
Appellant: [REDACTED]

For: Medical Assistance -- Developmental
Disability Waiver

**DECISION OF
STATE AGENCY
ON APPEAL**

Agency: [REDACTED] County/[REDACTED]

Docket: 210453

On July 31, 2018, Human Services Judge Kevin T. Slator held a hearing under Minnesota Statutes, section 256.045, subdivision 3.¹

The following people appeared at the hearing:

For appellant:

[REDACTED];

[REDACTED], appellant's father and guardian;

[REDACTED], appellant's mother, guardian, and appeal representative;

[REDACTED].

For the agency:

[REDACTED], Appeals Lead;

[REDACTED], MnCHOICES Certified Assessor;

¹The Minnesota Department of Human Services conducts state fair hearings pursuant to Minnesota Statutes, section 256.045, subdivision 3. The Department also conducts maltreatment and disqualification hearings on behalf of the Minnesota Departments of Health and Education pursuant to Minnesota Statutes, sections 626.556, subdivision 10i; and 626.557, subdivision 9d.

██████████, MnCHOICES Certified Assessor Supervisor;

██████████, Case Manager Supervisor (██████████);

██████████, Waiver Case Manager (██████████);

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 ISSUE

The issue raised in this appeal is:

Whether the agency properly assessed the appellant's needs in its Developmental Disabilities (DD) waiver screening that resulted in a reduction in her Consumer Directed Community Supports (CDCS) budget from \$93,607.90 to \$49,742.20.

Recommended Decision: REVERSE the agency as to the following ratings in the 2018 DD screening:

Qt. 12 (Diagnosis): Change to F72, severe intellectual disabilities.

Qt. 32 (Expressive Communication): Change rating to 06 ("uses single signs or gestures to express wants or needs").

Qt. 33 (Receptive Communication): Change rating to 03 ("limited comprehension - one to two words").

Qt. 36B (Daily Living Skills/House Management): Change rating to 05 ("person is unable to participate in activity").

Qt. 36D (Community Living): Change rating to 05 ("person is unable to participate in activity").

Qt. 37 (Level of Supports and Services): Change rating to 04 ("person requires 24-hour awake supervision").

Qt. 38A (Eating non-nutritive substances): Change rating to 03 (moderate).

Qt. 38E (Inappropriate Sexual Behavior): Change to 04 (severe).

Qt. 41 (Current Services/Planned Services): Change to include 44 under "current services" and "planned services."

PROCEDURAL HISTORY

1. On June 20, 2018, the agency sent a written Notice of Action (Service Plan) to inform appellant of the results of an April 30, 2018, DD Screening Document. *Exhibit 1*. On July 5, 2018, appellant filed an appeal. *Exhibit A*.
2. On July 31, 2018, the human services judge held an evidentiary hearing on the matter at ██████ County's satellite office at ██████, Minnesota. At the agency's and appellant's requests, the record was held open for post-hearing submissions that are noted below. On August 2, 2018, the record closed, consisting of the hearing testimony and six exhibits.²

FINDINGS OF FACT

1. Appellant was born on July 4, 1990, and is 28 years old. Appellant lives at home with ██████ and ██████. Appellant's health conditions include severe intellectual disabilities, autism, seizure disorder, and static encephalopathy. ██████ testimony; ██████ testimony.
2. Appellant's previous DD screening was conducted on June 18, 2012. *Exhibit 1, Attachment 5*. The current screening was conducted on April 30, 2018, by ██████, a certified MnCHOICES assessor. *Exhibit 1, Attachment 6*.
3. The screening included appellant's primary diagnosis from June 2, 2016, which was F79, or "unspecified intellectual disabilities." *Exhibit 1, Attachment 7*. However, appellant's treating physician, ██████, M.D., recently updated and corrected appellant's primary diagnosis to F72, or "severe intellectual disabilities." *Exhibit B*. The agency does not dispute this corrected diagnosis. ██████ testimony.
4. In connection with the DD screening dated April 30, 2018, the agency prepared a "Community Support Plan – Rule 185 Complaint" ("CSP") dated the same day. The plan contains an annual budget that is established by DHS, and not the agency, based on the screening document. *Exhibit 1, Attachment 10*; ██████ testimony.

