

**BEFORE THE OFFICE OF STATE ADMINISTRATIVE HEARINGS  
STATE OF GEORGIA**

<b>[REDACTED] (MINOR),</b> <b>Petitioner,</b>	: : :	<b>Docket No.:</b> <b>OSAH-DCH-KATIE-[REDACTED] Malihi</b>
<b>v.</b>	:	
<b>DEPARTMENT OF COMMUNITY HEALTH,</b>	: : :	
<b>Respondent.</b>	:	

**INITIAL DECISION**

**I. SUMMARY OF PROCEEDINGS**

Petitioner appealed the decision of Respondent, the Department of Community Health, to deny her application to participate in the TEFRA/Katie Beckett Program. A hearing was held on October 4, 2013 in Atlanta, Georgia. Mr. [REDACTED], Petitioner's father, appeared as her personal representative. Ms. Elizabeth Brooks, Esq. appeared as Respondent's legal counsel. For the reasons indicated below, Respondent's decision to deny Petitioner's application to participate in the Katie Beckett Program is hereby **AFFIRMED**.

## II. FINDINGS OF FACT

### *The Katie Beckett Program*

1.

The Katie Beckett Program was established in 1982 under the Tax Equity and Fiscal Responsibility Act (TEFRA). The program, which is administered by Respondent, permits the state to ignore family income for certain disabled children for the purposes of determining Medicaid eligibility provided that certain conditions are met. It provides benefits to children under the age of 18 who qualify as disabled individuals under § 1614 of the Social Security Act and live at home, rather than in an institution. To qualify for participation, applicants must meet specific criteria based on the institutional level of care they require. These criteria are governed by Title 42 of the Code of Federal Regulations.

### *The Katie Beckett Program Application Process*

2.

Respondent has contracted with the Georgia Medical Care Foundation (GMCF) to review applications for admission to the Katie Beckett Program. *Testimony of Lauren Jones.*

3.

The GMCF Katie Beckett Review Team reviews information submitted with each application to determine whether the applicant requires a level of care provided in a hospital, skilled nursing facility, or intermediate care facility. Applicants submit a packet to the GMCF review team containing a DMA-6(A) form, a Level of Care statement, and a Psychological Assessment. *Exhibit R-1.*

4.

Ms. Lauren Jones, a member of the GMCF review team, testified that, in making the determination of whether an applicant meets level of care criteria, the GMCF review team will review all information available to the team that is pertinent to the applicant's condition. Although the team gives deference to the recommendations of the applicant's physician, Ms. Jones specified that they exercise their professional judgment with regard to eligibility. If an applicant's physician specifies that the applicant meets hospital level of care, for example, the Review Team would review that applicant's condition to ascertain whether they met criteria for any pertinent level of care and not simply confine their review to hospital level of care criteria. *Testimony of Lauren Jones; Exhibit R-1.*

5.

If the Katie Beckett Review Team determines the applicant to be ineligible for Katie Beckett services, it will issue an Initial Denial of Admission. This letter informs the applicant that they have been denied and delineates the reasons for their denial. The applicant then has thirty days from the date of the letter in which to obtain a review of GMCF's decision. The applicant may supplement the original application with additional information, which GMCF will then review in making its Final Determination. *Exhibit R-1.*

6.

If GMCF decides not to alter its original determination after reviewing the supplemented information packet, it will issue a Final Denial of Admission letter to the applicant. The applicant then has thirty days in which to request a hearing. *Exhibit R-2.*

*Petitioner's Condition*

7.

Petitioner is a thirteen-year-old female born on August 23, 2000. Her parents, Mrs. [REDACTED] and Mr. [REDACTED], adopted her from Kyrgyzstan. Petitioner suffers from a congenital abnormality of her arm. Other than her physical diagnosis, Petitioner also suffers from severe psychological and psychiatric difficulties, including Bipolar Disorder and Reactive Attachment Disorder.<sup>1</sup> *Exhibit R-5; Testimony of [REDACTED]*

8.

