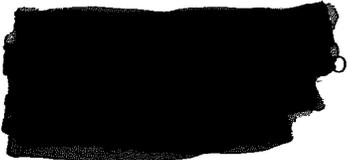


STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS
DEPARTMENT OF HUMAN SERVICES
APPEALS OFFICE
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Docket # 14-754
 Hearing Date: August 7, 2014

Date: October 21, 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: 0394.35-Disabled Child-Katie Beckett
SECTION: 0394.35.05 Special Elig. Conditions
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:  and agency representatives: Michelle Bouchard, Ann Murphy and the Policy Unit.

Present at the hearing were:  (appellant's mother), Michelle Bouchard RN, Dr. Frank Canino and Dr. Maggie Kozel (agency representatives)

ISSUE: Is the appellant eligible for Katie Becket services?

DHS POLICIES:

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

DISCUSSION OF THE EVIDENCE:

The agency representative provided the following testimony:

- The agency sent the appellant's mother notice dated April 11, 2014 informing her that based on the recertification information reviewed the appellant's Katie Beckett program eligibility would end effective April 24, 2014 because although the child did meet the definition of Disability used by Social Security he did not meet the Level of Care (LOC) requirement of the Katie Beckett program. The child was due for an eligibility redetermination in March of 2014.
- The agency representative stated that the child did meet the disability requirement however he did not meet the LOC requirement. The agency representative stated that the level of care criteria is the hardest to meet. A child could be receiving different medical and mental health services but it depends on how intense the services are and that the services are basically equal to hospitalization in intensity.
- The agency representative stated that the agency reviews the disability listings under the childhood Social Security listings. The child did meet the criteria for Social Security disability.
- She stated that the agency reviewers determined that the child did not meet the LOC criteria as the services provided were not sufficiently intense and the child would not require hospitalization or institutionalization if the services were not available.
- The appellant's records were sent for clinical review. (Copies of records submitted to record and to the appellant's mother). The records were reviewed by both the agency consulting psychologist and the agency consulting pediatrician.
- The agency psychologist stated that when a redetermination of eligibility is done it is necessary to show that the child is making progress. The LOC criteria require that the child would otherwise be hospitalized in a medical facility, a psychiatric facility, and an institution for the mentally retarded or in a nursing facility.
- He stated that generally children with spectrum disorder and developmental delays are reviewed to determine if they meet ICF-MR LOC or Psychiatric Hospital LOC eligibility.
- He stated that he started his review on March 28, 2014. He stated that he is aware that the child receives medical management from Dr. Levine who is a

neuro-developmental specialist. The record contains a lot of notations about the child's anxiety and difficulties at school. The child receives therapies at school. He stated that he could not find where there were any therapies or intervention received outside of the school setting.

- He stated that the most recent note from Dr. Levine is from February of 2014. The doctor noted that the child had difficulty with frustration tolerance but anxiety had not increased and he had a favorable response to Zoloft. Prior to that there was a fair amount of anxiety reported that increased and decreased along with disruptive behavior at school.
- He stated that he reviewed the child's school information that included four behavioral intervention plans and noted a lot of aggression at school that was addressed in the plans. He reviewed an old speech and language evaluation which showed poor pragmatic language and difficulty in terms of social relationships.
- He also reviewed information from 2011 that indicated difficulty with school and the child was at Meeting Street School at that time.
- He reviewed the parent questionnaire that indicates that the child continues to have difficulty in social situations, he gets a lot of one on one assistance at school, and he requires a lot of supervision.
- He stated that from his perspective he did not see the type of range of services that would indicate the child would qualify for a LOC where a child without those services in the community would be hospitalized.
- He stated that his evaluation requires that he review all of the available information and determine what additional services are provided such as a PASS plan, therapeutic intervention, and any other professional services.
- He stated that a recent report from Dr. Levine for review would be very helpful to the Katie Beckett eligibility determination. He stated that what is missing from what the agency had three years ago is a clear description of what it's like for this child within the school setting and the doctor's input about the behavioral evaluations from the school and how to address these behaviors.
- He stated that the child's doctor has not had the opportunity to tell the agency what he thinks clinically needs to happen to address the child's issues. He stated that is what the difference in eligibility from 3 years ago is, when the agency had that information from the child's doctor.
- He stated that the type of required information needs to address why the child is significantly different from his peers and how his diagnosis significantly places him at risk in terms of safety, behavior and relationships.

- He stated that the agency is always willing to review additional information that pertains to Katie Beckett eligibility.
- The agency pediatrician stated that her review of the records clearly showed that the child met the Social Security criteria for disability. He has had some very significant challenges and has required a lot of supports at school.
- She stated that she could not find sufficient information in the present record to determine that the child met a LOC.