² Exhibit A – Appeal to State Agency and letter dated July 5, 2018. Exhibit B – Letter dated July 26, 2018, to HSJ from ██████ with attached diagnostic code for appellant, and letter dated July 24, 2018, to HSJ from ██████, speech therapist for appellant. Exhibit C – Letter dated July 26, 2018, to HSJ from ██████, neurological music therapist, ██████, for Music. Exhibit D -- ██████'s response dated August 2, 2018, to Exhibit 2. Exhibit 1 – Agency Appeal Summary. Exhibit 2 – DD Screening Document Codebook, Challenging Behavior Scales, Definitions Rating Scale.

5. As a result of the current DD screening, appellant's annual CDCS budget amount, as stated in the CSP, decreased from \$93,607.90 to \$49,742.20. *Exhibit 1 (June 20, 2018, letter from agency to [REDACTED] and [REDACTED]); Attachment 10.*

6. After the appeal hearing, the agency provided materials on which the DD screening was based. They include DHS's (1.) Screening Document Codebook, containing instructions on completing the fields in a DD assessment, (2.) Definitions of Challenging Behavior Scales, and (3.) Challenging Behavior Screening Rating Scale, for use in determining the frequency/intensity rating for a behavior. *Exhibit 2.*

7. Appellant challenges several ratings contained in the current DD screening, including the following:

A. Expressive communication (Qt. 32). [REDACTED] noted that appellant's speech therapist provided a statement that appellant does not use an "augmentative communicative aid." *Exhibit B.* The correct rating is therefore 06 ("uses single signs or gestures to express wants or needs") and not 07 ("uses augmentative communicative aid"). *Exhibit B.*

B. Receptive communication (Qt. 33). [REDACTED] noted that appellant has "limited comprehension" and does not understand and use sign language. A rating of 03 ("limited comprehension – one to two words") is correct and not 04 ("comprehends signs/gestures/modeling prompts"). *Exhibits A, B.*

C. Daily Living Skills/House Management (Qt. 36B) and Community Living (Qt. 36D). [REDACTED] stated that appellant is unable to participate in daily living skills and house management. A rating of 05 ("person is unable to participate in activity") is correct and not 04 ("person participates with another's assistance for all or a portion of an activity"). A rating of 05 and not 04 is correct for "community living" for the same reason. *Exhibits A, B.*

D. Level of support and service (Qt. 37).

(1.) [REDACTED] testified that [REDACTED] told her appellant sleeps well, and she has to be up with her during the night only when she is sick. [REDACTED] *testimony.*

(2.) [REDACTED] testified that she does not sleep well because appellant often wakes and wanders during the night. Appellant is not given socks to wear at night so that she will not wander outside. [REDACTED] stated that appellant requires "24-hour awake supervision," so a rating of 04 ("person requires 24 hour awake supervision") rather than 03 ("person needs 24 hour plan of care") is correct.

(3.) [REDACTED] provided direct care to appellant for five years until January 2015, and still occasionally sees appellant and her family socially. [REDACTED] said people caring for appellant always have to keep their eyes and ears open. Appellant would cry out in her sleep and get up at least once during the night every night. [REDACTED] said she never got a full night's sleep when caring for appellant. [REDACTED] testimony.

(4.) [REDACTED] is an LPN who works at a medical clinic. [REDACTED] was a personal care assistant for appellant for 3 years beginning in 2001, when appellant was 11 years old, and is still socially involved with appellant and her family. [REDACTED] still does respite care for appellant on occasion, including overnights. [REDACTED] testified that appellant's sleeping has not improved in 17 years since she started working with her. A "baby gate" still has to be used to keep her upstairs when she wakes up during the night. [REDACTED] believes appellant still requires 24-hour care because she has unpredictable and aggressive behavior at night. For example, she runs hot water and does not know it will burn her. Someone needs to be awake to ensure that appellant does not hurt herself when she is up during the night. In general, [REDACTED] believes appellant is harder to manage now and is not getting any better. [REDACTED] testimony.