Petitioner's primary need for care stems from her mental disorders, which necessitate psychiatric care and medication. She has been prescribed anti-psychotics in the past, which resulted in further difficulties due to side-effects, such as severe hormone imbalance. Petitioner's condition entails aggression, mood swings, and even violent behavior, and has required that she be admitted to psychiatric facilities, such as Peachford Behavioral Health System of Atlanta, in the past. *Exhibit R-6; Testimony of [REDACTED]*

*Review of Petitioner's Application*

9.

Petitioner's caregivers applied for services under the Katie Beckett Program on or about April 4, 2013. Petitioner's physician, Dr. Alice Heimberg-Funk, submitted a DMA-6(A) form to GMCF, which included her recommendations for Petitioner's pediatric care. The form lists Petitioner's psychiatric conditions, including Bipolar Disorder and Reactive Attachment Disorder. Dr. Heimberg-Funk listed Petitioner's medications as: Inveza, an anti-psychotic; Sertraline, an anti-

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<sup>1</sup> Reactive Attachment Disorder is a mental disorder that is ordinarily diagnosed in early childhood or adolescence. It is characterized by "markedly disturbed and developmentally inappropriate social relatedness in most contexts." AM. PSYCHIATRIC ASS'N, DIAGNOSTIC AND STATISTICAL MANUAL OF MENTAL DISORDERS, FOURTH EDITION 127-30 (Michael B. First et. al eds., 2000).

depressant; and Oxcarbazepine, a mood stabilizer. Where the form indicates for the physician to recommend the Level of Care, Dr. Heimberg-Funk checked the box for "Hospital" but wrote above that box "Residential Treatment," indicating that the level of care Petitioner required is normally provided in a residential health facility, such as Peachford Behavioral Health System. *Exhibit R-3; Testimony of Lauren Jones.*

10.

The Level of Care Statement submitted by Dr. Heimberg-Funk again listed Petitioner's psychological difficulties and indicated "comprehensive psychiatric services" under her current needs. Dr. Heimberg-Funk checked the box for hospital level of care but again qualified her selection with the hand-written notation "Residential." She recommended that Petitioner receive this care five days a week and undergo one speech session per week. *Exhibit R-4.*

11.

Petitioner's Psychological Assessment concluded that her IQ was between 78 and 84, which is categorized as "Borderline to Average." According to Ms. Jones, only applicants whose IQ falls within the "Profound" range qualify under intermediate care facility for the mentally retarded (ICF/MR) level of care. *Exhibit R-5; Testimony of Lauren Jones.*

12.

In reviewing the Petitioner's application, the GMCF review team observed that her information packet described the needs associated with her Bipolar Disorder and Reactive Attachment Disorder, which were psychiatric in nature. *Exhibits R-7, R-10; Testimony of Lauren Jones.*

13.

GMCF determined that Petitioner was not eligible to participate in the Katie Beckett Program. The Final Denial Letter provided that Petitioner did not meet the criteria for TEFRA/Katie

Beckett because her needs were primarily psychiatric and psychological and “[a] child is not considered appropriate for nursing facility, intermediate (ICFMR), or hospital level of care services when the primary diagnosis or the primary needs of the patient are psychiatric rather than physical or non-psychiatric.” The Denial Letter also explained that no skilled nursing services were indicated on the Level of Care statement, Petitioner’s condition did not meet hospital inpatient-qualifying criteria, and she did not require rehabilitative services five days a week. *Exhibit R-2; Testimony of Lauren Jones.*

14.

Petitioner timely appealed the Final Decision and the matter was brought before OSAH. At the hearing on this matter, Petitioner’s representative contested Respondent’s denial of Petitioner’s application. Specifically, Petitioner’s representative disagreed with Respondent’s definitions of the different levels of care, which effectively excluded the care required to treat her mental disorders from the qualification criteria. *Testimony of [REDACTED]*.

