

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS  
EXECUTIVE OFFICE OF HEALTH AND HUMAN SERVICES  
APPEALS OFFICE - LP Bldg.  
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Docket #14-933  
Hearing Date: August 21, 2014

Date: September 19, 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 father), and Agency representatives Caridad Ramos SCW, Michelle Bouchard RN, and Maggie Kozel MD.

Present at the hearing were: appellant's father (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 fail to meet the Disability and LOC criteria of the Katie Becket (KB) Medical Assistance (MA) coverage group as of May 20, 2014?

**DISCUSSION OF THE EVIDENCE:**

**The Agency representatives testified:**

- Letters indicating that the minor child no longer met the required disability criteria were mailed on May 20, 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 could be met.
- The reviewers determined that the minor child had medically improved since benefits were previously awarded in September, 2012 and, therefore, was no longer impaired to the level defined by Social Security.
- The Agency presented copies of medical records used for the re-determination review, but was not prepared to present the records from the previous determination of eligibility.
- Their presentation, however, would include statements regarding the comparison of the appellant's condition at the time of the first favorable determination and at present.
- At the time of the first evaluation, the registered nurse (present) and a former consultant pediatrician reviewed the available medical records, and found that the minor child did not meet the criteria for Katie Beckett.
- Subsequently, new information was received which documented an increase in the frequency of flare ups, as well as the start of a new treatment medication.
- As the new information created some doubt about the severity of his condition, and because effectiveness of the treatment had not yet been established; the reviewers approved benefits to be reconsidered in 2014 in order to acquire more facts regarding the likeliness that prescribed treatment would restore functional capability.
- Two medical reviews completed for the redetermination were conducted independently.
- The minor child's diagnosis is lupus panniculitis which results in some flare ups of his skin.
- He also has a history of asthma.

- The parent questionnaire responses revealed that he is independent with ADLs (activities of daily living).
- He does have some difficulty walking, running, and jumping due to problems with his feet secondary to Sever's disease.
- On April 17, 2014, records of Hasbro Hospital noted that flare ups had improved with use of Hydroxychloroquine.
- Flare ups had been reduced to every 3-4 months with use of the medication.
- Foot pain associated with Sever's disease had improved with use of Naprosyn and gabapentin.
- Providence Community Health Center records indicated that asthma was better with use of prednisone.
- He was performing well in school, as was placed in a gifted program at his middle school.
- A rheumatology appointment completed in March 2014 documented start of physical therapy for Sever's disease and adequate control of symptoms resulting.
- He is experiencing mild recurrences that are not disabling, and is responding well to treatment medications.
- Although he has complained of fatigue, laboratory tests were negative for Lyme disease, and other factors tested.
- The primary care physician (PCP), Dr Gurney, discussed lupus panniculitis, an autoimmune disorder.
- When he first presented with that disorder affecting the skin and underlying tissue, the pain was significant.
- Recent dermatology notes support that he has responded quite well to treatment.
- A skin biopsy showed that inflammation was minimal, and the condition had stabilized.
- Flare ups had significantly decreased in both frequency and intensity.
- Although he would continue to require medications, records showed that while following the prescribed treatment he was doing quite well.

- Opinions regarding the cause of foot pain varied at one point, but more recent conclusions of both the treating dermatologist and a rheumatologist concur that the diagnosis is Sever's disease.
- Sever's disease is fairly common during certain growth periods, and does sometimes require physical therapy.
- It is often a self-limiting condition.
- There was no indication that Sever's disease is a complication of lupus.
- The parents were most concerned with Sever's symptoms because they interfere with routine activities such as gym class.
- None of the current symptoms reviewed were out of control or appeared to meet the criteria of a disability.
- Fatigue and allergy symptoms were not related to his other diagnoses, and did not exceed the severity level seen among children in general.
- At the time of the initial evaluation, it was uncertain what relationship, if any his various symptoms might have.
- Now, after two years, more specific medical information and documented responses to treatment have made the issue much clearer.
- He does not presently meet the stringent criteria requiring a high level of care.
- The prior evaluation showed that his situation was in flux, and the agency decided to err on the side of caution.
- Fortunately, he is presently doing well.
- The criterion for medical improvement does not rely on the child being disease free.
- Conditions well controlled by medication would not qualify as disabling for the purpose of KB MA benefits.
- At the time of the initial application, the minor child's conditions were newly diagnosed, and effectiveness of proposed treatment could not be predicted.