The child's mother testified that:

- She stated that not a lot has changed since 2011 other than the fact that the child is in public school now. He left Meeting Street because that school did not have enough resources for a sixth grader. The goal all along was to have the child attend public school.
- The child started public school in a self-contained classroom and attempts have been made to get him into an integrated classroom. He did not respond well to an integrated class as his anxiety and outbursts increased because of the differences in the integrated classroom as well as the academic pressures.
- She stated that the benefit of Meeting Street was that the teachers would provide a written log of every day in class. She stated that she is very concerned about her son's safety at this time. She does not believe he has the ability to plan to harm himself but at times he has expressed that he does not want to live.
- She stated that her son has gotten a lot better with medication. He takes 125 milligrams of Zoloft which is a decent dosage as he weighs just over a hundred pounds. She is very concerned about his emotional state and she has an appointment with Dr. Levine to discuss this on August 22, 2014.
- She stated that she would like to have her son participate in the PASS program but she cannot afford to pay for the program without assistance. She stated that her son is diagnosed with Autism Spectrum Disorder, Anxiety Disorder and Depression.
- She stated that there are not a lot of services for children with Autism unless you have \$40,000.00 to send a child to a private program. She stated that resources are especially limited to children who present with behavioral issues.
- She stated that her son needs constant supervision at home to keep him out of trouble. He cannot be left alone at home even for a short time. For example this past July 5th neighbors were lighting off fireworks and her son left the home without permission to ask the neighbor about the fireworks and to tell them that fireworks are illegal. He did not understand why that was not appropriate.

- She stated that during a recent vacation at Disneyworld her son left them and the staff found him about a half hour later. Her son did not realize how concerned his parents were for his safety and whereabouts.
- She stated that after school her son occasionally goes to the YMCA after school program otherwise she is at home after school. She stated that what she fails to understand is why her son met the LOC three years ago and is not meeting it now when his Autism condition has not changed.

FINDINGS OF FACT:

- An eligibility redetermination for MA under the K.B. Program was completed on behalf of the appellant during March 2014.
- The CCFH received and reviewed medical evidence submitted on behalf of the appellant in his redetermination application for MA through the Katie Beckett Program.
- The CCFH determined that the appellant does meet the Social Security disability criteria for the Katie Beckett program however he does not meet the LOC criteria of the Katie Beckett Program.
- The CCFH sent a notice of denial to the parents of the appellant dated April 11, 2014.
- The appellant's parent filed a request for hearing on her child's behalf, received by the agency on April 22, 2014.
- The initial hearing was scheduled on June 26, 2014, rescheduled for July 24, 2014, and rescheduled again for the hearing held August 7, 2014 at the request of the appellant's mother.
- The record of hearing was held open from August 7, 2014 through October 9, 2014 at the request of the appellant's mother to allow additional information to be submitted. No additional information was received by the CCFH. The CCFH reviewers notified this record that no further information was received and the decision to close the appellant's MA through the Katie Beckett Program remains unchanged.

CONCLUSION:

The issue to be decided is whether the appellant meets the LOC criteria of the Katie Beckett Program.

A review of the agency's policies regarding Medical Assistance eligibility under the Katie Beckett Program finds that the program covers certain disabled children under the age of eighteen (18) living at home and who would qualify for Medical Assistance if in a medical institution. Therefore, the applicant must first be determined disabled. Then, in addition, the Katie Beckett Program requires that he/she meet other special eligibility conditions. The special eligibility condition that this applicant was found not to meet is the LOC criteria.

To be eligible for the KB program, the appellant must require the LOC as provided in a Hospital, a Nursing Facility, or an ICF/MR (Intermediate Care Facility/Mentally Retarded).

A recertification application for MA under the Katie Beckett Program was filed on behalf of the appellant by his parent with the agency Katie Beckett Unit. As required by policy, the caseworker forwarded the medical assessments of the child to the CCFH (Center for Child and Family Health) unit for review.

At the time of hearing the appellant was 12 years old, he is diagnosed with Autism Spectrum Disorder and Anxiety Disorder. According to the Social Security Disability Evaluation listings: Autism Spectrum Disorder is characterized by qualitative deficits in the development of reciprocal social interaction, in the development of verbal and non-verbal communication skills, and in imaginative activity. There can be a markedly restricted repertoire of activities and interests depending upon the level of severity of the disorder.

The agency determined that presently the child does meet the Social Security disability criteria to be determined disabled due the combination of his Autism Spectrum Disorder and Anxiety Disorder.

The agency reviewers determined that the child did not meet the LOC requirement.

The record contains the child's Speech and Language evaluations from Meeting Street dated November 7, 2012. The evaluation indicates that at that time the child was 11 years old and enrolled in a fully inclusive classroom. He was diagnosed with Asperger's Syndrome/High Functioning Autism at 2 years 11 months. He has a one on one aide with him throughout his school day. The evaluation notes that the child has made progress with his social communication skills. He now identifies when events are expected or unexpected and will correctly identify the problem as a "big deal" or "not a big deal". He has made drastic improvements with identifying facial expressions and understanding how other people may be feeling in pictures and in real-life situations. He has started to self-regulate his behavior and has demonstrated more self-control during difficult situations. He now has an improved awareness of when he may have an outburst and will sometimes leave the room or walk away when he is upset.

The evaluation recommended that the child continue to receive speech-language services to address initiating conversation, maintaining reciprocal conversation, asking for help across all settings, identifying his own problem behaviors and problem solving.

