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

Kevin Westray, Legal Assistant

Petitioner,

Docket No.:

v.

Agency Reference No.:

DEPARTMENT OF COMMUNITY  
HEALTH,

Respondent.

**INITIAL DECISION**

**I. SUMMARY OF PROCEEDINGS**

Petitioner appealed the decision of Respondent, the Department of Community Health, to terminate his coverage under the TEFRA/Katie Beckett Deeming Waiver (hereinafter “Katie Beckett”). The hearing on this matter was held before the undersigned Administrative Law Judge on February 26, 2014, at the Richmond County DFCS Office in Augusta, Georgia.

Petitioner’s parents, \_\_\_\_\_ were present at the hearing, with \_\_\_\_\_ serving as Petitioner’s personal representative. Mr. Fatih Lengerli, Esq., appeared as Respondent’s legal counsel. The following individuals also appeared and provided testimony at the hearing: Dophamia Williams, Katie Beckett Program Specialist, and Lauren Jones, RN, Katie Beckett Review Nurse. For the reasons indicated below, Respondent’s decision to terminate Petitioner’s coverage under the Katie Beckett Deeming Waiver is hereby

**AFFIRMED.**

## II. FINDINGS OF FACT

### *The Katie Beckett Deeming Waiver*

1.

Katie Beckett 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 enables children under the age of 19, who would otherwise be ineligible to participate in Medicaid programs due to their parents' income, to qualify for Medicaid participation based upon their own income. The child must qualify as a disabled individual under § 1614 of the Social Security Act and live at home, rather than in an institution. In addition, the child must require the level of care provided in a hospital, skilled nursing facility, or intermediate care facility for the mentally retarded (ICF/MR). The criteria used to determine whether the child meets level of care are found in Title 42 of the Code of Federal Regulations. 42 C.F.R. § 409.31–33; 42 C.F.R. 435.1010; 42 C.F.R. 440.10; DEP'T OF CMTY. HEALTH, PART II INFORMATION MANUAL TEFRA/KATIE BECKETT DEEMING WAIVER 6–7 (2013) [hereinafter KATIE BECKETT MANUAL]; *Testimony of Dophamia Williams*.

### *The Katie Beckett Program Application Process*

2.

Respondent has contracted with the Georgia Medical Care Foundation (GMCF) to review renewal applications for continued participation in Katie Beckett. *Testimony of Lauren Jones; Exhibit R-1*.

3.

The GMCF Katie Beckett Review Team reviews information submitted with each renewal 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. *Testimony of Lauren Jones; 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, it will issue an Initial Denial of Continued Coverage letter. 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 Continued Coverage letter to the applicant. The applicant then has thirty days in which to request a hearing. *Testimony of Dophamia Williams; Exhibit R-2.*

*Petitioner's Condition*

7.

Petitioner is a fourteen-year-old male born on March 11, 1999. When he was about eighteen months old, he was diagnosed with spinal muscular atrophy (SMA) Type II, "a neuromuscular disease characterized by degeneration of motor neurons, resulting in progressive muscular atrophy and weakness." SMA Type II typically has a more pronounced effect on motor function in the subject's extremities, which inhibits locomotion and ambulation. *Exhibit R-8.*

8.

Because of the physical impairments caused by SMA, Petitioner relies on a motorized wheelchair for ambulation and undergoes rehabilitative therapy to address his muscular weakness. Petitioner has an Individualized Education Plan ("IEP) prepared in collaboration with his high school and parents. Input may also be provided by Petitioner's health care providers, including his primary care physician and specialists. Petitioner's most recent IEP provides for daily physical therapy ("PT") sessions provided by a school paraprofessional, with monthly consultation provided by a licensed physical therapist. He also receives PT three times a month and occupational therapy (OT) three times a month from Ducktails Pediatric Therapy and

Wellness, a pediatric outpatient facility.<sup>1</sup> *Testimony of*  
10, R-11, R-12.

*Exhibits R-8, R-9, R-*

9.

Both of Petitioner's parents are very attentive and active in his care and assist him in performing activities of daily living that he is unable to perform independently, such as transferring from his motorized wheelchair. In addition to the professional therapy services that Petitioner receives, Petitioner's parents also assist their son in performing nightly stretching exercises and other PT and OT exercises in accordance with instructions from Ducktails Pediatric Therapy and Wellness. *Exhibits R-8, R-9, R-16;*

10.

