



Minnesota Department of **Human Services**

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**DECISION OF  
STATE AGENCY  
ON APPEAL**

In the Appeal of: [REDACTED] for [REDACTED]  
For: Medical Assistance – Adoption Assistance  
Agency: Minnesota Department of Human Services / [REDACTED] County  
Docket: 195555

On August 10, 2017, Human Services Judge Jonathan R. Hall held an evidentiary hearing under Minn.Stat. § 256.045, subd. 3.

The following people appeared at the hearing:

[REDACTED], Appellant  
[REDACTED], Agency Representative, Minnesota Department of Human Services  
[REDACTED], Agency Representative, [REDACTED] County

The human services judge, based on the evidence in the record and considering the arguments of the parties, recommends the following findings of fact, conclusions of law, and order.

## STATEMENT OF ISSUES

The issue raised in this appeal is:

Whether the agency correctly denied the appellant's request to renegotiate her at-risk adoption assistance agreement because the appellant failed to specify her daughter's disabilities and the increased level of parenting required due to her daughter's attention deficit / hyperactivity disorder diagnosis.

## FINDINGS OF FACT

1. On June 16, 2017, the Minnesota Department of Human Services (DHS) (agency) sent the appellant a written notice denying the appellant's request for a conversion of the adoption assistance agreement for her daughter ██████████ to one that pays a \$427.00 monthly benefit because the request did not document ██████████ disabilities and level of parenting associated with an at-risk conversion monthly payment. *Exhibit 2; ██████████ Testimony*. The appellant filed an appeal challenging that decision, which the agency received on June 29, 2017. *Exhibit 1*. Human Services Judge Jonathan R. Hall held an evidentiary hearing via telephone on August 10, 2017 and held the record open until September 29, 2017 to receive additional evidence from the parties. The judge closed the record, consisting of three exhibits,<sup>1</sup> on that date.

2. On December 3, 2012, the appellant entered into an adoption assistance agreement with the agency regarding her adoption of ██████████ (DOB ██████████). *Exhibit 1; Appellant Testimony*. The agreement provided that ██████████ eligibility for adoption assistance was based solely on her being "at risk" of developing physical, mental, emotional, or behavioral disabilities. The agreement provided that when a child's adoption assistance is based on the child being "at risk" of "developing one or more of the disabilities aforementioned, no payment will be made unless and until the potential disability manifests itself as documented by an appropriate professional, and the commissioner authorizes payment by modifying this agreement accordingly." *Id.*

3. On May 10, 2017, ██████████ underwent a DHS Supplemental Adoption Assistance Needs Assessment. *Exhibit 2; ██████████ Testimony*. The assessment was conducted by Dr. ██████████, Ph.D., LP, who diagnosed ██████████ with attention deficit/hyperactivity disorder (ADHD). The assessment determined that ██████████ attention scores were out of the normal range, but were not similar or identical to the scores of children with ADHD. *Id.* This suggested that her attention problem may not be caused by ADHD. On the other hand, ██████████ shows borderline ADHD, attention deficit in the mild range. *Id.* However, she may soon learn how to control her attention in various settings, and grow out of her attention issues. *Id.* Dr. ██████████ did not recommend medication because ██████████ was doing well in school, but that if learning or behavior issues surface, medication should be

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<sup>1</sup> Exhibit 1 (Appeal); Exhibit 2 (State Agency Appeal Summary); Exhibit 3 (9/12/17 Correspondence from Dr. ██████████, MD).

started. *Id.* Some of [REDACTED] success may be due to having a skilled and tolerant teacher, and re-evaluation should be considered in the future if she has problems with future teachers. *Id.* [REDACTED] parents reported having problems keeping her focused at home. Dr. [REDACTED] recommended that the appellant restructure [REDACTED] home environment to one similar to that of her more disciplined school routine. *Id.* Dr. [REDACTED] determined that [REDACTED] functional attention is about 15 minutes. *Id.*

4. On May 30, 2017, the agency received the appellant's request to renegotiate the appellant's adoption assistance agreement with the agency. *Exhibit 2; [REDACTED] Testimony.*

