

4.

On January 24, 2013, based upon the information provided by Petitioner, Respondent determined that Petitioner did not meet the eligibility criteria for Nursing Facility Level of Care, Intermediate Care Facility Level of Care or Hospital Level of Care, and issued an Initial Denial of Admission or Continued Services letter to Petitioner. The initial denial of services was based on a determination by Respondent that Petitioner's condition is not so inherently complex that care cannot be safely and effectively performed by unskilled healthcare personnel as evidenced by documentation submitted. The letter provided Petitioner thirty days from the initial denial to provide additional, current, clinical materials to the Respondent. (Ex. 2.)

5.

Respondent received additional materials within the thirty days provided. Respondent conducted a second review, and on May 9, 2013, Respondent issued a Final Denial of Admission letter, which upheld the Initial Denial on the same grounds. (Ex. 3.)

6.

At the hearing, Petitioner's mother testified that he now receives physical therapy services two or three times a week for injuries resulting from an accident. (Testimony of _____.)

II. Conclusions of Law

1.

The TEFRA/Katie Beckett program was created by Section 134 of the Tax Equity and Fiscal Responsibility Act of 1982 ("TEFRA"). States are allowed, at their option, to make Medicaid benefits available to disabled children living at home that would not ordinarily be eligible for Supplemental Security Income ("SSI") benefits because of parental income or resources. Tax Equity and Fiscal Responsibility Act of 1982, Pub. L. No. 97-248. To be eligible for services under the TEFRA/Katie Beckett class of assistance, the child must:

1. Be eighteen years of age or younger;
2. Live at home;
3. Meet the federal criteria for childhood disability; and
4. Require the level of care provided in a hospital, skilled nursing facility, or intermediate care facility.

Based on a review of the undisputed evidence, this Court finds that Petitioner does not meet the institutional level of care requirement to be eligible for services under the TEFRA/Katie Beckett class of assistance. 42 U.S.C.S. § 1396a(e)(3); 42 C.F.R. § 435.225(a).

2.

First, Petitioner did not meet the level of care provided in a hospital. Hospital level of care is appropriate for individuals who continuously require the type of care ordinarily provided in an institution for the care and treatment of inpatients with disorders other than mental diseases. See 42 C.F.R. § 440.10. Inpatient is defined as a:

Patient who has been admitted to a medical institution as an inpatient on recommendation of a physician or dentist and who -- (1) Receives room, board and professional services in the institution for a 24 hour period or longer, or (2) Is expected by the institution to receive room, board and professional services in the institution for a 24 hour period or longer even though it later develops that the patient dies, is discharged or is transferred to another facility and does not actually stay in the institution for 24 hours.

Petitioner does not require, nor had his physician ordered, the type of continuous care required in a hospital. Accordingly, Petitioner does not meet the criteria for hospital level of care. 42 C.F.R. § 440.2.

3.

Second, Petitioner does not meet the level of care provided in a skilled nursing facility. Nursing facility level of care is appropriate for individuals who do not require hospital care, but who have been ordered by a physician to obtain skilled nursing services, rehabilitation services, or other health related services ordinarily provided in an institution that can only be provided by technical or professional personnel on a daily basis. Petitioner's physician recommended IVIG treatment every three weeks. Petitioner's physician did not order daily nursing services, rehabilitative services or other similar skilled health services. Therefore, Petitioner does not qualify for TEFRA/Katie Beckett services under the nursing facility level of care. 42 C.F.R. §§ 409.31-.34.

4.

Finally, Petitioner did not meet the level of care provided in an intermediate care facility for the mentally retarded ("ICF/MR"). ICF/MR level of care is satisfied, in part, if:

1. The individual has mental retardation; or
2. The individual has a severe chronic disability attributable to Cerebral Palsy or epilepsy; or
3. The individual has a condition, other than mental illness, which is found to be closely related to mental retardation because it results in impairment of general intellectual functioning or adaptive behavior similar to mental retardation and requires similar treatment and services, and the condition is likely to continue

- indefinitely; and
4. The impairment results in substantial functional limitations in three or more of the following life activities:
 - a. Self-care;
 - b. Understanding and use of language;
 - c. Mobility;
 - d. Self-direction; and/or
 - e. Capacity for independent living.

42 C.F.R. §§ 440.150, 435.1010. Petitioner does not have a diagnosis of mental retardation, a severe chronic disability attributable to Cerebral Palsy or epilepsy, or other diagnosis resulting in impairment of general intellectual functioning or adaptive behavior similar to mental retardation. Therefore, Petitioner does not qualify under ICF/MR. 42 C.F.R. §§ 440.150 and 435.1010.

6.

The purpose behind the TEFRA/Katie Beckett class of assistance is to provide Medicaid coverage for those children who require the level of care ordinarily provided in an institution, but for whom the parents have chosen to provide the care at home. An institutional level of care implies that care is needed on a continuous or daily basis. Petitioner has failed to present any evidence to demonstrate that he meets this level of care. Accordingly,

III. Decision

IT IS HEREBY ORDERED that Respondent's decision to deny Petitioner's Medicaid benefits under the TEFRA/Katie Beckett program is **AFFIRMED**.

SO ORDERED, this 11th day of September, 2013.



AMANDA C. BAXTER
Administrative Law Judge