### III. CONCLUSIONS OF LAW

1.

Because this case concerns the denial of Petitioner’s application to receive benefits through the Katie Beckett Program, Petitioner bears the burden of proof. Ga. Comp. R. & Regs. 616-1-2-.07. The standard of proof is a preponderance of evidence. Ga. Comp. R. & Regs. 616-1-2-.21.

2.

Medicaid is a joint federal-state program that provides comprehensive medical care for certain classes of eligible recipients whose income and resources are determined to be insufficient to meet the costs of necessary medical care and services. 42 U.S.C. §§ 1396 *et seq.*; *Moore v. Reese*, 637 F.3d 1220, 1232 (11th Cir. 2011). Participation is voluntary, “but once a state opts to

participate it must comply with federal statutory and regulatory requirements.” *Id.* All states have opted to participate and, thus, each must designate a single state agency to administer its Medicaid plan. *Id.*; 42 C.F.R. § 431.10(a), (b)(1). Georgia has designated the Department of Community Health as the “single state agency for the administration” of Medicaid. O.C.G.A. § 49-2-11(f).

3.

Respondent provides Medicaid benefits under the Katie Beckett program as described under Section 134 of the Tax Equity and Fiscal Responsibility Act of 1982 (TEFRA). 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

42 U.S.C. § 1396a(e)(3); 42 C.F.R. § 435.225(a).

4.

Based on the evidence presented at the hearing, the undersigned concludes that Respondent was correct in its determination that Petitioner does not meet the institutional level of care requirement for participation in the Katie Beckett Program.

5.

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*. 42 C.F.R. § 440.10(i) (emphasis added). Petitioner’s needs, as specified on her Level of Care statement, are psychological or psychiatric in nature; her physician specified that she required comprehensive psychiatric services. The pertinent federal regulations make it

clear that the definition of hospital level of care excludes institutions for the treatment of inpatients with mental diseases. Accordingly, Petitioner does not meet the criteria for hospital level of care for the purposes of Katie Beckett eligibility.

6.

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. 42 C.F.R. § 409.31. Respondent's manual specifies that, "[w]ith respect to an individual who has mental illness or mental retardation, nursing facility level of care services are usually inappropriate unless that individual's mental health needs are secondary to needs associated with a more acute physical disorder." *Part II Information Manual TEFRA/Katie Beckett Deeming Waiver, Level of Care Criteria 35-36* (2013). Although Petitioner's physician recommended that Petitioner receive care five days a week, she failed to specify what this would entail, indicating only that Petitioner required "comprehensive psychiatric services." Without more, there is no indication that Petitioner requires services that must be provided by professional or technical personnel on a daily basis. Therefore, Petitioner does not qualify for Katie Beckett services under nursing facility level of care.

7.

The intermediate care facility for the mentally retarded (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 [a list of] life activities . . .

42 C.F.R. §§ 440.150, 435.1010. Respondent's manual specifies that ICFMR criteria are met only by individuals who have an IQ less than 50 or suffer from a developmental disability.

Petitioner's mental disorders do not meet the specified criteria of ICF/MR level of care. Petitioner's Psychological Assessment listed her IQ as somewhere between 78 and 84, which is well above levels that meet the ICF/MR level of care criteria.

8.

Considering the record in this matter, Petitioner's caregivers have not established that she met the requisite Level of Care to qualify for the Katie Beckett Program. Respondent was therefore correct in its determination that she was ineligible for participation.

#### IV. DECISION

In accordance with the foregoing Findings of Fact and Conclusions of Law, Respondent's decision to deny Petitioner's application to receive benefits under the Katie Beckett Program is hereby **AFFIRMED**.

**SO ORDERED**, this the \_\_\_\_\_ day of October, 2013.

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**MICHAEL MALIHI, Judge**