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EXECUTIVE OFFICE OF HEALTH AND HUMAN SERVICES
APPEALS OFFICE - LP Bldg.
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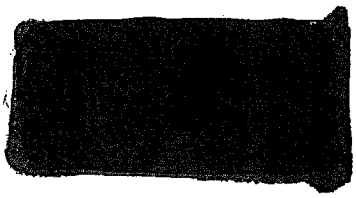
Docket #14-1301
Hearing Date: October 9, 2014

Date: November 13, 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
SECTION: 0318.20 Redetermination of 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 Ann Murphy, Michelle Bouchard, Sharon Kernan.

Present at the hearing were: appellant's mother (on behalf of the appellant minor child), Agency representative Ann Murphy SCW (Katie Beckett Unit), and Agency witnesses Maggie Kozel, MD (consultant Pediatrician), and Frank Canino, PhD (consultant Psychologist).

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 child currently fail to meet the disability and level of care (LOC) criteria required for continued eligibility in the Katie Becket (KB) Medical Assistance (MA) coverage group?

DISCUSSION OF THE EVIDENCE:
The Agency representative, and witnesses testified:

- A financial redetermination and clinical review was performed in June 2014.
- A request for a physician evaluation form and additional clinical information was sent to the parent of the minor child on June 30, 2014.
- New records were received in July 2014, and reviewed for the redetermination.
- Agency representatives reviewed available information relative to the re-determination process to establish if the disability and level of care criteria continued to be met.
- The reviewers determined that the minor child had medically improved since the last favorable decision was made in July 2013 and, therefore, was no longer impaired to the level defined as a disability by Social Security.
- Letters indicating that the minor child no longer continued to meet the required disability criteria were mailed on August 4, 2014.
- A letter from a psychologist was submitted after the denial notice was sent.
- The Agency presented copies of current medical and school records used during the redetermination review.
- At the time of the initial application in 2012, the minor child met listing 112.11 of the Social Security listings of impairments, and also met the criteria for a psychiatric hospital level of care.
- In 2013 evidence revealed that he continued to exhibit symptoms of ADHD (attention deficit hyperactivity disorder), oppositional defiant disorder (ODD), multiple descriptions of (inaudible) disorder, required a partial hospitalization at Bradley Hospital, and treatment with West Bay Collaborative.
- He is a very smart child, but was significantly dysregulated, and had not shown improvement at the point of the 2013 review.
- Current (2014) information did not include any interventions or clinical consultations outside of the school programs.

- Evidence established that concerns continued with regard to inattention, hyperactivity, dysregulated mood, and behavior.

- Dr Felder submitted information documenting facts comparable to those already considered during the previous review.

- The parent report documented the need for frequent reminders to complete things, difficulty with concentration, difficulty with social skills, and with regulation of emotion (easily agitated despite use of medication).

- The school offered some very positive comments about how bright he is, and that he was getting his work done, although he has difficulty with structure.

- He has a long history of dysregulated behavior consistent with mood disorder, and a possibility of bipolar disorder.

- His treatment, however, has been consistently designed to address ADHD which ordinarily would not be treated alone if co-occurring with mood disorder.

- There is an indication of ODD co-occurring with ADHD.

- Hyperactivity and defiance are often associated.

- He is academically capable, and from last year to present he has required less intense school services, which demonstrates improvement.

- As there was no updated psychiatric evidence available, Dr DeSantis was contacted for more information.

- The doctor did not submit progress notes as requested, but sent information reiterating what was already known.

- The doctor affirmed diagnoses of ADHD and ODD, but did not provide needed information about recommended treatment and effectiveness.

- School documents reveal that he requires a fair amount of support.

- Evidence lacked information regarding behavioral health intervention.

- As most of his support had come from his school settings, it would be difficult to establish the need for a level of care as required for eligibility in the Katie Beckett program.

The appellant minor child's mother testified:

- Dr DeSantis has been seeing him every other week since July (2014).
- She had tried to contact Gateway to arrange for care, but the schedule they offered conflicted with her work schedule.
- In the past, the child was asked to leave several schools, and it became important to find a daycare facility that incorporated clinical services into their programs to make more efficient use of time.
- He was recently banned from daycare at a gym because he threatened another child.
- He doesn't seem to be getting better, especially with regard to emotional dysregulation.
- He has difficulty sitting still to complete sessions with his therapist.
- He has great difficulty staying focused.
- Dr Bonner (pediatrician) had prescribed a second dose of his medication to be administered in the afternoon to help him get through the day.
- He was taking the medication as prescribed when he was involved in an after school program that would administer it, but is not always taking it now.
- There have been several incident reports from various after school programs documenting the behavioral issues.
- In order to get critical services he needs Katie Beckett benefits to access care not covered by the family Blue Cross plan.
- She requested to submit an update from the school department including information from a school psychologist.
- She needs more services to manage his behavior in school.
- She has not been using Katie Beckett services continuously, due to scheduling conflicts.

