



Rhode Island Executive Office of Health and Human Services
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Docket #14-1497
Hearing Date: December 4, 2014

Date: May 1, 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 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 Michelle Bouchard RN, Frank Canino, PhD. and Maggie Kozel, MD.

Present at the hearing were: appellant's parents (on behalf of the appellant minor child), and Agency representatives Michelle Bouchard, RN (Katie Beckett Unit), Frank Canino, PhD. (consultant Psychologist, 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 still meet the Level of Care (LOC) criteria of the Katie Beckett (KB) Medical Assistance (MA) coverage group as of September 2014?

DISCUSSION OF THE EVIDENCE:

The Agency representatives testified:

- The Agency reviewed the Appellant's re-certification application for Katie Beckett (KB) Unit service and on September 11, 2014, the KB Unit issued a denial of service notice. The denial was issued because it had been determined that the Appellant does not meet the definition of disability used by Social Security and does not meet the level of care (LOC) that is provided in a hospital, nursing facility, psychiatric hospital or an Intermediate Care Facility for those with Mental Retardation (IFC-MR); the Appellant's case would be closed effective September 22, 2014.
- The Appellant filed an Appeal on September 15, 2014 stating that the Appellant has Autism and has been receiving KB services and would like them to continue.
- The Appellant had been receiving KB services since July 2011 and this appeal is regards to a July 2014 clinical review.
- After the denial notice issued on September 11, 2014, additional information had been received by the KB Unit and reviewed; it was determined by Dr. Canino that the Appellant is disabled but still does not meet the LOC criteria required.
- On September 4, 2014 Dr. Canino started his review of the Appellant's re-certification application. It was noted that the Appellant was first approved for KB due to some pretty impaired language delay in July 2011.
- This present review there appears not to have a report from the Appellant's physician; the Parent Questionnaire notes that there is still a need for prompting to accomplish tasks, doesn't sleep alone, doesn't use language properly, needs to be motivated to be social, bangs his head against a wall when upset/frustrated, isn't on any medication, no outside services being received, there is an IEP with occupation/speech & language/behavior therapy as part of the school week, doesn't like to be left alone, enjoys his electronics and going to the playground with his PASS worker. There was a "Level of Care Recertification" form submitted by Stephen Risi, MSW LICSW date September 4, 2014 that notes that the Appellant has no impairment regarding health & physical well-being and mobility; and less than marked regarding self-care, learning cognition, social interaction, language-communication, self-direction and safety skills. There was an IEP submitted from the Appellant's elementary school for the period of 3-26-2014 to 3-25-2015, it describes that the last time that the Appellant was evaluated was in 2012, doesn't participate in an extended school year program, has difficulty staying on task, language skills are below average, stronger receptive skills than verbal skills, no score were provided so the degree of impairment cannot be determined. Dr. Canino feels that not enough had been provided to justify eligibility.
- Maggie Kozel, MD (pediatrician) from the Katie Becket Unit also review the same application and also the PCP report but didn't find useful information, noticed that

the Appellant's IEP notes that he is only receiving one hour per day of special education, was being transitioned out of the Autism Project at school, the PASS report scored the Appellant relatively high (no impairment and less than marked), had difficulty coming to a finding that the Appellant reached the LOC that would reflex the level of care from an institutional level. Dr. Kozel looked for all the information provided that would go to support the LOC requirement but there just wasn't any there.

The Appellant minor child's Parents testified:

