

STATE OF RHODE ISLAND
EXECUTIVE OFFICE OF HEALTH AND HUMAN SERVICES
APPEALS OFFICE

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DOCKET No. 24-1391

V.

Department of Human Services

DECISION

I. INTRODUCTION

A telephonic Hearing was held on the above-entitled matter on April 2, 2024. ██████████ ██████████, on behalf of his minor child ██████████ (hereinafter “Appellant”), initiated this matter to appeal a decision made by The Department of Human Services (hereinafter “DHS”), regarding the denial of Katie Beckett Medicaid services (hereinafter “KB”). The Appellant disagreed and sought relief from these actions. Based on the evidence presented and as discussed in more detail below, the Appellant’s appeal is denied.

II. JURISDICTION

The Executive Office of Health and Human Services (hereinafter “EOHHS”) is authorized and designated by R.I.G.L. §42-7.2-6.1 and EOHHS regulation 210-RICR-10-05-2 to be the entity responsible for appeals and hearings related to Medicaid Long Term Services and Supports (hereinafter “LTSS”). The Administrative Hearing was held in accordance with the

Administrative Procedures Act, R.I.G.L. § 42-35-1 et. seq., and EOHHS regulation 210-RICR-10-05-2.

III. ISSUE

The issue on appeal is whether DHS's denial of KB benefits was made in compliance with State and Federal regulations as set forth below.

IV. STANDARD OF PROOF

It is well settled that in formal or informal adjudications modeled on the Federal Administrative Procedures Act, unless otherwise specified, a preponderance of the evidence is generally required to prevail. This means that for each element to be proven, the factfinder must believe that the facts asserted by the parties are more probably true than false. 2) Richard J. Pierce, Administrative Law Treatises § 10.7 (2002) and see Lyons v. Rhode Island Pub. Employees Council 94, 559 A2d 130, 134 (R.I. 1989) (preponderance standard is the "normal" standard in civil cases)).

V. PARTIES AND EXHIBITS

DHS was represented by Jonathan Gramolini, Assistant Administrator for the Office of Medical Review; and Louise White, Consultant, Public Health Nurse. Nurse White testified and offered the following evidence, with no objections, and were entered into the record of hearing:

- Exhibit #1- Clinical Evaluation for Katie Beckett Coverage, signed and dated November 9, 2023 by [REDACTED].
- Exhibit #2- Clinical Progress Note by [REDACTED] dated June 2, 2023.
- Exhibit #3- Individualized Education Program (hereinafter "IEP) effective November 10, 2022 through November 9, 2023.

- Exhibit #4- IEP effective November 10, 2023 through November 9, 2024.
- Exhibit #5- a one (1) page document signed by [REDACTED] on December 1, 2023, that just reinforces that the Appellant is followed by her.
- Exhibit #6- Pediatric Speech and Language Evaluation completed by [REDACTED], SP/SLP, dated April 13, 2022.
- Exhibit #7- [REDACTED] report for December 2023.
- Exhibit #8- Required Parent Questionnaire submitted to DHS by Appellant's father dated November 4, 2023.
- Exhibit #9- Clinical Progress Note by [REDACTED] dated February 29, 2024.
- Exhibit #10- "A Day in the Life [REDACTED]" submitted to DHS by Appellant's father as part of application process.
- Exhibit #11- Benefit Decision Notice (hereinafter "BDN") dated January 18, 2024.
- Exhibit #12- KB Program Regulations.

The Appellant was represented by his Father, [REDACTED], (hereinafter "Father").

He did not present any evidence and he testified on behalf of his son.

VI. RELEVANT LAW/REGULATIONS

Under the Medicaid LTSS umbrella of home-and-community-based services, in certain circumstances, the KB program enables otherwise ineligible children who have severe disabling impairments and/or complex health needs to obtain the services they need at home rather than in an institutional setting. 210-RICR-50-10-03.1(A).

To qualify for Medicaid LTSS through the KB provision, a child must meet the general Medicaid requirements pertaining to residency, citizenship, and immigration status. In addition, a child must be under nineteen (19) years of age and two of the following clinical eligibility

reviews are included in the determination: 1) Level of Need- after the disability determination, the child's need for an institutional level of care using needs based criteria related to functional and health status is considered; and 2) Clinical Need determination- a determination is made on whether the child has a disabling condition that (a) require a level of care typically provided in an institution; and (b) the required services can safely be provided in the community.