FINDINGS OF FACT:

- The appellant child had been in receipt of Medical Assistance through the Katie Beckett (KB) coverage group since July 2012.
- A redetermination was completed in July 2013 which was the date of the last favorable decision.
- Upon clinical review, the Agency concluded that the appellant child is medically improved, and does not currently meet the Social Security disability requirements.
- A finding that the child is no longer disabled rendered the LOC issue moot.
- Two letters of denial were prepared by the Agency on August 4, 2014.
- A timely request for hearing was submitted by the mother of the appellant minor.
- The Agency's written response to the filing of the appeal cited policy for an initial case rather than a redetermination.
- The language of both printed notices was flawed, but not fatally flawed.
- The notices included statements indicating that the child was not disabled, and that medical improvement policy 0318.20 was the basis for the decision.
- The Agency reviewers concluded that medical improvement had occurred since the last favorable decision in July 2013.
- Seven days were allowed for the Agency to complete the evidence record by providing supportive evidence from that last favorable determination in July 2013 to the appellant and to the Appeals Officer.
- An extension of seventeen days was allowed for the Agency's submission of additional evidence due to an error in the follow up instructions.
- At the close of business on November 3, 2014, Agency consultant evaluation forms, a physician evaluation form, a parent questionnaire, two incident reports, and a copy of an IEP (individualized education program) had been added to the record of hearing, and sent to the appellant.
- The Agency has not met their burden to support their conclusion of medical improvement with acceptable clinical and diagnostic evidence; therefore the child is disabled as previously determined.

- The representative for the appellant minor has not meet the burden to prove that the child continues to meet the requisite level of care required for eligibility in the Katie Beckett, MA program.

- The minor child is no longer eligible for MA through the Katie Beckett coverage group as notified.

DISCUSSION OF THE EVIDENCE RECORD:

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

- ✓ A Parent/Guardian Questionnaire dated June 17, 2014 and signed by the mother of the appellant minor.
- ✓ A Physician Evaluation form AP-72-1 dated July 14, 2014 (signature illegible-no printed name provided).
- ✓ Two letters from psychologist, Danielle DeSantis, LMFT, PsyD dated August 9, 2014 and August 26, 2014.
- ✓ Records of [redacted] Public Schools for September 11, 2013 to September 18, 2014.

Additional evidence was submitted at hearing by the representative for the appellant minor. A copy was provided for the Agency.

- ✓ Records of [redacted] Public Schools dated September 18, 2014.

Additional evidence used in the re-determination, but not submitted at the hearing was forwarded to the Appeals Officer and the appellant on November 3, 2014.

- ✓ Two Childhood Disability Evaluation forms (SSA-538) dated August 19, 2013 and July 30, 2014, and signed by consultant psychologist for the Agency, Frank Canino, PhD.
- ✓ A level of care determination form and attached review notes dated July 30, 2014 and signed by Frank Canino, PhD.
- ✓ A Childhood Disability Evaluation form (SSA-538) undated, and signed by consultant pediatrician for the Agency, Margaret Kozel, MD.
- ✓ A level of care determination form and attached review notes dated July 31, 2014 and signed by Margaret Kozel, MD.
- ✓ Agency hearing presentation notes.
- ✓ A physician evaluation form dated July 3, 2013 and signed by Michael Felder, DO.
- ✓ A Parent Questionnaire dated June 27, 2013 and signed by the mother of the appellant minor.
- ✓ Two incident reports from The Children's Workshop dated July 25, 2013 and August 15, 2013.
- ✓ [redacted] Public schools IEP form for April 2013-April 2014.

As of the date of this decision, the Agency has not withdrawn the notice of denial under appeal based on the new evidence and testimony.

Medical and other evidence of an individual's impairment is treated consistent with (20 CFR 416.913) for the purpose of the disability determination. The record of hearing was held open to allow the Agency to forward evidence associated with the last favorable decision in July 2013 to the Appeals Officer and to the appellant, as required to establish medical improvement essential to the determination, but omitted from the Agency evidence packet submitted during the hearing. In cases where the necessary evidence records are lost or irretrievable, federal policy 20 CFR 416.994a outlines the specific procedure for addressing that problem. The Agency has not indicated that 2013 documents are missing, yet, at the close of business on November 3, 2014, five of the newly submitted entries were 2014 documents and the remaining 2013 records did not support certain statements offered in hearing testimony. All additional information received was added to the evidence record of hearing. As the records provided would not have been adequate to carry out a previous re-determination guided by applicable regulations, it appears unlikely that they are complete.

