

DECISION OF

STATE AGENCY

ON APPEAL

In the Appeal of:	
For:	Medical Assistance – Community Alternatives for Disabled Individuals (CADI) Program
Agency:	County
Docket:	203274

On February 7, 2018, Human Services Judge Ngoc Nguyen held an evidentiary hearing under Minnesota Statutes, section 256.045, subdivision 3.

The following people appeared at the hearing:

Appellant's mother; Agency Representative, Supervisor.

The 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 ISSUE

The issue raised in this appeal is:

Whether the Agency properly denied Appellant's request for participation in the Community Alternatives for Disabled Individuals (CADI) Program, because Appellant's needs could be met through the Medical Assistance State plan; and

PROCEDURAL HISTORY

On October 17, 2017, a MnChoices assessment was completed in County. *Exhibit A, C; Testimony of agency.* Appellant was assessed at 10.5 hours of PCA services. A notice of action was sent to Appellant on November 3, 2017 informing him that he was denied the CADI and PCA waiver services because he did not have a disability certification from the State Medical Review Team (SMRT) or Social Security and he was enrolled in a health plan. *Exhibit A, Attach. 1; Exhibit B.* On January 11, 2018, Appellant appealed the agency's denial of the CADI waiver. *Exhibit B.* On February 7, 2018, Human Services Ngoc Nguyen held a telephone evidentiary hearing on the matter. The record remained open until February 20, 2018 to allow the agency and Appellant to submit additional documents. The record closed at the end of day on February 20, 2018 and the judge accepted into the record three exhibits with attachments.¹

FINDINGS OF FACT

1. *Appellant.* Appellant is year old male who lives in the community with his family. *Exhibit A, attach. 2; Testimony of* Appellant was involved in a motor vehicle accident in May 2017 where he sustained serious injuries after hitting a light post going 90 miles per hour and was ejected over 100 feet from the car. *Exhibit A, attach. 2.* Appellant was in a coma after the accident, had respiratory failure, internal bleeding and multiple fractures to his brainstem/cerebellum, pelvis, ribs, and spine. Appellant was on a ventilator, sustained renal laceration, bilateral pelvic fractures, femoral dislocations, CVA, weakness on his right side, abdominal compartment syndrome, upper extremity deep vein thrombosis, rectal bleeding, radial artery occlusion, and recurrent GI bleeding. *Id.* Appellant requires daily wound monitoring and treatments to his abdomen. He has had two separate brain surgeries, uses a wheelchair, and is not verbally communicative. Appellant suffers from depression and anxiety and determined dependent in all ADLs and IDLs. *Id.*

2. Current Assessment and Agency's Position. On October 17, 2017, a

¹ Exhibit A – Agency Summary with attachments 1-3: (1) Notice of Action dated November 3, 2017; (2) MnChoices Eligibility Summary; (3) Appeal; Exhibit B- Redetermination Letter from Social Security dated February 6, 2018; Exhibit C- Addendum Summary from Agency with Notice of Action dated January 9, 2018, Screen-Shot of Appellant's MMIS Medical Assistance Eligibility Panel, MAXIS Disability Panel Screenshot.

MnChoices Assessor visited Appellant to determine his need for long term services and support. *Exhibit A, attach. 2.* At the time of the assessment, Appellant was residing at

Transitional Care Unit (TCU) and in receipt of 24 hour support. The goal at the time was for Appellant to transition home to the community to reside with his family. *Id.*

3. *PHN Findings*. At the time of the assessment, Appellant was residing at *Exhibit A*. The assessor determined Appellant ineligible for any services as he was enrolled in a health plan. The agency asserted that the health plan was responsible for any home and community-based service needs that may be required.

a. The assessor determined Appellant did not meet CADI waiver eligibility because he did not meet criteria of planning to return or remain in community living. *Id.* At the time of the assessment on October 17, 2017, Appellant resided at and was receiving 24-hour care. He did not move to his family's residence until November 15, 2017. *Id.*

b. Appellant did not meet CADI criteria because he was not certified disabled by Social Security or SMRT. *Id. Attach. 2; Exhibit C.* The agency reported that there are multiple federal and state systems that stores clients' medical assistance and disability certification information. *Exhibit C.* The agency accessed MMIS (Medicaid Management Information System) and MAXIS (the statewide master computer system). Both systems did not update Appellant's disability status until January 9, 2018. *Id.*

c. The agency sent a notice of action on November 3, 2017 denying Appellant's request for CADI waiver.