(5.) [REDACTED] testified that he sleeps very lightly when [REDACTED] is not home because appellant gets up and wanders around the house during the night.

8. Ratings under "Challenging/Excess Behavior Scales include: 01 (none), 02 (mild), 03 (moderate), 04 (severe), 05 (very severe), and 99 (unknown). Appellant challenges the following ratings:

A. Eating non-nutritive substances (Qt. 38A). [REDACTED] disputed the rating of 02. In a November 2017 assessment, the agency found that appellant "will put things that look like food she [likes] in her mouth." *Exhibit 1, Attachments 9, 12.* [REDACTED] testified that she based the rating on [REDACTED]'s statement that appellant's problem of eating non-nutritive substances was not as severe as it used to be. [REDACTED] testimony. [REDACTED] testified that a rating of 02 is correct. [REDACTED] testimony.

B. Injurious to self (Qt. 38B). In a November 2017 assessment, the agency found that appellant "picks at her skin to the point of infection." *Exhibit 1, Attachments 9, 12.* [REDACTED] asserts that the rating should be 05 and not 04. *Exhibit B.*

(1.) The agency's November 2017 assessment found that appellant "will rectally dig when she is constipated and staff [must] monitor to provide support." *Exhibit 1, Attachment 9, 12.*

(2.) [REDACTED] said appellant would often dig at sores or engage in rectal digging. [REDACTED] said appellant's habit of rectal digging worsened over time. [REDACTED] testimony.

(3.) [REDACTED] testified that appellant's rectal digging is a "newer thing." [REDACTED] testimony.

(4.) [REDACTED] testified that appellant picks at scratches or bug bites, preventing them from healing. [REDACTED] has not seen appellant engaging in rectal digging since she was potty-trained. [REDACTED] testimony.

(5.) [REDACTED] testified that appellant engages in rectal digging almost every night, and occasionally in the morning caregivers or family find balls of fecal material that must be cleaned up. [REDACTED] testimony.

C. Aggressive, physical (Qt. 38C). [REDACTED] asserts that the rating should be 04 and not 03. *Exhibit B*.

(1.) [REDACTED] testified that [REDACTED] told her appellant pushes and pulls others aggressively as a way for her to communicate (because appellant is nonverbal), but the problem was less severe than in the past. [REDACTED] testified that she considered "severe" to be a behavior that occurs every day, based on the "Challenging Behaviors Screening Rating Scale." [REDACTED] testimony; *Exhibit 2*.

(2.) [REDACTED] testified that appellant is "in her face" all of the time and sometimes pulls [REDACTED]'s face to get her attention. In public, appellant pushes her way to the front of lines. [REDACTED] testimony.

(3.) [REDACTED] testified that appellant nearly every day got aggressive and physical with someone, sometimes with [REDACTED]. On many occasions, appellant shoved or pushed [REDACTED], sometimes to the floor, or pushed [REDACTED]'s face. Appellant also shoved other customers when she was in a store. [REDACTED] said appellant's aggressive and physical behavior with others has also worsened over time. When in public, appellant would make loud noises that would scare others, especially children, when she was angry or frustrated. [REDACTED] testimony.

(4.) [REDACTED] testified that appellant sometimes grabs [REDACTED] by her face to get her to whistle. Appellant has no social awareness, and in an elevator pushes other people away or swats their hands away. At home appellant grabs food or the TV remote control from the hands of others and invades their personal space. [REDACTED] testimony.

(5.) [REDACTED] testified that appellant has gotten much stronger and does not know her own strength. She has gotten physically aggressive with care workers, causing them to quit caring for appellant. [REDACTED] testimony.