- The Appellant's father understands how the agency reached its decision since so much information is missing.
- Many things have been transitioning at school lately, to the point that the school is going to re-evaluate the Appellant to see if he should go back into the Autism Project, he isn't meeting any of the criteria's of a third grade level, he is a social outcast at school, has declined rapidly school due to the services that he lost at school, (he used to have a helper to assist him with staying on task/challenge him with appropriate behavior but the helper has been taken away), the parents see the social regression and academic decline and have brought this to the attention of the school and they have agreed to re-test the Appellant but it hasn't happened yet, possible in January 2015.
- The Appellant's mother stated that the school suggested that the Appellant attend summer school but he would have to be ready for to be on the bus by 7 a.m. for an hour ride, stay in school for an hour and a half and then face another hour bus ride back home. The mother thought it was better for the Appellant to stay home and work with his PASS worker but the Appellant had gone without a worker from April through September 2014 and no one had documented the decline.
- The Appellant was prescribed Adderall, the smallest dose, to help him with his focus at school but it didn't help. The medication just disrupted his sleep to the point that he would only sleep two hour per day, he was wide awake at 2 a.m.; the Adderall has been stopped.
- The parents hope that if they are able to get Katie Beckett services back, they will be able to continue to have help from PASS and Respite.
- The Appellant's parents presented additional documents:
 - ✓ A letter from Fatima Abbott, LCISW with the Frank Olean Center, Inc. dated November 17, 2014 stating in part that the Appellant/child is receiving Personal Assistance Services and Supports through the Olean Center; was primary diagnosis is Autism; areas that are being addressed are DLS, socialization and self-preservation/safety; has trouble transitioning, taking turns, personal space and other social skills; difficulty with expressive language. Recent concern is with his struggle with focus, which has worsened resulting in parents decided to treat with medication. Continues

to need prompts for hygiene, having disruptive sleep patterns and fear of being alone in a room.

- ✓ PASS Renewal Service Plan, date of renewal plan: September 10, 2014. It was reported that the Appellant/child established a good relationship with Direct Service Worker and made moderate progress on most goals; continues to benefit from PASS services but struggles with independence. Appellant/child continues to make progress in his teeth brushing and doing well with traffic safety; continues to struggle with personal space and stranger danger.
- ✓ A letter from the Appellant/child's PASS worker, Karen Crowley-Jacobs dated December 3, 2014. Ms. Crowley-Jacobs has worked with the Appellant/child since September 2014 to the present and current works twelve hours per week with him. Ms. Crowley-Jacobs feels that the Appellant/child does not demonstrate age appropriate safety or social skills; need consistent prompting to be appropriate around peers and safety awareness with traffic; and has a low tolerance for redirection, resulting in tantrums.
- ✓ A Speech/Language Evaluation Summary from the Appellant/child's elementary school dated February 2012. Boehm Test of Basic Concepts-3 was given for basic concepts of space/quantity/time; score was very low for his grade level. The CELFP-2 was given to measure Core, Receptive and Expressive Language, Language Content and Language Structure. The average range score is 85-115. The Appellant/child scores were 83 for Core Language, 87 Receptive Language, 77 for Expressive Language, 83 for Language Content and 82 for Language Structure. The Goldman-Fristoe Test of Articulation was given to measure articulation skills, the Appellant/child scores were ranged from fair to good.
- ✓ An Occupational Therapy Evaluation dated February 2, 2012 conducted by Erika Lund, OTR/L from Community Therapeutix. The BOT-2 test was administered; findings were below average for Fine Motor Precision, average for Fine Motor Integration, average for Fine Manual Control and average for Manual Dexterity. Fine Motor/Graphomotor Skill Review found that the Appellant/child was able to manipulate small objects in either hand; was able to hold his upper body in a good position for writing; found to be able to manipulate scissors; and was able to write the uppercase letters of the alphabet with a model.
- ✓ An Adaptive Behavior Assessment System – II done on February 8, 2012 which was completed by the Appellant/child's mother and his special educational teacher. Overall findings were that that the adaptive behavior can be characterized as lower functioning that that of almost all children the Appellant/child's age; conceptual adaptive behavior can be characterized as lower functioning that that of almost all children the Appellant/child's age; social adaptive behavior can be characterized as lower functioning that

other children, as well as practical adaptive behavior can be characterized as lower functioning than other children.

- ✓ Common Core Math and Language Standards for the 3rd Grade. With regards to social and learning skills, the Appellant/child is experiencing difficulty with demonstrating responsibility, working independently, cooperating & contributing in a group setting and demonstrating on task behaviors. He is moving toward expectations in interacting appropriately with peers, showing respect for classmates, following directions/procedures and participating in class discussions.
- ✓ An IEP from the Appellant/child's elementary school, effective 3-26-2014 through 3-25-2015. The Appellant/child's receptive & expressive vocabulary is within the average range, although his overall language skills fall below the average range. Demonstrates appropriate participation in his school day by respecting his and others' personal space, working quietly and using whole body listening 75% of the time. When frustrated, he copes by shutting down or being aggressive and needs prompting by an adult. Gross motor skills are age appropriate and fine motor skills are emerging nicely.