210-RICR-50-10-03.3(A)(2)

Under Title XVI of the Social Security Act, a child under the age of nineteen (19) will be considered disabled if he or she has a medically determinable physical or mental impairment or combination of impairments that cause(s) marked or severe functional limitations, and that has lasted or can be expected to last for a continuous period of not less than twelve (12) months, or can be expected to result in death. In addition, a child must require the level of care provided in a hospital, intermediate care for the intellectually disabled, or a nursing facility. Without appropriate interventions and supports (both at home and in the community), the child would be in an institution or be at immediate risk for institutional placement. 210-RICR-50-03.3(A)(3).

VII. FINDINGS OF FACT

1. An application for LTSS KB benefits was submitted to DHS in September 2023.
2. A Benefit Decision Notice was mailed to the Appellant on or about January 18/2024, which stated that the Appellant was denied for LTSS KB services due to not having the Nursing Home level of care needs that are required for Medicaid-funded LTSS. (Exhibit #11).
3. DHS testified that the clinical records were reviewed at different intervals by members of the clinical team at the Office of Medical Review.

4. The disability review follows the same sequential evaluation steps for childhood disability as for Social Security benefits under Title XVI of the Social Security Act, as follows: (a) is the child working at a substantial gainful level; (b) does the child have a severe, medically determinable impairment; and (c) does the medical condition/impairment meet or equal the severity of a listing for an impairment.
5. The Appellant has diagnoses of Autism Spectrum Disorder, Mixed Developmental Disorder, Receptive/Expressive language delays. (Exhibit #1).
6. The Appellant was receiving speech/language therapy through the school per his IEP, and outpatient therapy was scheduled to start in November 2023. This is noted in the clinical evaluation completed by [REDACTED] on November 9, 2023. (Exhibit #1).
7. Additionally, in the Appellant's IEP are services for social/emotional development and a recommendation for Applied Behavior Analysis (hereinafter "ABA"), to assist with speech/language development as well as social/emotional development.
8. Clinical progress note by [REDACTED] dated June 23, 2023 states that the Appellant was answering questions, but not asking them, he was unable to tell a story (i.e. "what happened at the zoo today?"), and demonstrates echolalia (both immediate and delayed), does have good vocabulary (especially with labeling). At that time, the Appellant was not initiating play with other children at the park and needed encouragement/support to play with others at school. It was also noted that he had good attention for preferred activities but did have occasional tantrums. (Exhibit #1).

9. The Appellant's IEP for period December 11, 2023 through December 10, 2024 shows that he follows classroom routines and safety rules. He will engage in parallel play, but does not interact or speak with others the exception of whispering "yes" or "no" when asked a question. He is able to follow 2-3 step directions, and is noted to just be starting to initiate a simple question while in speech therapy. The Appellant also understands community roles, such as doctor, firefighter, etc. The IEP shows that the Appellant is in a regular classroom setting at least 80% of the time and does not qualify for extended school year services. (Exhibit #4).
10. The Appellant had a pediatric speech and language evaluation completed on April 13, 2022, at the age of three (3) years and five (5) months old. There was not an updated evaluation to review, therefore this evaluation was used as a factor in the determination. The diagnosis given was Mixed receptive-expressive language disorder. (Exhibit #6).
11. On the Preschool Language Scale, 5th Edition (hereinafter "PLS-5"), the Appellant had an auditory comprehension score of seventy-nine (79), and an expressive communication score of seventy-four (74). (Exhibit #6).
12. The Clinical Evaluation of Language Fundamentals (hereinafter "CELF"), is an assessment that assesses aspects of language necessary for preschool children to transition into the classroom, showed a moderate impairment in the Appellant's Core Language Score, which measures general language ability, combining the scores from sentence comprehension, word structure, and vocabulary subtests. (Exhibit #6).

13. DHS testified that the CELF score of seventy-six (76) showed the highest level of impairment is a moderate limitation.
14. The Early Childhood Progress Report for December 2023 indicates that the Appellant is meeting twenty-two (22) goals, progressing in eleven (11) goals, and noted to be not applicable in two (2) goals. (Exhibit #7).
15. The parent/guardian questionnaire, completed by Father on November 4, 2023, indicates that the Appellant needs constant reminders, prompts for redirection, understands most things, does not communicate his needs, cannot engage in conversation, and only uses two (2) to four (4) word sentences. Socially, it notes that the Appellant is below typically developing children his age and does not seem to be aware of different contexts. Finally it states that he is compliant with most directions, but tends to self-isolate. (Exhibit #8).
16. Clinical progress note completed by [REDACTED] on February 29, 2024 notes that the Appellant continued to have difficulties with conversation and comprehension, whispers in short sentences, and can communicate his wants and needs. Appellant's father brought up concerns that he is a picky eater. (Exhibit #9).
17. On the "A Day in the Life" summary, Father noted concerns with self-care, an almost obsessive need to have his iPad to the point of refusing to eat breakfast. Major concern is the inability to fully communicate his needs fully and lack of social interaction and ability to engage with other children. He further states that he does not know how to ask for help or say what type of help he might need. It is

noted that the Appellant will engage in dangerous behavior such as running toward the street because he does not recognize the danger.