On June 10, 2013, Petitioner underwent spinal fusion surgery at Shriners Hospital for Children to correct severe scoliosis. During the rehabilitation period in the wake of this procedure, Petitioner's motor skills have been further curtailed, and he is not able to use his upper extremities for positioning or transferring. *Exhibits R-7, R-14.*

11.

Fortunately, Petitioner's diagnosis does not affect his cognitive functions. Petitioner currently attends school, where he "excels in his academic classes" and is popular among his peers. According to his IEP, he is expected to graduate from high school in May 2017. *Exhibit R-8.*

#### *Review of Petitioner's Application*

12.

Petitioner's Katie Beckett case was due for renewal on or about July 10, 2013.<sup>2</sup> Petitioner's physician, submitted a DMA-6(A) form to GMCF, which included his

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<sup>1</sup> An IEP meeting was scheduled at Petitioner's high school on Monday, March 3, 2014. It was uncertain from the evidence presented at the hearing whether the school will provide different services for the next academic year, which could include more frequent skilled services by a physical therapist or other provider.

recommendations for Petitioner's pediatric care. Dr. [redacted] listed SMA Type II as Petitioner's diagnosis and indicated on the form that Petitioner did not take any medications. He recommended no diagnostic or treatment procedures and did not include a treatment plan. Where the form called for the physician to recommend the Level of Care, Dr. [redacted] checked the box for "Nursing Facility" and "ICF/MR Facility" and included the handwritten notation "but has able body [sic] parent to take care of him." *Exhibit R-5; Testimony of Lauren Jones.*

13.

On the Level of Care Statement submitted with Petitioner's renewal application, Dr. [redacted] indicated that Petitioner required one PT session a week and one OT session a week and listed "dealing [with] severe weakness" under Petitioner's current skilled needs. Dr. [redacted] did not indicate on the Level of Care Statement that Petitioner received daily therapy services from a paraprofessional at his high school. *Exhibit R-6.*

14.

Petitioner's caregivers also submitted documentation of the OT and PT sessions that Petitioner was receiving at Ducktails and a copy of Petitioner's IEP to GMCF. *Testimony of Lauren Jones; Exhibits R-9, R-10, R-12.*

15.

In reviewing Petitioner's application, the GMCF Review Team took note of the fact that none of the documentation suggested that Petitioner received or required the Level of Care necessary for continued coverage under Katie Beckett. The Review Team noted that Petitioner's physician had recommended only one unit each of OT and PT sessions per week and had otherwise not listed any skilled needs. Since the PT sessions Petitioner received at school were administered

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<sup>2</sup> Petitioner's first renewal application was denied by Respondent due to a technical issue: Petitioner's physician did not clarify his recommended level of care on the Level of Care Statement. *Exhibit R-2.*

by a paraprofessional, and not a licensed physical therapist, the Review Team did not consider them to be skilled services that would indicate that Petitioner met any of the three Levels of Care. The Review Team determined that the PT and OT provided by Ducktails were skilled services that could be considered in determining whether Petitioner met a Level of Care. However, the Review Team concluded that the PT provided by a paraprofessional at his high school were not "skilled" services, and could not be considered in determining his Level of Care.

*Testimony of Lauren Jones; Exhibits R-5, R-6, R-8, R-9, and R-10.*

16.

Based upon the documentation submitted with Petitioner's application, the GMCF Review Team concluded that Petitioner did not meet any Level of Care requisite for continued coverage under Katie Beckett. An Initial Denial of Continued Coverage letter was issued to his caregivers on or about July 29, 2013. In the Initial Denial letter, Respondent provided that the denial of continued coverage was based upon the following:

- [Petitioner] does not require daily skilled/professional nursing services because his condition is not so inherently complex that care cannot be safely and effectively performed by unskilled healthcare personnel as evidence by documentation submitted which states:
  - Per the DMA6 signed, 5/29/13, at the age of fourteen he carries the diagnosis of Spinal Muscular Atrophy
  - Per the Level of Care Statement the physician recommends the Nursing Facility level of care; however, he does not order the level of services to meet criteria under that level of care. Physical and occupational therapy are ordered at one time per week each. No Skilled Nursing services are ordered. No hospitalizations are reported to have occurred during the review year.
  - Per the documentation submitted he receives Physical and Occupational therapy three times per month each with Ducktails Pediatric Therapy and Wellness with notes ending 4/30/13
  - Per the IEP he has once a month Physical therapy consults and does stretching exercises with his paraprofessional.
  - Based on the above, he does not meet criteria for Hospital or Nursing Facility level of care at this time. For approval the beneficiary must require skilled nursing or skilled rehabilitation services, or both, on a daily basis.