D. Aggressive, verbal/gestural (Qt. 38D). In a November 2017 assessment, the agency found that appellant

yells loudly – not in an aggressive manner but can be inappropriate for the setting. She in general is not aggressive. She at times has pushed or pulled but more so to communicate. She tends to have limited person space boundaries and will get very close to people and will also take items [from] people. *Exhibit 1, Attachments 9, 12.*

(1.) [REDACTED] asserts that the rating should be 04 and not 02. *Exhibit B.* She testified that appellant jumps and shrieks when she is in public on an elevator, which is perceived as frightening and threatening behavior by others who do not understand appellant. [REDACTED] testimony.

(2.) [REDACTED] testified that [REDACTED] reported that appellant yells inappropriately in public, and that scares and intimidates other people. [REDACTED] testimony.

(3.) [REDACTED] testified that appellant has no “indoor voice.” [REDACTED] testimony.

E. Inappropriate sexual behavior (Qt. 38E). [REDACTED] asserts that the rating should be 04 and not 01. [REDACTED] testified that appellant once pulled her pants down when they were attending a basketball game. [REDACTED] testimony. [REDACTED] told [REDACTED] appellant yells in public that causes others to be frightened. [REDACTED] testimony.

(1.) [REDACTED] testified that she did not ask [REDACTED] directly about whether appellant engages in inappropriate sexual behavior, but instead asked about offensive or disruptive behavior. [REDACTED] testimony.

(2.) [REDACTED] said appellant would masturbate every day when she came home from school on the floor in her room. In public, appellant would pull her pants and underwear down, exposing her private area, when she had to use a bathroom. [REDACTED] testimony.

(3.) [REDACTED] testified that appellant often masturbates when she needs to use the bathroom. She pulls down her pants and underwear, exposing herself. [REDACTED] testimony.

(4.) [REDACTED] echoed the testimony of other witnesses regarding appellant's inappropriate sexual behavior. [REDACTED] testimony.

F. Property destruction (Qt. 38F). In a November 2017 assessment, the agency found that appellant "will run water to the point of overflowing the sink." *Exhibit 1, Attachments 9, 12*. [REDACTED] testified that, during the assessment, [REDACTED] showed her a sun room that is called appellant's room, and said in the past appellant often threw and broke things in the room. [REDACTED] testified that she saw appellant in the room, vocalizing and bouncing on an exercise ball. [REDACTED] testified that she gave a rating of 03 because appellant no longer throws things as often as she did a year or more earlier, and does not break things as often. [REDACTED] testimony.

G. Runs away (Qt. 38G). [REDACTED] asserts that the rating should be 05 and not 01. *Exhibit B*.

(1.) The agency's 2017-2018 Coordinated Services and Supports Plan noted that an abuse prevention and risk management plan were necessary based on appellants' "vulnerability and inability to identify dangerous situations." *Exhibit 1, Attachment 12*. [REDACTED] testified that [REDACTED] reported that appellant runs away in public when something catches her eye, and she has no concept of safety or danger. [REDACTED] concluded that appellant's behavior is not intentional but is spontaneous, and does not meet the definition of "runs away" contained in the challenging behavior scales: "Person purposefully leaves without telling others or departs from the supervision of staff unexpectedly." [REDACTED] concluded appellant's behavior in running away is captured by a rating of 03 under self-preservation ("is not capable of self-preservation"). [REDACTED] testimony.

(2.) [REDACTED] said appellant's caregiver must be "vigilant" because of appellant's habit of running. Appellant would run away or try to run away if she saw something interesting outside, sometimes more than once per day. Once appellant ran away at the airport and police had to be called to help find her. [REDACTED] testimony.

(3.) [REDACTED] witnessed many occasions when appellant ran into traffic without any concern for her safety. [REDACTED] said appellant is "quick," and once jumped out of a car and ran into traffic. [REDACTED] testimony.