The Appellant's parents requested additional time to submit records that are either more current or that have been scheduled to be conducted January 2015; the record was held open until February 19, 2015.

Prior to the record closing, the Appellant's parents contacted this Hearing Officer and requested additional time to submit reports and evaluations, It was agreed that the record would be closed April 1, 2015 and the Katie Beckett Unit would have until April 10, 2015 to review any additional records and report back to this Hearing Officer if their position in this matter had changed.

FINDINGS OF FACT:

- The Appellant/child had been in receipt of Medical Assistance through the Katie Beckett (KB) coverage group since July 2011 and whose case came up for review in July 2015.
- The Agency reviewed the Appellant's re-certification application for Katie Beckett (KB) Unit service and on September 11, 2014, the KB Unit issued a denial of service notice. The denial was issued because it had been determined that the Appellant does not meet the definition of disability used by Social Security and does not meet the level of care (LOC) that is provided in a hospital, nursing facility, psychiatric hospital or an Intermediate Care Facility for those with Mental Retardation (IFC-MR); the Appellant's case would be closed effective September 22, 2014.

- The Appellant filed an Appeal on September 15, 2014 stating that the Appellant has Autism and has been receiving KB services and would like them to continue.
- After the denial notice issued on September 11, 2014, additional information had been received by the KB Unit and reviewed; it was determined by Dr. Canino that the Appellant is disabled but still does not meet the LOC criteria required and therefore still not eligible.
- On September 4, 2014 Dr. Canino started his review of the Appellant's re-certification application. It was noted that the Appellant was first approved for KB due to some pretty impaired language delay in July 2011. This present review there appears not to have a report from the Appellant's physician; the Parent Questionnaire notes that there is still a need for prompting to accomplish tasks, doesn't sleep alone, doesn't use language properly, needs to be motivated to be social, bangs his head against a wall when upset/frustrated, isn't on any medication, no outside services being received, there is an IEP with occupation/speech & language/behavior therapy as part of the school week, doesn't like to be left alone, enjoys his electronics and going to the playground with his PASS worker. There was a "Level of Care Recertification" form submitted by Stephen Risi, MSW LICSW date September 4, 2014 that notes that the Appellant has no impairment regarding health & physical well-being and mobility; and less than marked regarding self-care, learning cognition, social interaction, language-communication, self-direction and safety skills. There was an IEP submitted from the Appellant's elementary school for the period of 3-26-2014 to 3-25-2015, it describes that the last time that the Appellant was evaluated was in 2012, doesn't participate in an extended school year program, has difficulty staying on task, language skills are below average, stronger receptive skills than verbal skills, no score were provided so the degree of impairment cannot be determined. Dr. Canino feels that not enough had been provided to justify eligibility.
- Maggie Kozel, MD pediatrician from the Katie Becket Unit also review the same application and also the PCP report but didn't find useful information, noticed that the Appellant's IEP notes that he is only receiving one hour per day of special education, was being transitioned out of the Autism Project at school, the PASS report scored the Appellant relatively high (no impairment and less than marked), had difficulty coming to a finding that the Appellant reached the LOC that would reflex the level of care from an institutional level. Dr. Kozel looked at all the information provided to support the LOC requirement but there just wasn't any there.
- Many things have been transitioning at school lately to the point that the school is going to reevaluate the Appellant to see if he should go back into the Autism Project, he isn't meeting any of the criteria's of a third grade level, he is a social outcast at school, had declined rapidly school due to the services that he lost at school, (he used to have a helper to assist him with staying on task/challenge him with appropriate behavior but the helper has been taken away), the parents see

the social regression and academic decline and have brought this to the attention of the school and they have agreed to re-test the Appellant but it hasn't happened yet, possible in January 2015.