- The child's condition does not meet hospital inpatient-qualifying criteria which necessitates:
  - Nursing interventions every 4-8 hours
  - Post critical care or weaning monitoring
  - Procedures/interventions which require hospitalization/interventions or
  - IV medications which require hospitalization
- Services for this child are not required 24 hours per day, nor are they required to be ordinarily furnished on an inpatient basis which is a requirement of 42 CFR 409.31-409.34 as evidenced by previous documentation
- Rehabilitative services are not required five days per week per documentation submitted which is a requirement of 42 CFR 409.31-409.34.

*Exhibit R-3; Testimony of Lauren Jones.*

17.

Upon receiving the Initial Denial letter, Petitioner's caregivers sought supplementary documentation to support their contention that their son met Level of Care. GMCF was provided supplemental letters from \_\_\_\_\_, Petitioner's high school physical therapist; Dr.

\_\_\_\_\_, M.D., Petitioner's primary care physician; \_\_\_\_\_, a certified physician's assistant; and Dr. \_\_\_\_\_, MD, the orthopedic surgeon who performed Petitioner's spinal fusion surgery. Petitioner's caregivers also included documentation of the spinal fusion surgery performed on Petitioner on June 10, 2013. Petitioner's mother included along with this documentation a personal letter in which she described her son's needs and explained the care that he received. *Exhibits R-11, R-13, R-14, and R-15.*

18.

\_\_\_\_\_ described Petitioner's physical therapy regimen in her letter and recommended that he continue to receive one skilled physical therapy session a month. She also included a descriptive timeline of the PT consultation sessions that she completed with Petitioner. The timeline shows that \_\_\_\_\_ would consult with Petitioner and his school paraprofessional once a month throughout 2012. *Exhibit R-11.*



19.

wrote in his letter that he treated Petitioner for SMA and opined that Petitioner required "total care." did not elaborate further on his assessment of Petitioner's needs. *Exhibit R-13.*

20.

indicated in her letter that Petitioner was in need of "in-home health services due to his medical condition." She expressed her opinion that Petitioner required such services in order to assist with "grooming, bathing, feeding, and rotating in bed." *Exhibit R-15.*

21.

explained in his letter that Petitioner required assistance with activities of daily living as well as Range-of-Motion (ROM) exercises for his lower extremities. Petitioner's need for care, wrote , had increased since he had undergone spinal surgery on June 10, 2013, which resulted in further restriction of Petitioner's ability to reposition or transfer. *Exhibit R-14.*

22.

In her letter to GMCF, Petitioner's mother wrote that she had encountered difficulty in obtaining PT and OT services for her son due to issues with insurance coverage. She explained that she was unable to obtain more frequent PT services through Petitioner's school because the Burke County school district did not allow for additional sessions unless the child suffered from a cognitive impairment. Petitioner's mother included a detailed description of the daily activities that she performs in caring for her son. *Exhibit R-16.*

23.

After reviewing the supplementary materials, the Review Team concluded that the application was still lacking sufficient documentation to demonstrate that Petitioner required the skilled or rehabilitative services that would constitute a qualifying Level of Care. Although the skilled professionals familiar with Petitioner's care were of the opinion that Petitioner needed therapeutic services, none of them contended that Petitioner required those services in such an amount or to a degree that would meet Level of Care. Accordingly, Respondent issued a Final Denial of Continued Coverage letter to Petitioner's caregivers on or about September 23, 2013. Petitioner timely requested a hearing to dispute Respondent's determination and the matter was brought before OSAH. *Testimony of Lauren Jones; Exhibit R-4.*

24.