A letter of denial issued in this case indicated that the Katie Beckett Unit used the Social Security Administration's definition of disability as the basis for their decision. The Agency is mandated to determine disability for Medical Assistance eligibility and continued eligibility in accordance with the applicable law, including the Social Security Act and regulations (20 CFR 416.901-416.998).

In this matter, the Agency did not clearly identify all pertinent policy numbers in the text of their notice of denial, did not submit copies of the applicable policy as hearing evidence, and did not include any state or federal policy standards relied upon for their decision within the hearing presentation. There were some general references to the required medical improvement standard.

The Katie Beckett Unit is considered a non-examining source when expressing opinions regarding an individual's condition. Consequently, as controlling weight can only be assigned to a treating source with documented length, frequency, nature, and extent of treatment justifying that weight of opinion, development of the record is essential.

The appellant minor has been treated for attention deficit hyperactivity disorder (ADHD) and oppositional defiant disorder (ODD). Historically, he has been receiving MA benefits since July 2012, after an earlier agency finding that he met listing 112.11. In order to meet listing 112.11 (Attention Deficit Hyperactivity Disorder), evidence would have been required to support the existence of marked level inattention, marked impulsiveness, and marked hyperactivity at that time.

The Agency is directed by statutory requirements to periodically review and determine continued eligibility for those benefits based on the medical improvement criteria. The last re-determination resulting in a favorable decision was performed in July 2013. Based on what was known in July 2013, they determined that the child was disabled according to Social Security rules, advancing the evaluation to the level of care (LOC) determination. Testimony indicated that a partial hospital program had been required

at that time, and LOC was evaluated by determining that 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.

Consideration of whether medical improvement has occurred must be supported by evidence documenting changes in symptoms, signs, or laboratory findings associated with established impairments. The Agency made attempts to develop the 2014 evidence record by requesting updated information from the appellant and from a treating specialist. They testified that the appellant minor, had primarily been reliant on school-based services throughout the past year creating the appearance of medical improvement. However, the 2013 evidence indicated that occupational, speech, and behavioral therapies were being accessed through the school at the time of the last decision. The testimony is also contradicted by the written opinion indicating that evidence reviewed for the July 30, 2014 re-determination revealed marked level impairment in the second domain (Attending and Completing Tasks), and most likely in the third domain (Interacting and Relating with Others) as well. Marked limitations resulting from an impairment or combination of impairments in two domains would support the existence of a disability functionally equaling a listing according to the Social Security guidelines.

The mother of the appellant minor alleged that he had not improved, that she had made an effort to find school settings that incorporated clinical services so that she could manage her full-time job and his special needs more efficiently, and that he had recently started seeing a new psychologist. She described concerns regarding past incidents of aggression toward peers, disrespect of teachers, and unsafe behaviors. New evaluation data from the [redacted] School department indicates minimal progress with development of coping skills and socialization. There are still many characteristics indicated that need improvement. Otherwise, both parties have agreed that he has shown good academic potential.

CONCLUSION:

At the time of the August 2014 re-determination, the Agency was expected to address the statutory requirement to review continued eligibility. Whether a child's disability continues is determined in accordance with 20 CFR 416.994a. "To ensure that disability reviews are carried out in a uniform manner, that decisions of continuing disability can be made in the most expeditious and administratively effective way, and that any decision to stop disability benefits are made objectively, neutrally, and are fully documented, we follow specific steps in determining whether your disability continues." The necessary steps of the sequential evaluation under 20 CFR 416.994a which guides all redeterminations performed by the Agency for the Katie Beckett program include:

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 an impairment that was present at the time of the most recent favorable disability decision.)

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?

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 recent favorable disability determination?

If a favorable decision can be made at any step in the sequence, no further review is required. Steps of the sequential evaluation were not itemized or defined during the hearing presentation.

At the current time, the appellant has alleged that impairment remains severe and continues to impact functional capabilities. New conditions have not been identified. Although ADHD is still problematic, there does appear to be more emphasis on the deficits to interpersonal skills as he matures.

An individual claimant bears the burden support the existence of disabling impairments. However, the Agency assumes the burden of demonstrating that medical improvement had occurred based on a comparison of facts existing at the time of the last favorable decision with current evidence when reviewing cases for re-determination. In order to complete that comparison, according to 20 CFR 416.916 the appellant must co-operate in furnishing or helping to obtain or identify available medical or other evidence about disabling impairment(s). When a client fails to facilitate in obtaining necessary evidence, a decision must be made based on the information available.

Although the Agency found reason to render a favorable re-determination decision in 2013, they did not indicate that the appellant met or functionally equaled a specific listing at the time of the 2013 review, as they claimed had been the case at the time of the 2012 initial application. Therefore, the comparison of 2013 and 2014 reviews lacks information necessary to respond accurately at step 2. Testimony and evidence described symptoms that would require consideration of listing 112.08 (Personality Disorders) as both parties testified regarding the existence of significant dysregulation, and notable impulsivity and lack of social skills.