- The Appellant's mother stated that the school suggested that the Appellant attend summer school but he would have to be ready for to be on the bus by 7 a.m. for an hour ride, stay in school for an hour and a half and then fact another hour bus ride back home. The mother thought it was better for the Appellant to stay home and work with his PASS worker but the Appellant had gone without a worker from April through September 2014 and no one had documented the decline.
- The Appellant was prescribed Adderall, the smallest dose, to help him with his focus at school but it didn't help. The medication just disrupted his sleep to the point that he would only sleep two hour per day, he was wide awake at 2 a.m.; the Adderall has been stopped.
- At Hearing, the parents presented a letter and a PASS Renewal Service Plan from the Frank Olean Center, Inc. dated November 17, 2014; a letter from the Appellant/child's PASS worker dated December 3, 2014; a Speech/Language Evaluation Summary from the Appellant/child's elementary public school dated February 2012; an Occupational Therapy Evaluation from Community Therapeutix dated February 2, 2012; an Adaptive Behavior Assessment System – II dated February 8, 2012; the Appellant's math and language Common Core Standards for the 3rd grade; and the Appellant/child's EIP, effective 3-26-2014 to 3-25-2015.

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 6-30-2014 and signed by the mother of the Appellant/child.
- ✓ A Physician Evaluation for Katie Beckett Coverage Group, signed by Dr. Stuart Demirs, dated 7-10-2014
- ✓ Records of a DHS – Level of Care Recertification signed by Stephen Risi, MSW, LICSW and dated 9-4-2014.
- ✓ Records of an IEP, from the Appellant/child's elementary school, effective 3-26-2014 to 3-25-2015.
- ✓ Records of the PASS Renewal Service Plan from the Frank Olean Center dated 9-27-2013.

Additional evidence used for the last favorable determination was also submitted by the Agency to this Appeals Officer at Hearing, as well as copies of that evidence was also presented to the Appellant's parents.

- ✓ A Physician Evaluation for Katie Beckett Coverage Group, signed by Dr. Parrilla, dated 7-14-2011
- ✓ A Parent/Guardian Questionnaire dated 7-4-2011 and signed by the mother of the Appellant/child.
- ✓ Records from the public school, Speech/Language Dept. – Annual Review dated 3-29-2011.
- ✓ Psychological Center, Inc., Psychological Evaluation (Jane Borelli-Loomis, LICSW/Clinical Director); date of exam 6-9-2008.
- ✓ Letter from Diane Alberico, Family Solution CEDARR dated May 18, 2011.
- ✓ Records from Home Based Therapeutic Services – Treatment Plan for the period of 5-21-2010 to 11-12-2010.
- ✓ Records from Home Based Therapeutic Services – Treatment Progress Report, for the period 11-13-2010 to 3-13-2011.

At the close of Hearing, the Appellant's parents requested that the record remain open to allow them to submit additional information and for it to be reviewed for consideration on the behalf of the Appellant. The documents submitted are as follows:

- ✓ An Adaptive Behavior Assessment System – II administered 12-8-2014 by the school psychologist, [REDACTED]. Adaptive behavior is characterized as lower functioning than that of most of the Appellant/child's peers his age; conceptual adaptive behavior can be characterized as lower functioning than that of almost all other children his age; social adaptive behavior can be characterized as lower functioning than that of most other children his age; and practical adaptive behavior can be characterized as somewhat lower functioning than what is typical of his age. The WISC-IV FSIQ falls in or above the average range and the Appellant/child's ABAS-II GAC falls in the borderline range (suggesting that environmental or motivational factors rather than his level of intellectual functioning may be contributing to his adaptive behavior difficulties).
- ✓ A BASC 2 Report Summary administered on 12-8-2014 by a classroom teacher, Linda Alicchio. Regarding internalizing problem, Appellant/child's composite scale falls in the clinically significant classification range; on anxiety, score falls in the clinically significant classification range and warrants a follow-up; on depression, scores fall in the clinically significant classification range and usually warrants a follow-up; and on somatization score falls in the clinically significant classification range and warrants a follow-up. Regarding behavioral symptoms, Appellant/child's atypicality scores fall in the clinically significant classification range and usually warrants a follow-up; withdrawal, falls in the at risk classification range and follow up may be necessary; and attention problem scores fall in the clinically significant classification range and usually warrants a follow-up. Regarding adaptive skills; adaptability, the Appellant/child falls in the clinically significant range; social skills, he falls in the at risk classification range and a follow up may be necessary; leadership; scores fall in the clinically significant

range and usually warrants a follow up; ADL, scores fall in the clinically significant classification range and usually warrants a follow up; and functional communication scores fall in the clinically significant classification range and usually warrants a follow up.