(4.) [REDACTED] testified that she was surprised about appellant's rating under "runs away," because appellant's potential run is "hugely concerning." [REDACTED] testimony.

(5.) [REDACTED] testified that appellant ran away into the crowd at a WNBA basketball game. [REDACTED] testimony.

H. Temper outbursts (Qt. 38I). [REDACTED] asserts that the rating should be 05 and not 03. *Exhibit B.*

I. Current and Planned Services (Qts. 41 and 42). [REDACTED] states that questions 41 (“current services”) and 42 (“planned services”) failed to note that appellant receives day training and habilitation consisting of center-based non-work activity (44E). [REDACTED] *testimony; Exhibit B.*

CONCLUSIONS OF LAW

1. The Commissioner of Human Services has jurisdiction over appeals involving matters listed in Minnesota Statutes, section 256.045, subdivision 3(a).

2. ***Jurisdiction and timeliness.*** Unless federal or Minnesota law specifies a different time frame in which to file an appeal, an individual or organization specified in this section may contest the specified action by submitting a written request for a hearing to the state agency within 30 days after receiving written notice of the action or within 90 days of such written notice if the person shows good cause why the request was not submitted within the 30 day time limit. *Minnesota Statutes, section, 256.045, subdivision 3(i).* The individual filing the appeal has the burden of proving good cause by a preponderance of the evidence. *Id.*

3. ***Burden of persuasion.*** The burden of persuasion is governed by specific state or federal law and regulations that apply to the subject of the hearing. If there is no specific law, then the participant in the hearing who asserts the truth of a claim is under the burden to persuade the human services judge that the claim is true. *Minnesota Statutes, section 256.0451, subdivision 17.* In this case, because appellant is challenging the correctness of the agency’s DD screening, appellant bears the burden of persuasion.

4. ***Medical assistance waivers.*** 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. *Minnesota Statutes, section 256B.49; United States Code, title 42, sections 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 DD waiver program that appellant participates in.

5. ***Assessment and community support plan required.*** If a person is diagnosed as having a developmental disability, the county of financial responsibility is required to (1)

conduct (or arrange for) a needs assessment by a certified assessor, (2) develop a community support plan according to section 256B.0911, and (3) authorize services identified in the person's coordinated service and support plan developed according to subdivision 1b.

Minnesota Statutes, section 256B.092, subdivisions 1, 7(a).

6. ***Admissible evidence and scope of review.*** The agency asserted that the record should be confined to information presented during the April 30, 2018, DD screening. However, appellant disputed the accuracy of the findings and conclusions contained in the screening, and presented contrary evidence at the appeal hearing. This evidence is relevant and admissible and was considered in reaching this decision.

7. ***Analysis and conclusions.***

A. As discussed below, some of the ratings contained in the current DD screening document are inaccurate. This is partly to insufficient attention given by the assessor to some sections of the screening. However, because the assessor had a limited opportunity to observe appellant, information presented by those in close contact with appellant was vitally important to the assessor's ability to make accurate findings and reach accurate conclusions, and to making correct ratings. The information presented to the assessor was, in certain areas, incomplete.

B. Based on evidence presented in the form of exhibits received into the record and testimony at the appeal hearing, a preponderance of the evidence supports a conclusion that some of the information and ratings contained in appellant's April 30, 2018, DD screening are correct, while others are incorrect and should be changed, as follows:

- (1.) Qt. 12 (Diagnosis): The correct primary diagnosis ("Diagnosis 1") is F72, severe intellectual disabilities, as agreed between appellant and the agency.
- (2.) Qt. 32 (Expressive Communication): [REDACTED]'s undisputed testimony establishes that the correct rating is 06 ("uses single signs or gestures to express wants or needs").
- (3.) Qt. 33 (Receptive Communication): [REDACTED]'s undisputed testimony establishes that appellant has limited comprehension and does not understand and use sign language. Therefore, a rating of 03 ("limited comprehension - one to two words") is correct.
- (4.) Qt. 34 (Self-Preservation): Appellant did not challenge this rating, and the agency indicated that it includes appellant's tendency to risk harm to herself by running from her family or caregivers in public. Nevertheless, a rating of 03 ("is not capable of self-

preservation") is accurate.