In this matter, updated information was limited by the appellant's reliance on school services, and lack of more extensive evaluation and treatment options that were made available by eligibility in the Katie Beckett program. Clearly the reviewers were frustrated with the limited information. The appellant was not, however, denied for failure to provide information or to cooperate with program requirements. Despite having limited 2014 information, the Agency concluded that medical improvement had occurred. The notices clearly stated that he was "not disabled", and that he had "medically improved". Additionally, a date of closure was noted.

After a careful review of the Agency's policies, evidence and testimony, this Appeals Officer finds that the Agency has clearly not met their burden to establish that medical improvement has occurred. The records submitted do not support the earlier 2013 findings used as a comparison for the re-determination. As the Agency has been silent with regard to the reason for the lack of 2013 medical evidence and policy to support their actions, it can be concluded that medical improvement has not been justified as

stated in the two letters of denial issued on August 4, 2014. Therefore, the child is considered disabled as previously determined.

The concept that the minor child could benefit from ongoing or additional supportive services is not in dispute. Clearly, any established effective treatments should be continued whenever possible. However, per department policy, to qualify for KB MA coverage, while the child may benefit from a service, he must not only meet or equal the disability criteria as determined above, but must actually show evidence that he requires the LOC provided in a hospital, a nursing facility, or an ICF-MR, or to be determined to be at immediate risk for such placement. Despite the mother's concerns, she was unable to provide any evidence that interventions or therapies offered in a hospital setting had been required throughout the past year. Current educational and community services have been the primary sources of support. The child is performing well academically, and recent arrangements for counseling have been established to assist the child with improvement of skills and behavioral issues. 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. Consequently, he does not meet the requisite level of care.

Following complete review of the Agency's policies, as well as the evidence and testimony offered by both parties, this Appeals Officer finds that the appellant child no longer meets the Level of Care criteria of the Katie Becket (KB) Medical Assistance (MA) coverage group. 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:

- **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.

- The level of care provided at home is appropriate for the child;

- 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.

0306.05.15 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).

0318.20 Redetermination of Disability Determination

REV:09/2005

Cases are reviewed in order to determine whether or not an individual's disability has improved medically to the point where he/she is able to work. When determining whether a medical condition has improved, DHS uses a point of comparison to compare the current severity of the impairment(s) to the most recent favorable disability determination that the individual has received.

The Department of Human Services (DHS) conducts continuing disability reviews when one or more of the following in accordance with 20 CFR, Section 416.990(b) apply:

- o Current medical or other reports are necessary to determine if a recipient's disability has continued (for example, where medical technology has changed),
- o A recipient returns to work and successfully completes a trial period of work,
- o DHS receives evidence that raises a question as to whether or not an individual's disability continues,
- o A recipient has earned substantial wages during the eligibility period, unless otherwise eligible under the Sherlock Act, R.I.G.L. 40-8.7.
- o By his/her first birthday, for a child whose low birth weight was a contributing factor material to the disability determination, or
- o After his/her first birthday for a child who has an impairment(s) that is not expected to improve by his/her first birthday.

There are several definitions that are important to know in order to understand why an individual's disability determination would be reviewed.

Definitions:

MEDICAL IMPROVEMENT: Any decrease in the medical severity of an individual's impairment(s) which was present at the time of the most recent favorable medical decision that they were disabled or continued to be disabled. A determination that there has been a decrease in medical severity

must be made on improvement in the symptoms, signs and/or laboratory findings associated with the individual's impairment(s).

POINT OF COMPARISON: When determining whether medical improvement has occurred, compare the current medical severity of the impairment(s) to the medical severity of the impairment(s) which was present at the time the most recent favorable medical decision of disability was made.

MEDICAL SEVERITY: Medical evidence that establishes a physical or mental impairment or combination of impairments of sufficient severity as to be the basis of a finding of inability to engage in any substantial gainful activity.

DHS, upon initiating a continuing disability determination review, will notify the individual by a written notice advising that:

- DHS will be reviewing the individual's disability,
- The reason why the disability is being reviewed,
- There are medical improvement standards as listed in 20 CFR, Section416.994(b)(1)(ii),(iii),(iv) and DHS Policy Section 0318.20 that apply,
- The individual has a right to submit medical and/or other evidence to be considered in the review process,
- That the review could result in a later decision to discontinue the individual's Medical Assistance benefits.

During the continuing disability determination review, DHS uses reasonable efforts to obtain the individual's medical reports and develop a complete medical history consisting of at minimum the preceding twelve (12) months.

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.