nursing notes and early intervention records reveal that he is growing and developing beautifully, and appears to be a happy child.
- Although his feeding process requires special attention, a reason for continued use of skilled nursing care was not apparent.
- The mother's concern about avoiding child care situations due to high risk of illness was considered.
- Although he has received care in the home, he had to be treated for severe cold and infection anyway.
- There were no medical recommendations indicating that she should not send her child to child care.
- With regard to the disability determination, the reviewers found that he meets the disability requirements of the Social Security regulations, as he is under the age of three and still requires the use of a gastrostomy tube.
- As there was no evidence supporting a requirement for skilled nursing care, the pediatrician agreed with the conclusion of the reviewing nurse.
- The parameters of the program indicate that he must require a level of care that would ordinarily be available at a hospital or nursing facility, which no longer appears to be the case.
- The Agency concluded that based on the improvement in the child's medical condition, he does not require the skilled services outlined in the LOC criteria for KB MA.

The appellant's mother testified:

- She acknowledged that she had received the denial letter and the attached policy and understood that continuance of MA benefits required support of clinical evidence that her son met the level of care characteristics as stated in the policy section provided.
- Her son is currently 18 months old.
- She has been cautious about sending him to child care because a simple cold affects him more than most children.
- His last cold was accompanied by ear infections and vomiting, and was long lasting.
- He experienced a setback in the progress he had made increasing his food intake.
- He can drink up to a maximum of 4 oz of formula per day, but requires a total of 24 oz.
- His calorie intake was recently reduced because he is growing well, and the plan is to get him to experience the sensation of feeling hungry.
- Some weight loss is expected during the process.
- Although he has been through a lot, he is presently doing well.
- Eating has been the greatest challenge because his response has been inconsistent.
- Skilled nursing techniques have been very helpful.
- At present he is able to eat solid foods that a toddler would be expected to eat, although he is limited to small quantities.
- She believes that he requires consistency to manage his eating routine.
- She is very concerned that taking away the nurses he is accustomed to working with could cause a setback in his progress.
- He is not old enough to understand rational explanation about why he needs to take in nutrition.
- She requested to submit a statement from his primary nurse outlining her success with patients requiring similar care.

- The nurses who have experience working with children with feeding challenges are very creative, and offer unique solutions.
- They have achieved results by using techniques that she is not aware of.
- The feeding team has primarily observed and offered advice, but has not been very helpful in the past.
- She believes she is able to duplicate the techniques they have found effective, and to acquire tools such as new utensils that have been introduced.
- She does not feel that her use of the techniques and information is carried out as skillfully as handled by the nurses.
- She requested to submit an Early Intervention report dated June 9, 2014.

FINDINGS OF FACT:

- The appellant child had been in receipt of Medical Assistance through the Katie Beckett (KB) coverage group since April 2013.
- He had been diagnosed with a small intestinal ischemia, and underwent a small bowel resection and anastomosis in January 2013.
- Upon clinical review, the Agency concluded that the appellant child still meets the Social Security disability requirements, but does not meet the LOC criteria for KB Medical Assistance (MA).
- On May 12, 2014 DHS a letter documenting the conclusion of that review was sent to the appellant in care of his mother.
- The appellant's mother filed a timely request for hearing on his behalf, received by the Agency on May 19, 2014.
- The child has not attained the age of 3 (18 months old at the time of the hearing), and requires supplemental daily enteral nutrition via gastrostomy tube.
- His condition meets listing 105.10 of the Social Security childhood listings of impairments, and therefore, he is disabled.
- Evidence has not established that the child presently requires the LOC provided in a hospital, a nursing facility, or an ICF-MR, in addition to being disabled.

- 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.
- The appellant child has medically improved to the point that although he is still disabled, he no longer meets the LOC criteria for KB coverage.

THE EVIDENCE RECORD:

The Agency submitted the following evidence into the record and testified that all was reviewed and was the basis for their decision:

- ✓ A Parent/Guardian Questionnaire dated February 20, 2014 and signed by the mother of the appellant child.
- ✓ A Physician Evaluation for Katie Beckett dated April 29, 2014 and signed by Arlet Kurkchubasche, MD.
- ✓ Records of Rhode Island Hospital for January 28, 2013 to May 17, 2013.
- ✓ Homefront Health Care Nursing summaries for December 2013 to July 31, 2014.
- ✓ Hasbro Children's Early Intervention Program for April 3, 2013 to March 24, 2014.

