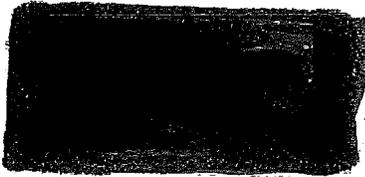




Rhode Island Executive Office of Health and Human Services  
Appeals Office, 57 Howard Ave., LP Bldg, 2<sup>nd</sup> floor, Cranston, RI 02920  
phone: 401.462.2132 fax 401.462.0458

Docket #14-2147  
Hearing Date: January 22, 2015

Date: March 13, 2015



### **ADMINISTRATIVE HEARING DECISION**

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

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

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

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

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

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

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

#### **APPEAL RIGHTS:**

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

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

## **DISCUSSION OF THE EVIDENCE:**

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

- The Agency performed a clinical review for redetermination of eligibility in August 2014.
- The child had been receiving KB benefits since November 2005.
- Updated medical evidence records were requested and reviewed.
- Review of the available information resulted in findings that the minor child continued to meet the disability criteria as defined in Social Security listings, but did not require the level of care required for eligibility in the KB program.
- The Agency had to assess whether or not the minor child required care in an intermediate care facility which would encompass children with developmental disabilities.
- His primary diagnosis is autism disorder.
- He is not cognitively impaired.
- He has not presented with self-care issues.
- Receptive and expressive language skills are intact.
- He does have some social and communication problems.
- Overall, based on current functioning, he does not require institutional level of care.
- Back in 2005 (when he initially applied) he was a very different child.
- Previously, there was evidence of serious language delay.
- He had difficulty relating to others.

- At the time of the 2013 review it was apparent that he was making progress, although he still had difficulty paying attention and relating appropriately to others.
- Social communication problems and rigid thinking were indicated.
- There were concerns relative to significant anxiety and some safety issues.
- He may not have met a hospital level of care, but was not adequately improved and the agency's consultant psychologist endorsed continuation of KB benefits.
- His physician providing information for the 2014 review opined that he met the listing for autism.
- The physician recommended continuation of PASS (Personal Assistance Services and Supports) and noted some concerns about safety issues, but did not describe them.
- The parent report documented services he was receiving from Seven Hills.
- He also attends the Autism project for social skills groups.
- They continue to be concerned about social communication.
- Some additional speech services are incorporated into his IEP (individualized education program).
- The PASS plan submitted revealed some concerns regarding depression, worries about advancing to middle school, and a need to continue addressing anxiety, however, no goals were included.
- An August 2014 letter from Cora Mayer (LMHC) noted that he has generalized anxiety disorder, autism, and that he requires additional services not identified.
- The agency's consultant psychologist felt that the evidence established that the appellant minor child was making progress, as he is getting fewer support services in school, he is not cognitively impaired, and he did not present with a diagnosis of ADHD.
- He does have some pragmatic language difficulties, and continued issues with anxiety.
- There was mention of some individual therapies, but no details about the schedule, the goals, or progress information.

- There is no evidence documenting evaluation by a psychiatrist or by a physician who can consider treatment with medication for mood disorder or anxiety disorder.
- At this point in time, PASS is his primary assistance, which is not actually treatment, but work activity.
- There is no treatment in place to deal with the kind of issues being emphasized.
- Rose Molina, LICSW noted that he attends a social skills group, has significant needs, and that his emotional responses are inconsistent.
- The report also noted obsessive thoughts and safety concerns but did not address impact on functioning.
- A report from the middle school noted that he has severe anxiety.
- A speech therapist also noted significant anxiety.
- No treatment for anxiety has been identified.
- The agency's consultant psychologist found that they did not have certain information that would demonstrate need for an institutional level of care.
- The relevant domains contributing to his impairment were developmental and social, and no physical conditions appeared to contribute to his disability.
- Back in April 2013 it was recommended by a neuropsychologist that he would benefit from more behavioral health interventions and consultations with medical providers to address anxiety.
- Clinicians' written evaluations have generally referred to anxiety without citing any evidence about frequency of events, severity of symptoms, or treatment recommendations and effectiveness.

**The appellant minor's mother, assisted by a witness, testified:**

- The minor child is currently 12 years of age.
- She requested to submit his newest CEDARR, PASS, and 3-year school evaluation plans, as well as a written copy of her personal statement.
- Her son is considered funny, smart and talented.
- He works extremely hard to get through each day.