- (5.) Qt. 36B (Daily Living Skills/House Management): This factor is described as follows:

An age appropriate skill, often referred to as domestic skills, the person performs to live in a clean, comfortable and normalized environment. Types of skills included are food preparation, cleaning, routine tasks, and appliance or device use. *Examples: cooking, baking, vacuuming, sweeping, washing dishes, bed making, washing clothes, table setting, use of telephone, dishwasher, television, alarm clock.*³

A preponderance of the evidence establishes, as [REDACTED] testified, that appellant is unable to participate in daily living skills and house management. A rating of 05 ("person is unable to participate in activity") is therefore the correct rating and not 04 ("person participates with another's assistance for all or a portion of an activity").

- (6.) Qt. 36D (Community Living): This factor is described as follows:

Age appropriate skills necessary for participation in and access to community environments. *Examples: social communication skills, awareness of accessible community environments, street safety, accessing transportation.*⁴

A preponderance of the evidence establishes that appellant lacks age-appropriate skills to participate in and access community environments. A rating of 05 ("person is unable to participate in activity") is therefore the correct rating and not 04 ("person participates with another's assistance for all or a portion of an activity").

- (7.) Qt. 37 (Level of Support & Services): A preponderance of the evidence establishes that appellant cannot be safely left alone for short periods of time at night, that her nocturnal behavior is potentially dangerous to herself, and that she requires overnight supervision. A rating of 04 ("person requires 24-hour awake supervision") is therefore more correct than 03 ("person needs 24-hour plan of care").

- (8.) Qt. 38A (Eating non-nutritive substances): The agency's 2017 assessment describes appellant's tendency to "put things that look like food she [likes] in her mouth," but no evidence was presented as to how frequently this occurs. According to the Challenging Behavior Screening Rating Scale, the description of "mild" (based on a score of 0-6) is

³ "Definitions of Independent Living Skills Categories," Minnesota Department of Human Services Disability Services Division, Issued: January 1, 2004, http://www.dhs.state.mn.us/main/groups/manuals/documents/pub/dhs_id_017131.pdf.

⁴ "Definitions of Independent Living Skills Categories," Minnesota Department of Human Services Disability Services Division, Issued: January 1, 2004, http://www.dhs.state.mn.us/main/groups/manuals/documents/pub/dhs_id_017131.pdf.

“interferes with no one, easy to ignore.” *Exhibit 2.* Ignoring appellant every time she puts a “non-nutritive substance” into her mouth may risk her safety and not be appropriate. However, there was no evidence or testimony of incidents in which appellant has been harmed (or potentially harmed) by such behavior, which would warrant a rating of severe or very severe. Therefore, a rating of 03 (moderate) is appropriate.

(9.) Qt. 38B (Injurious to Self): The definition of this behavior is as follows:

Person engages in behavior that intentionally causes injury or has significant potential for intentionally causing injury to their own body. Includes putting self in dangerous situations. *Example: Person intentionally runs into traffic, has suicidal behavior, self-hitting, self-biting, head banging, self-burning, self-poking/stabbing, rectal digging, pulling out hair or uses objects to the body.*

Appellant’s habit of picking at sores or bug bites on her skin, and to engage in rectal digging when she is constipated, does not appear to be behavior that is intended to cause injury to herself, and does not have the potential for injury, such as self-hitting, self-biting, head banging, self-burning, etc. Arguably, the correct behavior intensity rating is moderate (“interferes with self only and can be ignored, may require some redirection, minor disruption”) rather than severe (“interferes with others, requires staff intervention to redirect or block behavior, major disruption”). Appellant’s behavior would not meet the definition of very severe (“disrupts entire area, unit, apartment or building, requires immediate staff intervention to address behavior, may cause serious injury (skin or tissue damage)”). The rating given by the agency, 04 (severe), is therefore appropriate and correct.

