

STATE OF VERMONT

HUMAN SERVICES BOARD

In re) Fair Hearing No. 19,059
)
Appeal of)

INTRODUCTION

The petitioner appeals the decision by the Department of Disabilities, Aging, and Independent Living (DAIL) finding her daughter ineligible for Disabled Children's Home Care (DCHC or "Katie Beckett") benefits under Medicaid. The issue is whether the child meets the medical eligibility requirements of the program.

PROCEDURAL HISTORY

The Department's decision in this matter is dated April 4, 2004. The petitioner filed her appeal on May 10, 2004. The matter was continued several times for further medical assessments and purported departmental review of additional evidence.

At a status conference held on July 20, 2005 the hearing officer advised the parties that based on the evidence in the record, more specifically the several unequivocal reports from the child's treating physicians (see *infra*), he would recommend a decision in the petitioner's favor. At that

time, and in a phone conference held on October 19, 2005, the hearing officer advised the parties that the record would close on November 18, 2005.

In a letter dated November 15, 2005, the Department requested additional time in which to contact the child's treating physicians. The hearing officer then advised the parties that he would hold the record open until December 30, 2005.

On January 3, 2006 the Department submitted a memorandum that essentially argues against applying the so-called "treating physician rule" in Katie Beckett cases. Other than this, the Department has not submitted any additional evidence or rationale in this matter since its decision in April 2004.

LEGAL AND FACTUAL ISSUES

The parties agree that to qualify for the Katie Beckett program it must be shown that a child requires a level of medical and/or personal care that is provided by a hospital, nursing home, or intermediate care facility for the mentally retarded (ICF-MR), and that such care can be provided in the child's home at no greater cost than in an appropriate institution. See W.A.M. § 200.23. In this case there does

not appear to be any dispute that the petitioner and her husband can provide care for their daughter for less cost (probably, for *far* less cost) than she would be charged if she were admitted to an ICF-MR. The issue is whether sufficient evidence establishes that the child's medical and developmental status is such that she requires such level of care—i.e., would she be eligible for admission into an ICF-MR?

In addressing this question the parties appear to agree that in Vermont the criteria for admission to an ICF-MR is set forth as follows (per a Department Memorandum dated February 24, 1993):

- a. The individual is mentally retarded or has a related condition, AND
- b. The individual has one of the following:
 - (1) A severe physical disability requiring substantial and/or routine assistance in performing self-care and daily living functions;
 - (2) Substantial deficits in self-care and daily living skills requiring intensive, facility-based training; OR
 - (3) Significantly maladaptive social and/or interpersonal behavior patterns requiring an ongoing, professionally-supervised program of intervention.

DISCUSSION OF THE EVIDENCE

It appears that the Department's decision in this matter consists entirely of the following hand-written statement by a "nurse reviewer" dated April 20, 2004:

While the child is hearing impaired with communication difficulties they are not of a sufficient problem that would require institutional placement.

This decision appears to be based largely, if not entirely, on a May 29, 2003 disability determination made by the child's school district finding her eligible for special education services. This document refers to an assessment of the child done by a "team" at the "Child Development Clinic". The clinic team noted that due to the child's "documented speech and language deficits both in receptive and expressive realms" it was "impossible to compute a Verbal Scale IQ or a Full Scale IQ". However, the team's assessment of the child's "Performance Scale IQ" was 54, although the team noted that the scores should be used "cautiously and only as a measure of (her) currently (sic) intellectual status".

Other than quarterly progress notes from the child's speech and language clinic, the Department has not cited or produced any other medical evidence or assessment of the child upon which its April 2004 decision was based.

Following that decision, and since she requested this hearing, the petitioner has submitted several reports for the Department's consideration (reproduced in the hearing officer's Recommendation, dated January 11, 2006). In its memorandum the Department argues that it has "reviewed" these above reports, but that it has found them "not relevant" to the issue of whether the child requires ICF-MR level of care. Regardless of the Department's view of the weight to be accorded the opinions of treating physicians, the above reports constitute virtually the entire medical record in this matter. In the nearly two years that the petitioner's appeal has been pending the Department has conducted no further evaluation or review of the child on its own.

The Board finds the above reports to constitute simply overwhelming evidence that the petitioner's daughter meets the Katie Beckett eligibility criteria.¹ The reports are internally consistent and consistent with each other. The doctors specifically address, and appear to fully understand, the applicable legal criteria. There is no reason whatsoever to doubt their qualifications, expertise, and credibility in evaluating their patient's need for institutional services.

¹ Namely Sections (a) and (3) of the ICF-MR criteria set forth on pages two and three, *supra*.

Moreover, the doctor's assessments of mental retardation are fully consistent with the child's tested IQ. Although the child's actual IQ testing was problematic, the fact remains that her Performance score of 54 is the *only* such assessment in the record, and there is no question that such a score falls well within the range for mental retardation.

Most significant, however, is the fact that the above reports are absolutely unrebutted and uncontroverted by any other examining source, medical or otherwise. Whatever the arguable legal standard to be applied in evaluating medical evidence in such cases, to say nothing of basic notions of government agency fairness and competence, based on the above reports it must be concluded that the petitioner has overwhelmingly demonstrated that her daughter qualifies for DCHC Katie Beckett benefits.

ORDER

The Department's decision is reversed.

#