5. On June 16, 2017, the agency denied the appellant's request to renegotiate [REDACTED] adoption assistance agreement because the request did not include specific evidence of her disabilities and the level of parenting associated with the assessment's Level I designation requested by [REDACTED] County and the appellant. *Exhibit 2; [REDACTED] Testimony.* [REDACTED] diagnosis appears to place her in the mild range of ADHD, with the agency determining that her symptoms may have another cause, or that if her ADHD is the cause, she may eventually grow out of her symptoms. *Id.* The agency contended that the evidence submitted showed that [REDACTED] had some behavioral issues at school, but was able to manage them after school personnel intervened. Medication was not indicated because [REDACTED] medical providers felt that she was progressing well enough with her school work. *Id.* The [REDACTED] County Adoption Assistance Needs Assessment included a section entitled Level I, which is a level of care that indicates that a child requires a structured environment with supervision by an adult caregiver; and that mild to moderate assistance is required to supplement the child's self-care capabilities. *Id.* However, the appellant indicated only that [REDACTED] met the criterion that she "required a minimal amount of additional supervision above and beyond that provided to a typical same-aged child." *Id.* The appellant stated that [REDACTED] is a high-energy child, but did not state that she exhibits other behavioral issues, such as a lack of personal hygiene, or that she needs to be supervised because she is unsafe when alone "as we often see with children who are at Level I or higher." *Id.* For those reasons, the agency denied the appellant's request to renegotiate the agreement. *Id.*

6. Level I criteria describe a child who requires a structured environment with supervision by an adult caregiver, where mild to moderate assistance is required to supplement self-care capabilities. A child with problems listed below may meet Level I criteria if she requires a regimented daily schedule and assistance with routine performance of activities of daily living:

- a. withdrawn
- b. night terrors
- c. poor hygiene
- d. oppositional
- e. eating or elimination problems
- f. delayed growth and maturation
- g. requires minimal amount of additional supervision above and beyond that provided to a typical same-age child
- h. over five, needs help with eating, toileting or dressing

- i. physically disabled, but self-sufficient (i.e. deaf)
- j. procedures required to prevent infections or contagion to child
- k. weekly therapy, counseling or support group sessions
- l. home tutoring because of learning disability
- m. required to facilitate/participate in infrequent or long distance face-to-face visitation between child and birth relatives, including siblings
- n. other (specify). *Exhibit 2.*

7. [REDACTED] is diagnosed with ADHD, and met six to eight of the nine symptoms of inattention, including:

- a. sometimes fails to give close attention to details or makes careless mistakes;
- b. sometimes has difficulty sustaining attention in tasks or play activities;
- c. often does not seem to listen when spoken to directly;
- d. often does not follow through on instructions and fails to finish schoolwork or chores;
- e. often has difficulty organizing tasks and activities;
- f. often loses things necessary for tasks or activities;
- g. is often easily distracted by extraneous stimuli; and
- h. is often forgetful in daily activities. *Exhibit 2; [REDACTED] Testimony.*

8. [REDACTED] met eight of nine symptoms of hyperactivity-impulsivity, with six being sufficient for an ADHD diagnosis, primarily hyperactive-impulsive type. *Exhibit 2; [REDACTED] Testimony.* [REDACTED] parents have implemented several strategies to help her at home. They enrolled her in swimming lessons so she can burn energy and feel pride in learning a new skill. She is learning to ride a bike. Her parents have tried to engage her in leap tv, which incorporates educational skills with dancing. *Id.* They installed a jungle gym in the back yard. They have worked with [REDACTED] school to reduce the amount of homework during the week because she is unable to focus at home to do the work. [REDACTED] struggles with social skills and interrupts others whenever she wants to speak. *Id.* Both of [REDACTED] parents placed her in the clinical range on the Inattention Scale of the Connors 3 – Parent Rating Scale (Poor concentration or attention, difficulty keeping his/her mind on work, distractibility, bore easily), the Hyperactivity/Impulsivity Scale (High activity levels, restless and/or impulsive), and the predictive Global Index. *Exhibit 2.*

9. [REDACTED] school teacher, [REDACTED], did not place [REDACTED] in the clinical range of any of the scales. She wrote, “[REDACTED] sometimes does not listen to all of the directions. Needs to have them repeated;” and “She works slowly but carefully and usually stays on task to finish her work.” *Exhibit 3.*