18. DHS testified that the Appellant's language delay did not demonstrate any marked or extreme limitations according to Social Security's childhood disability criteria, nor did it meet or equal the severity of a listing for a disability under the same criteria. When assessing the Appellant's functional abilities, across all domains there were no sever marked or severe limitations determined.
19. DHS testified that with regards to the Appellant's disability, it does not rise to an institutional level of care, nor is he at immediate risk of being placed in an institutional placement. Father does have the ability to access appropriate services via the school in community-based services.
20. Father testified that he does not feel that the Appellant is able to care for himself and without some form of adult supervision, he would not be able to care for or be safe by himself. He feels that the only reason that the Appellant is able to accomplish what he does is because he is able to work from home right now and therefore is able to give constant prompting. He stated a concern that if he was called to return to work in person that there will be no support available to him.
21. Father feels that there has been no progress in language skills since the evaluation that was performed in April 2022. He stated that the Appellant still is unable to communicate his needs at home or at school, and that the speech therapy that he receives is not enough.

22. When asked specifically what supports he is looking for to assist his son, he essentially repeated the same issues- that the Appellant would need assistance to take care of his basic daily needs.

23. On both clinical progress notes that were submitted, it was recommended that the Appellant look into Applied Behavior Analysis services (hereinafter “ABA”), which helps people with autism to develop skills to manage their behavior. There was also a referral for an Occupational evaluation was made at the clinical visit on February 29, 2024. Father indicated that neither have been done due to scheduling around work and school hours.

VIII. DISCUSSION

It is not disputed that the Appellant has a speech and language disability, as well as Autism Spectrum Disorder. However, he does not meet the criteria for disability under the Social Security Methodology as he does not demonstrate any severe or extreme limitations in any domain, which is required in order to qualify. 210-RICR-50-10-3.2 and 210-RICR-50-30-3.

While it is understandable that Father is concerned because he does not feel that the Appellant is able to care for himself in the absence of an adult, the Appellant is only five (5) years old and it would not be expected that a child of that age could fully care for himself alone. As with any other parent who has a child of that age, regardless of disability status, arrangements would need to be made if the work schedules of the parents did not accommodate being able care for their child. Additionally, Father’s answers on the questionnaire were inconsistent with what was reported by the school and the pediatrician. It should also be noted that Father testified that the Appellant attends school from 8:40 a.m. to approximately 3:30 p.m. when he is picked up by

his mother when she is off work, so essentially, with the exception of summer, the Appellant has adult supervision for the daytime hours at school and then at home.

There are services that are available either in the community or as home-based services that have been offered and/or referred to, however the parents have not availed themselves to these services due to scheduling issues, wait lists, or finding a suitable provider. The fact that these services are not being utilized does not qualify the Appellant for services that do not meet an institutional level of care, or a risk of being institutionalized.

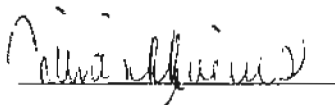
IX. CONCLUSION OF LAW

After careful review of the testimony and evidence presented at the Administrative Hearing, this Appeals Officer concluded the following: the Appellant's disability does not require the level of need for institutional care, nor does it present a risk of institutionalization if the needs are not met in the community.

X. DECISION

Based on the foregoing Findings of Fact, Conclusions of Law, evidence, and testimony it is found that a final order be entered that there is sufficient evidence to support the denial of Medicaid KB services.

APPEAL DENIED



Jillian R. Rivers

Appeals Officer

NOTICE OF APPELLANT 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.

CERTIFICATION

I hereby certify that I mailed, via regular mail, postage prepaid, a true copy of the foregoing to [REDACTED]; copies were sent, via email, to [REDACTED] and DHS representatives Rose Leandre, Rebecca Cahoon, Jonathan Gramolini, and Louise White, on this 8th day of April, 2024.

Jamoa M. Leandre