The record contains a Behavior Intervention Plan from the [REDACTED] School Department dated March 28, 2014. The plan indicates that Reading class is an area of behavioral difficulty. The child had stayed the entire Reading class with good behavior 63% of the

time since the last review. Overall the child was making good progress. He had 3 "0" days in Reading, and none in any other classes. His target for points earned per day is 75% and he successfully met this target 81% of the time. The plan indicates that the child engages in verbal or physical communication difficulties when anxious, overwhelmed or frustrated. These behaviors typically occur in the regular education setting. The plan states that when these behaviors occur they significantly impact learning and socializing.

The record contains the child's IEP dated January 24, 2014. The purpose of the meeting was for annual review. The IEP states that the child is transitioning to new routines and classroom expectations across all settings at ██████████ Middle School. He works to attain 3 targeted behaviors throughout his school day: Appropriate Words/Voice, Follow Directions, and Complete Work. The child needs supervision and support during transitions in order to self-regulate when encountering a stimulating environment and or when there is an unexpected change in routine. He continues to work on verbal outbursts and physical aggression. Formal assessments revealed that the child has difficulty with answering questions without visual supports, and in carrying out conversations of appropriate topic, length and with nonverbal cohesion. The child demonstrates a very low frustration tolerance. He needs time and space following dysregulation before he can process his actions/feelings with words. The child is able to follow his visual schedule, locate his classes, and open his locker independently. He has begun to initiate the use of break cards when he is experiencing frustration. The IEP indicates that the child will continue to receive social work services to provide specialized instruction in self-regulation monitoring and strategies. The IEP services place the child in a special class integrated in a school district building.

The record contains two Child Psychiatry Progress Notes from Dr. Levine dated November 8, 2013 and February 7, 2014. The November note states that the child has had decreased anxiety and irritability with increase in Zoloft to 125 mg. He had one episode of frustration/tantrums at his YMCA afterschool program. No increase in depressed mood reported. No SI or acute safety issues reported. He has some difficulties with negative self-esteem. The note indicates no dangerous behavior, no risk of self-harm, and no risk of violence. The note states that the child is 12 years old with Autistic Disorder with a decrease in irritable and disruptive behaviors with Zoloft treatment.

The February note states that the child had increased frustration, some tearfulness, and feelings of being overwhelmed over the past week. No increased anxiety reported. He has some continued difficulties with self-deprecating comments and the desire to do things very well all of the time. No SI or acute safety issues reported. The plan was to continue with 125 mg. of Zoloft and consider increased dosage if there is an increase in irritability/frustration.

The record contains an agency KB DHS AP-72.1 Physician Evaluation for Katie Beckett Coverage Group form dated March 14, 2014 and completed by Dr. Levine. The form indicates that the child is diagnosed with Autism Spectrum Disorder and Anxiety Disorder. The evaluation identifies treatment with 125 mg. Zoloft. The evaluation states that the child requires constant supervision for academic, social and home based

function. The evaluation recommends that the child participate in PASS services to address psychosocial development and self-help skills.

Based on review of the medical, academic and mental health treatment records the child does not meet the LOC requirement for an institution. Presently the child is clinically stable: he does not require daily skilled or complex medical care. The medical records submitted indicate that the child does not require skilled nursing care or care that would put him in danger of being institutionalized if he did not receive the care at home.

The clinical evidence indicates that the child is able to walk, communicate, feed himself, and toilet without assistance. The child has made progress and continues to benefit from ongoing social skills, speech, language and occupational therapy within the school setting.

The LOC guidelines require a need for hospitalization, for example to meet a hospital LOC a child would have to require postoperative medical monitors, medication management and specialized care.

The LOC guidelines for a nursing facility require a need for specialized training and monitoring beyond those of typical parents. The child would require skilled observation of his vital signs due to an unstable condition.

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

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

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

According to the record none of the noted medical, behavioral and developmental problems meet the care requirement to qualify for a LOC.

The record does not support, in his current condition, the child's need for a LOC as required for the Katie Beckett Program.

The child's parent is advised that she may re-apply for the program at any time as additional information becomes available.

After a careful review of the agency's policies, as well as the evidence and testimony given, this Appeals Officer finds that the agency was correct in their denial of the appellant's recertification application for the Katie Beckett Program. The appellant's request for relief is therefore denied.

APPEAL RIGHTS (see attached)



Michael J. Gorman
Appeals Officer

APPENDIX

MEDICAL ASSISTANCE

0352.15 ELIGIBILITY BASED ON DISABILITY

REV:06/1994

To be eligible for Medical Assistance because of permanent or total disability, a person must have a permanent physical or mental impairment, disease or loss, other than blindness, that substantially precludes engagement in useful occupations or appropriate activities (for children), 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

10

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.

DISABLED CHILD-KATIE BECKETT

0394.35

1 0

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

DISABLED CHILD-KATIE BECKETT

0394.35

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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.

Special Elig Conditions
0394.35.05 1 0
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 Special Elig Conditions 0394.35.05 2 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.

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.