- ✓ Behavior Rating Inventory of Executive Function (BRIEF) administered on 12-11-2014 by school psychologist, [REDACTED]. Although that this particular screening was not intended to generate any clinical diagnosis, it reports that: the Appellant/child's scores on the Shift scale and the Emotional Control scale were significantly elevated compared to age and gender matched peers; suggests a significant problem solving rigidity combined with emotional dysregulation.
- ✓ Confidential Cognitive Psychological Evaluation administered on December 8 & 9, 2014 by the Appellant's school psychologist, [REDACTED]. The results of the evaluation state that the general cognitive ability as estimated by the WISC-IV is in the average range; general verbal comprehension abilities were in the average range; general perceptual reasoning abilities were in the high average range; general working memory abilities are in the low average range; general processing speed abilities in the borderline range; ability to sustain attention, concentrate and exert mental control are a weakness relative to his non-verbal and verbal reasoning abilities; and the ability to process visual material quickly is also a weakness relative to his verbal and nonverbal reasoning ability.
- ✓ Occupational Therapy Evaluation administered on 12-5-2014 by Erika Lund, OTR/L from Community Therapeutix. Bruininks Oseretsky Tests of Motor proficiency (BOT-2) shows that the Appellant/child has average fine motor skill, handwriting has improved. Scores on the SPM show that he does have some sensory processing difficulties at school; has had some improved skill areas that he is not accessing either because he relies on what he is comfortable with or because he is not motivated by the work.
- ✓ Speech-Language Evaluation administered November 2014 by Christie Johnson, MS., CCC-SLP, NBCT Speech-Language Pathologist. Demonstrates receptive and expressive language skills within the average range of function; easily follows multiple step directions, makes associations, understands linguistic concepts, understands and interprets spoken sentences of increased length and complexity, formulates grammatically correct sentences and applies word structure rules during conversations; understanding social situations is challenging; and has great difficulty with attention and focus which impedes his ability to make progress in a whole group setting.
- ✓ An assessment from RI-CART dated 2-23-2015.
- ✓ Clinical Psychological Evaluation (Confidential) administered on March 11, 20 and 27, 2015 by Elizabeth Cantor, PhD. Licensed Clinical Psychologist. Cognitive testing with the WISC-IV reveal a full scale IQ score that falls at the lower end of the average range; adaptive skills were also assessed using the ABAS-II and results reveal far below the average skills range; behavior rating scales were also obtained and results from the BASC yielded significant scores in the areas of

attention problem, atypicality and withdrawal from both parents; scored in the at risk range in school for hyperactivity, internalizing problems, learning and school problems and adaptive skills; Vanderbilt Assessment scales were administered to screen ADHD, results suggest significant concerns at home and at school with inattention and slightly more concern with hyperactivity at home compared to school; and Executive Function suggesting significant concerns with the ability to regulate his attention, behavior and emotions across settings.

- ✓ IEP for the period from 1-22-2015 to 1-21-2016 by the Appellant/child's public school.

On April 16, 2015 the Katie Beckett Unit e-mailed this ~~Hearing Officer~~ stating, "The additional information was reviewed and there is no change in the reviewers decision for Docket #15-125".

CONCLUSION:

The issue to be decided is whether the clinical evidence established that as of July 2014 the Appellant met both the Disability and LOC criteria required of the Katie Beckett Medical Assistance coverage group.

The Appellant, currently an eight year old male in the third grade, with the assistance of both his parents applied for a re-certification application for Katie Beckett review in July 2014; he has been receiving KB services since July 2011. After review of the Appellant's application, on September 11, 2014 the agency issued a denial of services notice to the Appellant and his parents. The Reasoning for the denial was that it was determined that the Appellant/child did not meet the definition of disability used by Social Security and did not meet the level of care (LOC) that is provided in a hospital, nursing facility, psychiatric hospital or an Intermediate Care Facility for those with Mental Retardation (ICF-MR).

Policy stated in § 0306.05.15 Eligibility Based on Disability that:

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.

There is also a requirement that need to be met in addition to the disability requirement, the policy which addresses LOC, § 0394.35.05 Special Eligibility Conditions

- 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.

Having received the agency's denial notice, the Appellant's parents filed an appeal on September 15, 2014 of the agency's action.