**The appellant minor child's father testified:**

- He believed that the reports of the treating physicians were accurate, and that the agency testimony regarding review of those reports was based on professional opinions.
- He was unclear about what standard was applied during the review of the medical facts.
- Because access to KB benefits has been beneficial, he believes that those benefits should continue.
- As the agency presentation indicated, his son is not cured.
- The minor child is not presently in need of hospitalization, nor was he at the time of the last favorable decision to award KB benefits.
- The child is in need of a significant number of medications to manage his symptoms.
- The KB program has provided essential access to treatments which have proven to be effective.
- Obviously there is improvement, but he is unclear at what level of improvement his son would be disqualified from the KB program.
- The goal in his son's case is to achieve complete healing.
- The minor child still has the same diseases, and requires many medications.
- The child now also attends physical therapy sessions.
- While his son has improved, he believes that the child is still disabled.
- The child can walk when he is not experiencing flare ups of conditions affecting his feet.
- Doctors are still trying to establish what exactly is going on, and he believes diagnoses could change.
- The appellant child had missed a significant number of school days related to his diseases during the past school year.
- He is very self-motivated, and has maintained good grades in school despite periodic absences.

- The child's functioning is impacted by physical symptoms only, and he functions very well mentally.
- If the child misses school, he is still motivated to work on reading and other skills because he enjoys being actively challenged.
- He is seeking continuation of services for financial reasons.
- He believes that his health insurance will cover some of the child's care, but is concerned that the full scope of what he will require is not yet known.
- He does not think that his insurance plan offers benefits that would be as good as those received through KB eligibility.
- He believes that his son may have erroneously been made eligible at the time of the initial application, because he did not require a level of care provided in an institutional setting at any time.
- He does not deny that his son has improved, but would still like consideration according to the disability criteria.

#### **FINDINGS OF FACT:**

- The appellant child had been in receipt of Medical Assistance through the Katie Beckett (KB) coverage group since September 2012.
- The appellant child had been diagnosed with lupus panniculitis, asthma, and Sever's disease.
- The appellant child's conditions have been treated and medically improved with prescribed remedies.
- Upon clinical review, the Agency concluded that the appellant child does not meet the Social Security disability requirements.
- The LOC criterion for KB Medical Assistance (MA) was not relevant to the redetermination.
- On May 20, 2014 DHS sent two letters documenting conclusions of the redetermination review to the appellant in care of his parents.
- The appellant's parents filed a timely request for hearing on his behalf, received by the Agency on May 23, 2014.

- A comparison of the evidence reviewed for recent redetermination and the medical records used at the time of the last favorable determination revealed medical improvement.
- The appellant minor child's present condition does not meet or equal any of the Social Security listings of impairments.
- Evidence has not established that the child presently meets the disability criteria according to 20 CFR 416.901-416.998.
- The record provides no indication that the current level of services is such that if these services ceased, that they would be unavailable through appropriate home and community interventions or that the appellant child would be at immediate risk for institutionalization.
- The appellant child has medically improved since the last favorable disability decision.
- The appellant child fails to meet the criteria for MA benefits under the KB group coverage.

## 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 April 21, 2014 and signed by both parents of the appellant child.
- ✓ Records of Rhode Island Hospital/Hasbro Children's Hospital for March 19, 2013 to April 17, 2014.
- ✓ Records of Providence Community Health Centers (PCHC) for February 28, 2012 to December 30, 2013 to
- ✓ Records of Providence Schools for December 7, 2012 to April 11, 2014.
- ✓ Records of University Foot Center April 29, 2013 to January 9, 2014.
- ✓ Records of University Dermatology for December 26, 2012 to September 23, 2013.

Additional evidence used for the last favorable determination was forwarded by the Agency to the Appeals Officer on August 27, 2014, along with verification that copies of that evidence had also been sent to the appellant.

- ✓ A Parent/Guardian Questionnaire date stamped June 17, 2012 and signed by the mother of the appellant child.
- ✓ Records of Respiratory and Immunology Center for December 21, 2010 to September 25, 2012.
- ✓ University Otolaryngology for May 24, 2010 to December 23, 2011.
- ✓ University Dermatology January 18, 2013.
- ✓ Records of Pediatric Dermatology for June 15, 2011.
- ✓ Records of Pediatric Ophthalmology and Strabismus Associates for June 27, 2011.
- ✓ Records of Rhode Island Hospital/Hasbro Children's Hospital for March 2, 2011 to January 24, 2012.

Medical and other evidence of an individual's impairment is treated consistent with (20 CFR 416.913) for the purpose of the disability determination. In this matter, the parties found that the evidence record required for redetermination was complete up to the time of the appeal hearing. The record of hearing, however, was held open for 7 days to allow the Agency to forward records associated with the last favorable decision as required to establish medical improvement to the Appeals Officer and to the appellant. Records were received by this Appeals Officer on August 27, 2014.

All medical opinion evidence is evaluated in accordance with the factors set forth at (20 CFR 416.927). The appellant minor child has had a longitudinal treatment relationship with Rhode Island Hospital physicians. Various specialists have conducted separate tests and examinations in order to rule out many theories and to establish the most probable diagnoses and treatment recommendations. Although their progress notes do not necessarily address the disability criteria in specific terms, great weight is given to the facts revealed within all treating source statements for the purpose of this determination.