Additional evidence was submitted by the appellant during the hearing:

- ✓ A note identified by the appellant child's mother as treatment experience information reported by a nurse caretaker which is unsigned and undated.
- ✓ Rhode Island Early Intervention annual review dated June 9, 2014.

CONCLUSION:

The issue to be decided is whether the clinical evidence established that as of April 1, 2014 the appellant child met both the Disability and LOC criteria required of 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 uses the Social Security Administration's definition of disability. They are mandated to determine disability for Medical Assistance in accordance with the applicable law, including the Social Security Act and regulations (20 CFR 416.901-416.998). If disability is established, 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 look for types of intensive therapies normally given inside an institution.

First, the Agency evaluates disability characteristics 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 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. Whether a child's disability continues is determined in accordance with 20 CFR 416.994a, which outlines a three-step evaluation 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. A favorable decision was made in April 2013 subsequent to small bowel resection and anastomosis completed in January 2013, when skilled nursing care was required to manage his recovery and nutritional needs. One year later, he had shown overall steady growth and development despite some setbacks within that period of time. He was on target for developmental milestones, was ambulating well, and was developing language satisfactorily. The care providers and his mother all described a happy child that appeared comfortable with social interaction. He has recently been introduced to solid foods appropriate for a toddler, and a new feeding schedule has been proposed to teach him to recognize hunger signs. Based on the supported improvements, the evaluation continues to step 2.

Step 2: Despite medical improvement, does the child's impairment still meet or equal the severity of the listed impairment that it met or equaled before?

In this matter, the Agency has established that the minor child meets listing 105.10 (*Need for supplemental daily enteral feeding via a gastrostomy*) due to any cause, for children who have not attained age 3; or thereafter experience residual impairment(s) as defined in 105.00H. That determination is clearly supported, as required, by acceptable clinical and diagnostic medical evidence. Therefore, the evaluation of disability ends at step two with a finding of "disabled".

As a result, continuation of KB MA benefits is reliant upon the medical evidence and testimony presented to establish that the child currently meets the LOC characteristics. There are three areas in which the child can meet the LOC criteria: Hospital, Nursing Facility (NF), or ICF-MR which is a type of care for individuals with mental retardation or related conditions including developmental disabilities.

There is no dispute that the appellant child is 18 months old and living in his parent's home. There is also no dispute that the Agency had previously found the appellant to be a disabled child who met the LOC criteria, and was scheduled for review in one year. There is no dispute that at the time of the one year redetermination, the child continued to meet the requirements of disability listing 105.10. The appellant child's mother made a case that her child could be expected to benefit from continuity of care, and the creative options offered by the nurses who had been attending to his feeding. The concept that he could benefit from additional supportive services offered by knowledgeable professionals is also not in dispute. However, per department policy, to

qualify for KB MA coverage, while the child may benefit from a service, he must actually require the LOC provided in a hospital, a nursing facility, or an ICF-MR, in addition to being disabled.

To his mother's credit, she is very knowledgeable about his condition, able to understand his needs, has stayed informed during the changes in his feeding routine, and was noted to be very competent with handling his care including proper use of the g-tube. The nursing records indicated that she needed no additional training. 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. The Agency, therefore, maintains that the evidence establishes that although the appellant child meets a Social Security listing for disability, he no longer meets the LOC criteria for KB coverage.

After a careful review of the Agency's policies, as well as the evidence and testimony given, this Appeals Officer finds that the Agency made accurate findings relative to disability characteristics, as well as the Level of Care (LOC) criteria of the Katie Becket (KB) Medical Assistance (MA) coverage group. The appellant's request for relief is therefore denied.

The notice under appeal dated May 12, 2014 documents the outcome of the redetermination, however does not address terms of closure of the MA case. The Agency should initiate the proper procedure to inform the parent of the appellant child of the intended closure date.

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