At the hearing on this matter, Petitioner's mother explained that she was unable to obtain the skilled services that her son required due to the limitations of her insurance,<sup>3</sup> financial constraints, the scarcity of facilities that offer PT and OT in the area, and the school's policy on PT. She contended that her son nonetheless required the amount of skilled services necessary to meet Skilled Nursing Facility Level of Care. She further argued that her son actually received those services, because the therapeutic sessions furnished by the paraprofessional at Petitioner's school were skilled services, and that, therefore, her son met the criteria for Nursing Facility Level of Care. Petitioner's mother testified that since Petitioner was initially found eligible for Katie Beckett, he has not received more than two sessions per week of PT or OT. She queried why Respondent had not taken adverse action in her son's Katie Beckett case earlier since he was not receiving at least five PT or OT sessions each week. Finally, Petitioner's mother

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<sup>3</sup> Petitioner's mother explained that, before her insurance carrier would cover PT or OT for her children, she would have to meet a \$1,300.00 deductible. This effectively prohibited Petitioner's caregivers from obtaining PT or OT as a private-pay patient. Services provided by Ducktails are currently funded through Katie Beckett.

submitted that Petitioner had become more dependent on others since his June 2013 spinal surgery and that his need for services had likewise increased. *Testimony of*

### III. CONCLUSIONS OF LAW

1.

Because this case concerns the termination of Petitioner's coverage under Katie Beckett, Respondent 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.

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 continued Katie Beckett coverage.

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); KATIE BECKETT MANUAL 6. Petitioner's needs, as described in the documentation submitted with his application, are not continuous; he does not require the intensity or frequency of care that he would receive in a hospital. Accordingly, Petitioner does not meet the criteria for hospital level of care for the purposes of Katie Beckett eligibility.

6.

Skilled Nursing Facility Level of Care is appropriate for individuals who do not require hospital care, but who, on a regular basis, require licensed nursing services, rehabilitation services, or other health-related services ordinarily provided in an institution. KATIE BECKETT MANUAL 6. The individual must require services that are so inherently complex that they can be safely and effectively performed only by, or under the supervision of, technical or professional personnel . . .

AND

the service is one of the following or similar and is required seven days per week:

- Overall management and evaluation of a care plan for an individual who is totally dependent in all activities of daily living,
- Observation and assessment of an individual's changing condition because the documented instability of his or her medical condition is likely to result in complications, or because the documented instability of his or her mental condition is likely to result in suicidal or hostile behavior
- Intravenous or intramuscular injections or intravenous feeding
- Enteral feeding that comprises at least 26 per cent of daily calorie requirements and provides at least 501 milliliters of fluid per day
- Nasopharyngeal or tracheostomy aspiration
- Insertion and sterile irrigation or replacement of uprapubic catheters
- Application of dressings involving prescription medications and aseptic techniques
- Treatment of extensive decubitus ulcers or other widespread skin disorder
- Heat treatments as part of active treatment which requires observation by nurses
- Initial phases of a regimen involving administration of medical gases
- Rehabilitation nursing procedures, including the related teaching and adaptive aspects of nursing, that are part of active treatment

OR

The service is one of the following or similar and is required five days per week:

- Ongoing assessment of rehabilitation needs and potential; services concurrent with the management of a patient care plan,
- Therapeutic exercises and activities performed by PT or OT,
- Gait evaluation and training to restore function to a patient whose ability to walk has been impaired by neurological, muscular, or skeletal abnormality,
- Range of motion exercises which are part of active treatment of a specific condition which has resulted in a loss of, or restriction of mobility,
- Maintenance therapy when specialized knowledge and judgment is needed to design a program based on initial evaluation,
- Ultrasound, short-wave, and microwave therapy treatment,
- Hot pack, hydrocollator, infrared treatments, paraffin baths, and whirlpool treatment when the patient's condition is complicated by circulatory deficiency, areas of desensitization, open wounds, etc. and specialized knowledge and judgment is required,
- Services of a speech pathologist or audiologist when necessary for the restoration of function in speech or hearing

OR

The service is one of the following only if additional special medical complication requires that it be performed or supervised by technical or professional personnel:

- Administration of routine medications, eye drops, and ointments

- General maintenance care of colostomy or ileostomy
- Routine services to maintain satisfactory functioning of indwelling bladder catheters,
- Changes of dressings for non-infected postoperative or chronic conditions,
- Prophylactic and palliative skin care, including bathing and application of creams, or treatment of minor skin problems
- Routine care of incontinent individuals, including use of diapers and protective sheets
- General maintenance care (e.g. in connections with a plaster cast)
- Use of heat as a palliative and comfort measure (e.g. whirlpool and hydrocollator)
- Routine administration of medical gases after a regimen of therapy has been established
- Assistance in dressing, eating, and toileting,
- Periodic turning and positioning of patients,
- General supervision of exercises that were taught to the individual and can be safely performed by the individual including the actual carrying out of maintenance programs

AND

- The service needed has been ordered by a physician
- The service will be furnished either directly by, or under the supervision of, appropriately licensed personnel
- The beneficiary must require skilled nursing or skilled rehabilitation services, or both, on a daily basis.

KATIE BECKETT MANUAL 35-36.

7.

Although many professionals familiar with Petitioner's condition and treatment averred that he required therapeutic services, none of them specified that he required the frequency of skilled services that would qualify him for continued Katie Beckett coverage. statement that Petitioner requires "total care" does not adequately describe Petitioner's skilled needs, and is not reasonably supported by the evidence on record. Similarly, assertion that Petitioner requires assistance with daily care, ROM exercises, and periodic turning and positioning, does not express a need for the amount of skilled services that would meet Level of Care. averred that Petitioner was in need of services such as grooming, bathing, feeding, and rotating in bed, which are not skilled services encompassed by Skilled Nursing Facility Level of Care. See 42 C.F.R. § 409.31-.34; KATIE BECKETT MANUAL 35-36.

8.

As the GMCF Review Team noted during its consideration of Petitioner's renewal application, none of the documentation supports the proposition that Petitioner requires OT or PT five times a week. Indeed, much of the documentation on record refutes such a proposition. In the Level of Care statement, Dr. [redacted] submitted that Petitioner required only one unit of OT and one unit of PT per week and listed no additional skilled needs. Petitioner's registered physical therapist opined that Petitioner required her skilled PT services only once a month and submitted a record documenting monthly PT sessions. Because the PT sessions performed at Petitioner's school are administered by a paraprofessional, and are not "furnished either directly by, or under the supervision of, appropriately licensed personnel," they do not qualify as skilled services. Additionally, records from Ducktails confirm that Petitioner's therapeutic regimen consisted of three OT and three PT sessions each month. These records contain no statements to the effect that these sessions are insufficient to ameliorate Petitioner's condition. Indeed, Petitioner's IEP reports that Petitioner is "very independent" and that he was realizing positive results from his PT. Finally, Petitioner's mother admitted that he has never received more than two PT or OT sessions per week since he has been covered by Katie Beckett.

9.

Petitioner's caregivers submitted insufficient documentation to suggest Petitioner meets any Level of Care due to skilled needs that manifested in the wake of his spinal fusion surgery.<sup>4</sup> The documentation suggests that, while the surgery may have temporarily worsened Petitioner's ability to transfer and reposition himself, it did not result in new skilled nursing needs or skilled rehabilitation needs. The discharge records from Shriners Hospital indicate that, after his

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<sup>4</sup> This could change, of course, if, upon re-application, Petitioner's caregivers submit documentation that their son's needs have increased in the wake of his surgery.

surgery, Petitioner was prescribed medication, cautioned against engaging in strenuous activity, and encouraged to perform ROM exercises as instructed by physical therapy. No additional skilled services are prescribed. *Exhibits R-7.*

10.

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. Petitioner is very clearly not appropriate for ICF/MR Level of Care. Petitioner does not have mental retardation, a severe chronic disability attributable to Cerebral Palsy or epilepsy, or a condition closely related to mental retardation. Petitioner's cognitive functions are not impaired by his SMA. Indeed, as noted in his IEP, Petitioner functions at an academic level commensurate, or even exceeding, that of his peers.

11.

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



**IV. DECISION**

In accordance with the foregoing Findings of Fact and Conclusions of Law, Respondent's decision to terminate Petitioner's coverage under Katie Beckett as provided in the Final Denial letter sent to Petitioner's caregivers on or about September 23, 2013 is **AFFIRMED**.

**SO ORDERED**, this the 7<sup>th</sup> day of March, 2014.

A handwritten signature in black ink, appearing to read "Patrick Woodard", written over a horizontal line.

**M. PATRICK WOODARD**  
Administrative Law Judge