- His academic life has always been a challenge.
- He has required support of a resource teacher, occupational therapist, and speech therapist to get through his education requirements.
- With modifications, he has been able to stay in a main-stream classroom.
- His anxiety symptoms have intensified over the years.
- He gets headaches and stomachaches, and has developed a pattern of frequently leaving school early during the present school year.
- He thrives when he participates in team or other organized activities.
- His PASS and Seven Hills involvements have exposed him to positive situations.
- His safety is a major concern, as he does not often exercise good judgment.
- She has experienced some potentially harmful events with the child, and though he escaped serious harm, she worries about future incidents.
- He is, however, continuing to make progress as a result of the services that he has in place.
- His resource teacher has increased modifications to his schedule in order to keep him in a regular classroom.
- They have tried holistic treatment for his adverse (anxiety) symptoms without satisfactory results.
- She is now looking for a psychiatrist to evaluate him and discuss further treatment options.
- He attends counseling with a licensed clinical social worker who may have more specific information regarding his required level of care.
- The grandmother of the appellant minor had witnessed unsafe behaviors that she fears could escalate in the future.
- She feels that he needs to continue with the supports currently in place.
- The mother representing the appellant minor child still believed that his care rises to the level required, and requested to hold the record of hearing open for the submission of additional supportive evidence from his treating sources.

**FINDINGS OF FACT:**

- The appellant minor's case was reviewed for redetermination of eligibility for Medical Assistance (MA) through the Katie Beckett (KB) coverage group in August 2014.
- Following a clinical review of the evidence submitted, the Agency issued a letter of denial dated November 3, 2014 indicating that the child met the disability requirements according to applicable Social Security regulations, but that he did not meet the requisite level of care (LOC) criteria for KB Medical Assistance (MA).
- The appellant's mother filed a timely request for hearing on his behalf, which was received by the Agency on November 13, 2014.
- The agency found sufficient evidence that the appellant minor's conditions continued to meet the disability requirements for 112.10 (Autistic Disorder and Other Pervasive Developmental Disorders) of the Social Security childhood listings of impairments, and therefore, he is disabled for the purpose of the KB evaluation.
- Evidence has not established that in addition to being disabled, the minor child presently requires the LOC provided in a hospital, a nursing facility, or an ICF-MR.
- The mother of the appellant submitted 4 exhibits into the evidence record during the hearing, and requested to hold the record of hearing open for the submission of additional evidence after the hearing.
- The record was held open through the close of business on February 19, 2015.
- On February 20, 2015, the Katie Beckett Unit confirmed that as of the close of business on February 19, 2015, no new evidence had been received.
- There is no evidence that interventions or therapies offered in a hospital setting have been required.
- Educational and community services have been the primary sources of support.
- The minor child performs well academically, receives regular counseling, and participates in group activities.
- The record provides no indication that if current services ceased, the appellant minor would be at immediate risk for institutionalization.
- The appellant has not met the LOC requirements for continued eligibility for Medical Assistance through the KB coverage group.

## THE EVIDENCE RECORD:

- ✓ A Parent/Guardian Questionnaire dated August 19, 2014 signed by the mother of the appellant minor.
- ✓ A Physician Evaluation for Katie Beckett coverage Group dated August 19, 2014 and signed by pediatrician, Elizabeth Lange, MD.
- ✓ Records of Cumberland School Department Special Services Office dated March 13, 2014 and January 13, 2015.
- ✓ A Cumberland School Department Individualized Education Program dated March 27, 2014.
- ✓ PASS plan data sheet dated November 17, 2014.
- ✓ Two CEDARR Care plans dated January 3, 2014 and November 18, 2014.
- ✓ Written statement of testimony offered by the mother of the appellant minor, submitted on January 22, 2015.
- ✓ A neuropsychological evaluation dated April 23, 2013 and prepared by Dana Osowiecki, PhD.
- ✓ A Seven Hills RI PASS renewal service plan dated November 22, 2013.
- ✓ A letter dated November 10, 2014, and signed by special education teacher, Brooke MacDonald.
- ✓ A letter dated November 10, 2014, and signed by speech/ language pathologist, Cheryl Webster.
- ✓ A letter dated November 8, 2014 and signed by clinician, Rose Molina, LICSW.
- ✓ A letter dated August 21, 2014 and signed by counselor, Cora Mayer, LMHC
- ✓ Records of Cora Mayer, LMHC for September 11, 2013 to June 7, 2014.
- ✓ Hearing Testimony.

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

The appellant has been diagnosed with Autism, Generalized Anxiety Disorder (GAD), and developmental language disorder. He has been under the care of a pediatrician, special education professionals, a speech therapist, and Master's level clinicians. He participates in various group programs through community resources such as CEDARR and PASS. He has thrived with support of the services currently in place, and has been maintained for education purposes with specific accommodations in the public school system. As of the date of hearing, no psychiatric evaluation or treatment had been arranged, despite a recommendation of a neuropsychologist nearly two years ago. A holistic approach was tried first, but without good results.