d. Appellant's MNsure Medical Assistance through MNsure began on May 1, 2017. *Exhibit A*.

e. On December 11, 2017, Appellant submitted an application for Medical Assistance Long-Term Care. The agency asserted that long-term care services could not be covered without an approved application. *Exhibit C*.

f. According to the January 9, 2018 notice, Appellant was approved Medical Assistance effective December 1, 2017 with a disability basis of eligibility. *Id.*

4. On or about February 2, 2018, Appellant was given a new MnChoices assessment and was approved for 10.5 hours of PCA services. *Testimony of agency;*

At the time of the hearing, the agency had not made an updated determination on CADI services; however the representative reported that it would appear that Appellant was eligible for CADI services as he is currently in receipt of Medical Assistance as a disabled person. *Testimony of agency*.

5. *Appellant's Position.* Appellant's mother **Example 1** reported that Appellant was uninsured at the time of his accident in May 2017 and the hospital

submitted the paperwork immediately for health care coverage. *Testimony of* asserted that Appellant was certified disabled by Social Security in August Ms. 2017 and started to receive benefits in December 2017. Id. Appellant has multiple bone breaks and is unable to walk, talk or complete and ADLs. *Id.* Ms. provided a letter entitled, "Redetermination Summary for Determining Continuing Eligibility for Supplemental Security Income Payments." Exhibit B. This letter is dated February 6, 2018. It states that Ms. provided the information to support continuing eligibility for Supplemental Security Income payments. Appellant's was determined disabled with an effective date of May 6, 2017. Id. According to the letter, Appellant resided in an institution from June 1, 2017 to November 15, 2017 when he moved into a private residence. *Id.* Ms. reported Appellant needed a ramp at the home for Appellant's wheel chair. Had Appellant been approved for CADI services upon leaving the institution on November 15, 2017, funds from the waiver could have assisted in paying for the wheel chair ramp. *Testimony of* Ms. Ms. agreed that at the time of the hearing, Appellant was not approved for CADI services. Id.

CONCLUSIONS OF LAW

1. **Jurisdiction.** A person may request a state fair hearing by filing an appeal either: 1) within thirty days of receiving written notice of the action; or 2) within ninety 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.* The appeal is timely and the Commissioner of Human Services has jurisdiction over this appeal under Minn. Stat. § 256.045, subd. 3.

2. **Burden of Proof.** In an administrative appeal, the burden of proof is governed by the state or federal laws that apply to the hearing. *Minn. Stat. §256.0451, subd. 17.* When there is no specific law, the party who seeks that a certain action be taken must prove the facts at issue by a preponderance of the evidence. *Id.* Therefore, in this appeal involving the denial of Appellant's request to be approved for participation in the CADI program, the Appellant proposing the denial is overturned has the burden of showing why the Agency's actions should be reversed.

3. **Preponderance of the Evidence.** The "preponderance of the evidence" means, in light of the record as a whole, the evidence leads the human services judge to believe that the finding of fact is more likely to be true than not true. *Minn. Stat. § 256.0451, subd.* 22. The legal claims or arguments of a participant do not constitute either a finding of fact or a conclusion of law, except to the extent the human services judge adopts an argument as a finding of fact or conclusion of law. *Id.* The human services judge's recommended order must be based on all relevant evidence. *Minn. Stat. § 256.045, subd. 5.*

4. CADI Waiver and Services.

a. The Minnesota Department of Human Services has authorization from the federal government to offer services exceeding the scope and limitations of the standard Minnesota Medicaid program, known as Medical Assistance. *Minn. Stat.* §

256B.49, subd. 11; 42 U.S.C. §§ 1396 et seq. The authorized federal waivers are intended to avoid institutionalization, to not exceed the cost of institutionalization, and to make broader services available to address recipient needs unmet by Medical Assistance. *Id.* These home and community-based waiver programs include the CADI waiver program.

b. The CADI program provides funding for home and community-based services that offer an alternative to institutionalization and promote the optimal health, independence, safety and integration of those who would otherwise require a nursing facility level of care. *Minnesota Department of Human Services Community-Based Services Manual* ("CBS Manual").²

5. CADI Waiver Eligibility.

a. Eligibility for participation in the CADI waiver program requires that the applicant:

- i. is less than 65 years old;
- ii. is eligible for Medical Assistance;
- iii. has been certified as disabled by the Social Security Administration or the State Medical Review Team; and
- iv. has an assessed need for supports and services over and above those available through the Medical Assistance State plan.