An Appeals Hearing was scheduled and took place in this matter on December 4, 2014. The agency began their presentation of their side of the issue indicating that after further review, one of reviewers determined that the Appellant does meet the Social Security definition of disability but still did not meet the level of care that policy requires. The agency proceeded with the only remaining issue, that the Appellant did not meet the level of care that would be provided in a hospital, a Nursing Facility, or an ICF-MR.



In his review on behalf of the agency, Dr. Canino testified that there appears to be some missing information that could be beneficial to the Appellant if it had been presented (i.e. – a report from the Appellant’s physician and a “Family Plan” done by Cedarr was dated 2013 and not current), but the parent’s questionnaire was detailed. The Level of Care Recertification submitted by Stephen Risi, MSW LICSW (dated 9-4-14) states that the Appellant has no impairment regarding health and physical well-being and mobility. There was also an IEP provided from the Appellant’s elementary school that notes that the Appellant was offered an extended school year program but it wasn’t acted upon by the parents. Dr. Canino testified that he felt that there just wasn’t enough provided to justify eligibility.

The second reviewer of the Appellant’s application was Dr. Kozel (pediatrician) noted that the Appellant/child’s IEP noted that he is only receiving one hour of special education per day, spending 80% of the day in the regular education, was being transitioned out of the Autism Project at school and the PASS report progress in hygiene and overall, making moderate progress on most goals. Dr. Kozel testified that in reviewing of the application, she just didn’t see any information that provided to support the LOC required and why she reached her decision to deny.

The Appellant’s parents were not surprised at the agency’s decision once they were aware of information that should have also been submitted. The parent had already begun to submit additional information by the time that this Hearing took place and had scheduled an updated IEP, evaluations of the Appellant/child. Some of these evaluations were submitted after the Hearing had taken place and while the record had remained open. The records submitted after Hearing yet before the record closed are listed on pages 7 – 9 of this decision. The agency had time to review these records and concluded that they still did not provide the Appellant with the criteria to meet the level of care required by policy.

The LOC requirement states to be eligible to Katie Beckett services, the applicant must meet the level of care that would be provided in a hospital, nursing facility, psychiatric hospital or an intermediate care facility for those with mental retardation. Katie Beckett Manual explains each category as follows:

3.1.1 Hospital

Hospital level of care is appropriate for children who continuously require the type of care ordinarily provided in a hospital, and who, without these services, would require frequent hospitalizations. This level of care is highly skilled and provided by professionals in amounts not normally available in a skilled nursing facility but available in a hospital.

3.1.2 Psychiatric Hospital

Psychiatric hospital level of care is appropriate 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.

3.1.3 ICF/MR

ICF/MR level of care is appropriate for individuals who require the type of active treatment typically provided by a facility whose primary purpose is to furnish health and rehabilitative services to persons with mental retardation or related conditions including developmental disabilities.

3.1.4 Nursing Facility

Nursing facility level of care is appropriate for children who do not require acute hospital care, but who, on a regular basis, require licensed nursing services, rehabilitation services, or other health-related services ordinarily provided in an institution. Nursing facility level of care is usually inappropriate for children with behavioral health needs, mental illness or mental retardation, unless the needs associated with these conditions are secondary to a more acute physical disorder.

The Appellant failed to provide, as part of his application and/or through submission of addition evidence, information that would indicate that he would need skilled medical treatment that is found in a hospital, that is more complex than nursing facility level of care due to an unstable medical condition; skilled observation multiple times during a 24 hour period due to health needs and the potential for status changes that could lead to rapid deterioration or life threatening episodes; medical monitoring, assessment, and intensive medication regimen for the child's medical condition; provision of hands on comprehensive medical interventions and treatments; recognition of changes in the child's condition that require prompt interventions to avert complications; or modification of treatment plans throughout the day based on the child's condition.

The Appellant failed to provide, as part of his application and/or through submission of addition evidence, information that would indicate that he demonstrates a serious deterioration in the ability to safely and adequately care for himself; exhibits thought processes that are impaired and interfere significantly with daily life; displays severe and persistent dysregulated mood and/or severe disturbance of affect; or exhibits a serious and imminent risk of harm to self or others due to a psychiatric illness.