The appellant minor's mother spoke of his strengths and weaknesses, and was particularly concerned about his lack of reason and judgment leading to unsafe choices. While she was able to describe circumstances that caused concern, the frequency of incidents was not such that it could be assumed he was in immediate danger.

Additionally, evidence documented by treating and examining sources did not identify or elaborate on dangerous behavior as perceived by the parent. It would be important in this matter to make a distinction (if any) between his actions and those typical of children within the same age group. In order to provide more detail from treating professionals, the appellant's representative requested time to submit additional information, and a date was stipulated.

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

The parameters of the program indicate that the child must require a level of care that would ordinarily be available at a hospital or skilled nursing facility, which the reviewers determined had not been demonstrated by the available evidence. The Agency found that based on the information submitted at the time of application, it was not proven that he requires the skilled services outlined in the LOC criteria for KB MA. Additional evidence added during the hearing, has not compelled them to reverse the original findings as of the date of this decision. Although the mother representing the appellant child did not agree with the agency's LOC findings, she has allowed the record of hearing to close without submitting the supportive evidence she requested additional time to complete.

**CONCLUSION:**

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

A review of the Agency's policies regarding MA finds that the KB coverage group consists of certain disabled children under the age of eighteen (18) who are living at home but who require the level of care provided in a Hospital, a Nursing Facility, or an ICF/MR (Intermediate Care Facility/Mentally Retarded). The letter of denial issued in this case indicated that KB used the Social Security Administration's definition of disability. They were mandated to redetermine disability for Medical Assistance in accordance with the applicable law, including the Social Security Act and regulations (20 CFR 416.901-416.998). Federal regulations define a disabled child as a minor child who has a medically determinable physical or mental impairment or combination of impairments that could be expected to cause marked and severe functional limitations for at least twelve months. In this matter, the Agency medical improvement review resulted in a finding that the appellant minor's impairments continued to meet the criteria for listing 112.10 as in previous years. Consequently, eligibility for KB MA benefits at the time of the 2014 redetermination depended upon production of medical evidence that would support that the child currently meets the LOC characteristics as indicated above. The LOC is evaluated by determining if in the absence of appropriate home and community interventions and supports, the child would either reside in an institutional facility or be at immediate risk for such placement. The reviewers typically look for types of intensive therapies normally given inside an institution.

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

At the current time, all records indicate that while he is still challenged, he is progressing and managing his symptoms with educational supports, speech and occupational therapies, behavioral counseling, and community resources and activities. He is performing well academically. At no time within the past year, has evidence documented a need for emergency treatment, nor has skilled care with a psychiatrist been arranged. Evidence and testimony has not addressed why psychiatric care had not been pursued while KB benefits were in effect, although there was an understandable delay in seeking psychiatric care, as holistic treatment was tried. The lack of interventions or more aggressive therapies, as well as the appellant's request to maintain current services, gives the appearance that his impairments are being adequately managed with school and community resources. The record provides no indication that the current level of services is such that if these services ceased, the appellant child would be at immediate risk for institutionalization.

The Agency reviewed new evidence submitted at hearing, but has not withdrawn their decision that although the minor child meets a Social Security listing for disability, he does not meet the LOC criteria for KB coverage. The mother and grandmother of the appellant minor were especially concerned about the possibility of an escalation of unsafe behavior. They requested to hold the evidence record of hearing open for additional information from his treatment providers. The record was held open for four weeks. At the close of business on February 19, 2015, no new evidence had been submitted. Consequently, the record, as it exists, does not include proof that his conditions have escalated to meet the requisite level of care.

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

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



Carol J. Ouellette  
Appeals Officer

## APPENDIX

### MEDICAL ASSISTANCE

#### 0394.35 DISABLED CHILD-KATIE BECKETT

REV:08/2006

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

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

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

#### 0394.35.05 Special Elig Conditions

REV:08/2006

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

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

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

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

### 0306.15 Eligibility Based on Disability

REV:06/1994

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

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

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

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

### 0352.15 ELIGIBILITY BASED ON DISABILITY

REV:07/2010

A. To qualify for Medical Assistance, an individual or member of a couple must be age 65 years or older, blind or disabled.

**B. The Department evaluates disability for Medical Assistance in accordance with applicable law including the Social Security Act and regulations (20 C.F.R sec. 416.901-416.998).**

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

## NOTICE OF APPELLATE RIGHTS

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