Minnesota Department of Human Services Community-Based Services Manual ("CBS Manual").

b. In addition, CADI participation requires that the applicant requires a hospital level of care or a nursing facility level of care. *Minn. Stat.* § 256B.49, subd. 14(b). For individuals age 21 and older, the determination of need for nursing facility level of care shall be based on certain criteria. *Minn. Stat.* § 256B.0911, subd. 4(e). Specifically, the applicant must meet one or more of the following nursing facility level of care criteria:

- i. the person requires formal clinical monitoring at least once per day;
- ii. the person needs the assistance of another person or constant supervision to begin and complete at least four of the following activities of living: bathing, bed mobility, dressing, eating, grooming, toileting, transferring, and walking;
- iii. the person needs the assistance of another person or constant supervision to begin and complete toileting, transferring, or positioning and the assistance cannot be scheduled;
- iv. the person has significant difficulty with memory, using information, daily decision making, or behavioral needs that require intervention;

² The Community-Based Services Manual can be accessed from the Minnesota Department of Human Services website at http://mn.gov/dhs. Specifically, select "General Public", then "Publications, forms and resources", then "Manuals", and then "Community-Based Services Manual".

- v. the person has had a qualifying nursing facility stay of at least 90 days;
- vi. the person meets the nursing facility level of care criteria determined 90 days after admission or on the first quarterly assessment after admission, whichever is later; or
- vii. the person is determined to be at risk for nursing facility admission or readmission through a face-to-face long-term care consultation assessment as specified in section 256B.0911, subdivision 3a, 3b, or 4d, by a county, tribe, or managed care organization under contract with the Department of Human Services. The person is considered at risk under this clause if the person currently lives alone or will live alone or be homeless without the person's current housing and also meets one of the following criteria:
 - 1. the person has experienced a fall resulting in a fracture;
 - 2. the person has been determined to be at risk of maltreatment or neglect, including self-neglect; or
 - 3. the person has a sensory impairment that substantially impacts functional ability and maintenance of a community residence.

Minn. Stat. § 144.0724, subd. 11(a).

c. These criteria are further delineated in Minnesota's federallyapproved CADI waiver plan. That plan broadly defines nursing facility level of care as follows:

Nursing facility level of care determinations may be based on a variety of conditions or needs, including complex medical needs, unstable health, need for assistance with activities of daily living or instrumental activities of daily living, or dementia or other cognitive or behavioral impairments and subsequent need for supervision or assistance.

*Community Access for Disability Inclusion (CADI) waiver; federal waiver # MN.0166.R06.00.*³

d. The waiver specifies that the nursing facility level of care criteria applies to those who have the need for at least one of the following:

- i. Physical assistance or ongoing supervision to accomplish activities of daily living or someone to complete activities of daily living for the individual;
- ii. Physical assistance or ongoing supervision to accomplish instrumental activities of daily living to decrease vulnerability for self-neglect or maltreatment by another, or someone to complete instrumental activities of daily living for the individual;

³ Federally-approved Medicaid waivers can be found at:

https://www.medicaid.gov/medicaid/section-1115-demo/demonstration-and-waiver-list/waivers_faceted.html

- iii. Assistance with activities or instrumental activities of daily living resulting from a sensory impairment;
- iv. Extended state plan home care or other delegated health services necessary to prevent or delay nursing facility admission secondary to a complex or unstable medical need;
- v. Home modification or equipment that will maximize independence and contribute to meeting health and safety needs;
- vi. Services or supports to access community resources or maintain social networks and relationships;
- vii. Caregiver supports to supplement and extend supports provided by informal caregivers; or
- *viii.* Supervision, direction, cueing, or hands-on- assistance to perform activities or instrumental activities of daily living due to cognitive or behavioral limitations.

Community Access for Disability Inclusion (CADI) waiver; federal waiver # MN.0166.R06.00.