The Katie Beckett Unit (KBU) is considered a non-examining source when expressing opinions regarding an individual's condition, and therefore, cannot be assigned controlling weight of opinion. The Agency did not cite applicable policy numbers in the notice of denial, did not submit copies of the policy as hearing evidence, and did not include identification of any state or federal policy or Social Security listings relied upon for their decision in the hearing presentation. Although the Agency made references to the substance of some policies in both the written notification and the verbal presentation, the father of the appellant minor child was clearly frustrated as he indicated repeatedly that he did not believe the specific criteria affecting the outcome of the redetermination had been effectively communicated to him.

A representative of the KBU did clarify during the hearing that at the time of the initial application, they considered their obligation to assess the expected duration of extreme symptoms of the child's conditions. Based on what was known in September 2012 they determined that the child was disabled according to Social Security rules, advancing the evaluation to the level of care (LOC) determination. Although the appellant has never required an institutional LOC, they approved eligibility based on the uncertainty as to whether or not the child's impairments would lead to an imminent risk for such placement.

The issue to be decided is whether the clinical evidence established that at the time of redetermination in May 1, 2014 the appellant child met both the disability and the LOC criteria required of the Katie Beckett (KB) Medical Assistance (MA) coverage group. The criterion for that process is included within the discussion that follows.

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. The Agency is 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.

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 appellant child has been receiving MA benefits since September 2012. The Agency is directed by statutory requirements to periodically review and determine continued eligibility for those benefits based on factors including the disability criteria identified above. Consideration of whether medical improvement has occurred must be supported by evidence documenting changes in symptoms, signs, or laboratory findings associated with established impairments.

## CONCLUSION:

When medical improvement applies, in most cases, disability will be considered ended only if it can also be concluded that an individual is not disabled based on a neutral determination without any interference as to the presence or absence of disability being drawn from the fact that a previous finding of disability had been made. 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 an impairment that was present at the time of the most recent favorable disability decision. A favorable decision was made in September 2012 subsequent to Agency review of medical documentation of diagnosis of lupus panniculitis, with evidence of frequent flare-ups of skin and underlying tissue, and a history of asthma. Treatment plans had been implemented, and evidence reveals that with compliance to prescribed treatment he had achieved good management of adverse symptoms associate with each of his conditions. Evidence supports a significant decrease in the frequency and intensity of flare ups associated with lupus as well as good control of asthma. Although he has missed school periodically due to his physical symptoms, outstanding intellectual capability and self-discipline have made possible his commendable performance in school. Furthermore, within the past two years since he was last evaluated for KB program criteria, it is now confirmed by acceptable clinical and diagnostic evidence that recommended treatment has reduced the severity of the child's symptoms, and improved functional capabilities.

### **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?**

The Agency has established that the minor child does not meet or equal any of the Social Security listings of impairments. As evidence of that fact, the Agency cited good management of adverse symptoms with compliance to prescribed treatment remedies, increased ability to perform ADLs, good academic record, restored ability to participate in physical education activities, and a reduction in the frequency and intensity of flare ups of lupus panniculitis symptoms. That determination is clearly supported by acceptable clinical and diagnostic medical evidence.

In this matter a review of listing sections 114.00 (Immune system disorders), and 103.00 (Respiratory system disorder) has been completed. Medical evidence records do not establish that his conditions rise to the marked or extreme levels required to meet or equal listings in either category. Therefore, as medical improvement has been demonstrated, the evaluation continues to step three.

### **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?** Upon redetermination, records show that the minor child had received further evaluation of foot pain leading to an additional diagnosis of Sever's disease. Evidence documents good management of Sever's symptoms with medication, and physical therapy. Additionally, Sever's disease

is likely to be a self-limiting condition. Although it is acknowledged that the child continues to require treatment, and that the child is not disease free, the record provides evidence that symptoms have been improved since the last favorable disability determination with compliance to prescribed treatment. Evaluation of continuing disability in accordance with Social Security regulations results in a finding that the appellant child is no longer disabled.

The father of the appellant minor child indicated that his son has achieved great benefit from the care plan that has been available to him, and argued that he could benefit from continuation of care. The concept that he could benefit from ongoing or additional supportive services offered by knowledgeable professionals is not in dispute. Clearly, the established effective treatments should be continued. However, per department policy, to qualify for KB MA coverage, while the child may benefit from a service, he must meet or equal the disability criteria as explained above, an must actually require 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. A finding that the child is no longer disabled renders the LOC issue moot.

After a careful review of the Agency's policies, as well as the evidence and testimony given, this Appeals Officer finds that the child is not disabled, and that the Agency made accurate findings relative to the disability characteristics. 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.

### 0306.05.15 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).

## 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.