The Appellant failed to provide, as part of his application and/or through submission of addition evidence, information that would indicate that he needs structure, supervision, training and/or supports necessary to ensure safety and promote attainment of objectives

is equal to that which would be provided in an intermediate care facility for the mentally retarded.

The Appellant failed to provide, as part of his application and/or through submission of additional evidence, information that would indicate that he would require specialized professional training (that one would find in a Nursing Facility) and monitoring beyond those ordinarily expected of parents; has unstable health, functional limitations, complicating conditions cognitive or behavioral conditions, or is medically fragile such that there is a need for active care management; an impairment that substantially interferes with the ability to engage in everyday activities and perform age appropriate activities of daily living at home and in the community; needs complex care management and/or hands on care that substantially exceeds age appropriate assistance; or needs restorative and rehabilitative or other special treatment.

In conclusion, the Appellant is an eight year old boy and is in the 3rd grade, who with the help of both his parents applied for re-certification in July 2014 for Katie Beckett services which he has been receiving since July 2011. The Katie Beckett unit reviewed the Appellant's application, reports and evaluations and on September 11, 2014, issued a denial of services notice stating that the Appellant was found not disabled in accordance with the Social Security definition and was found not to have met the level of care that would be provided in a hospital, nursing facility, psychiatric hospital or an intermediate care facility for those with mental retardation. The Appellant and his parent disagreed with the agency's decision and filed an appeal on September 15, 2014.

At the start of Hearing that took place on December 4, 2014, the representative for the Katie Beckett unit testified that additional documentation had been received after the denial decision had issued on September 11, 2014 and that due to that information, the Katie Beckett unit now feel that the Appellant did meet the disability requirement but still did not meet the level of care that is required.

With the agency conceding that the Appellant is disabled as defined by Social Security, the only issue to be address is whether the Appellant meets the level of care required as policy states.

There has been no presentation of evidence or testimony which states that the Appellant/child needs continuous required care ordinarily found in a hospital or requires frequent hospitalization, has needs so severe that is at immediate risk for hospitalization, needs health and rehabilitative services for mental retardation, or other health related services ordinarily provided in an institution. It is not being stated that the Appellant does not suffers from some disability and delays. The Cognitive Psychological Evaluation (December 8 & 9, 2014) describe the Appellant/child as "a delightful youth", the OT Evaluation (December 5, 2014) has the Appellant/child "willing participated in this evaluation", the Speech-Language Evaluation (November 2014) describes the

Appellant/child as "was always polite and engaged in conversation", and the Clinical Psychological Evaluation (March 11, 20, 27, 2015) has the Appellant/child as being "a pleasure to work with". There was no indication that if drastic matters are not implemented, the Appellant/child would suffer immediate harm.

After a careful review of the Agency's policies, as well as the evidence and testimony given, this Appeals Officer finds that the child does not meet the level of care that is required to be eligible for Katie Beckett services, and that the Agency made accurate findings relative to the level of care characteristics. The Appellant's request for relief is therefore denied.

Thomas Grace

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).

Katie Beckett Manual Level of Care Criteria for Medical Assistance Eligibility under the Katie Beckett Option

3.1 Summary of Institutional Level of Care

Facility-specific institutional level of care criteria is found in Appendices A-D. The following is a brief and general description of each type of facility for informational purposes.

3.1.1 Hospital (Appendix A)

Hospital level of care is appropriate for children who continuously require the type of care ordinarily provided in a hospital, and who, without these services, would require frequent hospitalizations. This level of care is highly skilled and provided by professionals in amounts not normally available in a skilled nursing facility but available in a hospital.

3.1.2 Psychiatric Hospital (Appendix B)

Psychiatric hospital level of care is appropriate 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.

3.1.3 ICF/MR (Appendix C)

ICF/MR level of care is appropriate for individuals who require the type of active treatment typically provided by a facility whose primary purpose is to furnish health and rehabilitative services to persons with mental retardation or related conditions including developmental disabilities.

3.1.4 Nursing Facility (Appendix D)

Nursing facility level of care is appropriate for children who do not require acute hospital care, but who, on a regular basis, require licensed nursing services, rehabilitation services, or other health-related services ordinarily provided in an institution. Nursing facility level of care is usually inappropriate for children with behavioral health needs, mental illness or mental retardation, unless the needs associated with these conditions are secondary to a more acute physical disorder.



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.