6. The Agency must act on an application for Medical Assistance no later than 45 days from the date of a Medical Assistance application on behalf of a person who is neither blind nor disabled. *Minn. R. § 9505.0900, subp. 2.* In the case of application on behalf of a blind or disabled person, the Agency must complete the eligibility determination no later than 60 days from the date of the application. *Id.* The Agency must not deny an application earlier than the end of the 45- or 60-day period because of the applicant's refusal to provide the required information. *Id.*

7. The Agency must notify a person in writing of its decision on the applicant's Medical Assistance eligibility within the time limits above. *Minn. R.* § 9505.0100. If the determination is to deny eligibility, the Agency must give the applicant the reasons for the denial and state the applicant's right to appeal the denial. *Id.*

8. Assessment and Support Planning. A person requesting assessment, services planning, or other assistance intended to support community based living, must be visited by a long-term care consultation team within 20 calendar days after the date on which an assessment was requested or recommended. Face-to-face assessments must be conducted accordingly. *Minn. Stat. § 256B.0911, subd. 3a.*

a. Face-to-face assessment completed as part of eligibility determination for the alternative care, elderly waiver, community access for disability inclusion, community alternative care, and brain injury waiver programs under sections 256B.0913, 256B.0915, and 256B.49 is valid to establish service eligibility for no more than 60 calendar days after the date of assessment. *Id. at subd. 3a(i).*

b. The effective eligibility start date for programs in paragraph (i) can never be prior to the date of assessment. If an assessment was completed more than

60 days before the effective waiver or alternative care program eligibility start date, assessment and support plan information must be updated and documented in the department's Medicaid Management Information System (MMIS). Notwithstanding retroactive medical assistance coverage of state plan services, the effective date of eligibility for programs included in paragraph (i) cannot be prior to the date the most recent updated assessment is completed. *Id. at subd.* 3a(j).

c. A long-term services and supports assessment (MnChoices) is valid for 60 days from the face-to-face assessment visit. *Community Based Services Manual (CBSM), Assessment and Support Planning.*

9. Conclusion.

a. The preponderance of the evidence show that at the time of the October 17, 2017 assessment, the agency did not have a determination by the Social Security Administration or SMRT of Appellant's disability. Appellant did not provide evidence that a determination was made at that time. The letter from Social Security Administration provided by Appellant's mother is dated February 6, 2018 and only confirms that Appellant's disability began on May 6, 2017. The totality of the evidence does show that Appellant was disabled at the time of the assessment only.

b. The preponderance show that at the time of the assessment on October 17, 2017, the plan was for Appellant to eventually move to a residence in the community with his family. However, no date was discussed and Appellant was receiving 24 hour care at an inpatient facility.

c. The preponderance of the evidence show that on January 9, 2018, the agency received notification from the Social Security Administration of his disability determination. At that time, the agency requested closure of Appellant's Medical Assistance through MNsure and activated Medical Assistance with an eligibility as a disable person.

d. Appellant's October 17, 2017 MnChoices assessment was valid for only 60 days; therefore at the time the agency was notified of the disability determination on January 9, 2018, the assessment could no longer be utilized. For that reason, the agency correctly requested another face-to-face assessment which appeared to have been performed the first part of February 2018. Appellant was approved the maximum amount of PCA services and at the time of the hearing on February 7, 2018, a CADI eligibility determination had not been made; however the agency expressed confidence that Appellant would be approved for services.

e. For these reasons, the agency was correct to deny Appellant's request for CADI services on November 3, 2017 as he was still living at **Canadian** a 24-hour rehabilitation facility and there was no determination provided that Appellant was certified disabled by SMRT or Social Security. He did not meet eligibility for CADI services. If the agency denies CADI waiver based on the new assessment, Appellant may file another appeal.

RECOMMENDED ORDER

THE HUMAN SERVICES JUDGE RECOMMENDS THAT the Commissioner of Human Services AFFIRM the Agency's denial of Appellant's application to participate in the CADI waiver program dated November 3, 2017. This decision does not affect CADI eligibility determination made in any subsequent assessment.

Ngoc Nguyen Human Services Judge Date

ORDER OF THE COMMISSIONER

IT IS THEREFORE ORDERED THAT based upon all the evidence and proceedings, the Commissioner of Human Services adopts the judge's recommended findings of fact, conclusions of law, and order as the Commissioner's final decision.

FOR THE COMMISSIONER OF HUMAN SERVICES:

Date

cc: Appellant's mother DHS Andersen Building - 0967 County Human Services,

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 recourse.

If you disagree with this decision, you may:

- Request the Appeals Office reconsider this decision. 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; however, if you submit additional evidence, you must explain why it was not provided at the time of the hearing. The request must be *in writing*, be made *within 30 days of the date of this decision*, and a *copy of the request must be sent to the other parties*. Send your written request, with your docket number listed, to: *Appeals Office, Minnesota Department of Human Services, P.O. Box 64941, St. Paul, MN 55164-0941*. You may also fax the request to (651) 431-7523.
- 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 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 7.⁴

⁴ 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.