10. [REDACTED] pediatrician, Dr. [REDACTED], MD, contended that [REDACTED] medical condition has several negative impacts at home and school. She is easily distracted with a short attention span that keeps her from concentrating on her tasks. She can manage school, but only because she is in a smaller class with teachers who make an effort to provide behavioral interventions. Because she makes such an effort at school, [REDACTED]

experiences more difficulties in completing tasks at home. Her parents must exert much more effort than normal to assist her because the home environment tends to be less structured than the school day. *Exhibit 3; Appellant Testimony.*

11. When the appellant and her husband adopted ██████ in 2012, they were informed that she was an “at risk” child, meaning that, while she did not have a diagnosis due to her age, if any behavioral issues arose as she got older, they could renegotiate the adoption assistance agreement. When she received the diagnosis from Dr. ██████, the appellant went to her county worker to see if her adoption assistance agreement could be renegotiated. *Exhibit 1; Appellant Testimony.* ██████ is on the go from the minute she wakes up in the morning until she goes to bed at night. While her attention span to an activity is 15 minutes, it is only when she is actually participating in an activity. *Id.* She does not have down time during the day due to her hyperactivity. The appellant and her husband must always be ready with activities for ██████ because she is constantly asking what she can do next. *Id.* ██████ can handle the school day but is unable to concentrate on homework when she gets home. *Id.* ██████ talks constantly and interrupts others because she does not understand that it is not always her turn to talk. *Id.*

## CONCLUSIONS OF LAW

1. ***Jurisdiction.*** A person may request a state fair hearing by filing an appeal either: 1) within 30 days of receiving written notice of the action; or 2) within 90 days of such notice if the appellant can show good cause why the request for an appeal was not submitted within the thirty day time limit. *Minn. Stat. § 256.045, subd. 3(i).* The appellant submitted her appeal request within 30 days of receiving the agency’s notice of action, and so the appeal is timely and the Commissioner has jurisdiction.

2. ***Determination of Adoption Assistance Benefits; Negotiation of Adoption Assistance Agreement.*** (a) A monthly payment is provided as part of the adoption assistance agreement to support the care of a child who has manifested special needs. The amount of the payment made on behalf of a child eligible for adoption assistance is determined through negotiation between the adoptive parent and the child-placing agency on behalf of the commissioner. The negotiation shall take into consideration the circumstances of the adopting parent and the needs of the child being adopted. The income of the adoptive parent must not be taken into consideration when determining eligibility for adoption assistance or the amount of the payments under section 259A.20. At the written request of the adoptive parent, the amount of the payment in the agreement may be renegotiated when there is a change in the child's needs or the family's circumstances.

(b) The adoption assistance agreement of a child who is identified as an at-risk child must not include a monthly payment unless and until the potential disability upon which the eligibility for the agreement was based has manifested during childhood. *Minn. Stat. § 256A.25, subd. 1.*

3. ***Renegotiation of Adoption Assistance Agreement.*** An adoptive parent of a child with an adoption assistance agreement based on the child being an at-risk child may request

renegotiation of the agreement to include a monthly payment. The parent must have written documentation from a qualified expert that the potential disability upon which eligibility for adoption assistance was approved has manifested. Documentation of the disability must be limited to evidence deemed appropriate by the commissioner. Prior to renegotiating the agreement, a reassessment of the child must be conducted using an assessment tool prescribed by the commissioner according to section 259A.15, subdivision 3. The reassessment must be used to renegotiate the agreement to include an appropriate monthly payment. The agreement must not be renegotiated unless the commissioner and the adoptive parent mutually agree to the changes. The effective date of any renegotiated agreement must be determined according to requirements and procedures prescribed by the commissioner. *Minn. Stat. § 256A.25, subd. 2(b)*.

4. **Assessment Tool.** An assessment tool prescribed by the commissioner must be completed for any child who has a documented disability that necessitates care, supervision, and structure beyond that ordinarily provided in a family setting to children of the same age. This assessment tool must be submitted with the adoption assistance certification and establishes eligibility for the amount of assistance requested. *Minn. Stat. § 256A.15, subd. 3*.

5. **Level I Criteria.** This child requires a structured environment with supervision by an adult caregiver. Mild to moderate assistance is required to supplement self-care capabilities. A child with problems listed below may require a regimented daily schedule and assistance with routine performance of activities of daily living:

- a. withdrawn
- b. night terrors
- c. poor hygiene
- d. oppositional
- e. eating or elimination problems
- f. delayed growth and maturation
- g. requires minimal amount of additional supervision above and beyond that provided to a typical same-age child
- h. over five, needs help with eating, toileting or dressing
- i. physically disabled, but self-sufficient (i.e. deaf)
- j. procedures required to prevent infections or contagion to child
- k. weekly therapy, counseling or support group sessions
- l. home tutoring because of learning disability
- m. required to facilitate/participate in infrequent or long distance face-to-face visitation between child and birth relatives, including siblings
- n. other (specify). See [REDACTED] *County Human Services Division, Community Social Services and Behavioral Health, Minnesota Department of Human Services "Supplemental Adoption Assistance Needs Assessment" form.*

6. In this case, the preponderant evidence supports a conclusion that the agency incorrectly denied the appellant's request to renegotiate [REDACTED] adoption assistance agreement when it determined that [REDACTED] does not meet Level I criteria for a child who "requires minimal amount of additional supervision above and beyond that provided to a

typical same-age child” based on the determination that she did not exhibit “behavioral issues, a lack of personal hygiene, or a child that needs to be supervised because she is unsafe alone as we often see with children who are at Level I or higher.” The agency provided no evidence to support the notion that a child must meet more than one criteria in order to meet Level I criteria. The Level I criteria appear to state that a child who “requires a structured environment with supervision by an adult caregiver” meets Level I criteria. The itemized criteria merely represent examples of the nature of a particular child’s need for that environment. Dr. [REDACTED] recommended that the appellant modify [REDACTED] home environment to something like what she has at school to address [REDACTED] hyperactive behavior at home as compared to school. I conclude that his recommendation merits renegotiation of the [REDACTED] adoption assistance agreement because the behaviors for which [REDACTED] was “at risk” have manifested. While the statutory language allows the agency to decline renegotiation where there is not mutual agreement as to what the specific changes to the agreement should be, I conclude that the agency erred when it denied the appellant’s request to renegotiate [REDACTED] adoption assistance agreement without attempting renegotiation at all. For these reasons, I recommend that the agency’s decision be reversed.

RECOMMENDED ORDER

THE HUMAN SERVICES JUDGE RECOMMENDS THAT the Commissioner of Human Services REVERSE the agency’s decision to deny the appellant’s request to renegotiate [REDACTED] adoption assistance agreement.

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Jonathan R. Hall  
Human Services Judge

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Date

ORDER OF THE COMMISSIONER

IT IS THEREFORE ORDERED THAT the Commissioner of Human Services adopts the human services judge’s recommendation as her final decision.

FOR THE COMMISSIONER OF HUMAN SERVICES:

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## FURTHER APPEAL RIGHTS

**This decision is final, unless you take further action.**

Appellants who disagree with this decision should consider seeking legal counsel to identify further legal action.

If you disagree with this decision, you may:

- **Request the appeal be reconsidered.** The request must state the reasons why you believe your appeal should be reconsidered. The request may include legal arguments and may include proposed additional evidence supporting the request. The request must be *in writing* and be made *within 30 days of the date of this decision*. The request may be sent to *Appeals Division, Minnesota Department of Human Services, P.O. Box 64941, St. Paul, MN 55164-0941*. You may also fax the request to *(651) 431-7523*. *A copy of the request must be sent to the other parties*. To ensure timely processing of your request, please include the name of the Human Services Judge assigned to your appeal, along with the docket number for your appeal.
- **Start an appeal in the district court.** This is a separate legal proceeding that you must start *within 30 days of the date of this decision*. You start this proceeding by serving a written copy of a notice of appeal upon the Commissioner of the Department of Human Services and any other adverse party of record, and filing the original notice and proof of service with the court administrator of the county district court. The law that describes this process is Minnesota Statute § 256.045, subdivision 7.<sup>2</sup>

cc: [REDACTED], Appellant, for [REDACTED]  
DHS 0944, [REDACTED]

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<sup>2</sup> County agencies do not have the option of appealing decisions about Supplemental Nutrition Assistance Program (SNAP), Minnesota Family Investment Program (MFIP), or Diversionary Work Program (DWP) benefits to district court under 7 C.F.R. § 273.15(q)(2) and Minnesota Statute § 256J.40.