(10.) Qt. 38C (Aggressive, Physical): The definition of this behavior is as follows:

Person engages in behavior that intentionally causes physical pain to other people or to animals. A person who causes physical pain due to involuntary movement is not considered to have physical aggression toward others. *Example: Person hits, pinches, kicks, scratches, bites, throws objects at others or uses objects to hurt others.*

Appellant’s behavior clearly is sometimes physically aggressive, but there is no evidence of an intent to cause physical pain in others. Rather, as [REDACTED] noted, appellant pushes and pulls others aggressively as a way for her to communicate, because she is nonverbal. As [REDACTED] also noted, the behavior is less severe than in the past. The agency’s rating of 03 (moderate) is therefore appropriate and correct.

- (11.) Qt. 38D (Aggressive, Verbal/Gestural): The definition of this behavior is as follows:

Person uses language (verbally, through written words or symbols, or through gestures or signs) which threaten psychological, emotional, or physical harm toward others. *Example: Person swears at others, writes threatening notes, attempts to intimidate through aggressive gestures that do not make physical contact with other persons.*

Appellant's behavior is also clearly sometimes verbally aggressive, such as when she yells or makes noises in public in a way that is unexpected or jarring. However, it would not appear that appellant intends to threaten others with "psychological, emotional, or physical harm," or that she is capable of intentionally engaging in such conduct. The rating given by the agency, 02 (mild), is appropriate and correct.

- (12.) Qt. 38E (Inappropriate Sexual Behavior): The definition of this behavior is as follows:

Person expresses himself/herself in a sexual manner that is socially unacceptable, offensive or injurious to self or others. *Example: Person masturbates in public, exposes private body areas to others, forces others to participate in sexual acts.*

The agency appears to have failed to address this behavior. The evidence establishes that appellant habitually pulls her pants down, exposing her private area, when she has to go to the bathroom. The evidence also establishes appellant's habit of masturbating. Because appellant sometimes engages in these behaviors in public, a rating of 04 (severe) is warranted.

- (13.) Qt. 38F (Property Destruction): The definition of this behavior is as follows:

Person disassembles, damages or destroys public or private property or possessions. *Example: Person breaks windows, glasses, lamps or furniture, tears clothing, sets fires or uses tools/objects to damage property.*

A preponderance of the evidence establishes that appellant still engages in throwing things, sometimes breaking them, but does so with less frequency than in the past, as █████ testified. The agency's rating of 03 (moderate) is therefore appropriate.

- (14.) Qt. 38G (Runs Away): The definition of this behavior is as follows:

Person purposefully leaves without telling others or departs from the supervision

of staff unexpectedly. *Example: Person leaves the living area for extended periods of time without informing appropriate persons, runs away or intentionally wanders away from staff while in the community.*

The agency believed appellant's habit of running away from her family or caregivers in public was more appropriately captured in question 34, "self-preservation," because it is potentially harmful to her. The agency asserts that this factor addresses behavior of a person who runs away intentionally or purposefully -- without telling others or unexpectedly -- and appellant's behavior is spontaneous, without a great deal of thought, intention, or purpose. The agency's interpretation of this factor is correct, and its rating of 01 ("none") is therefore appropriate.

(15.) Qt. 38I (Temper Outbursts): The definition of this behavior is as follows:

Person has instances of emotional behavior that are atypical of others in similar situations. There may also be instances of manic behaviors, which could also be disruptive. *Example: cries, shouts angrily, screams, throws self on floor, disrupts objects without intent to destroy, argues without apparent reason or hyperactivity, overzealous social exchanges, over excitement.*

The evidence presented does not support a finding that appellant has temper outbursts and causes a "major disruption" daily, which is required for a rating of 04 (severe). The agency's rating of 03 (moderate) is supported by a preponderance of the evidence.

(16.) Qt. 41 (Current Services/Planned Services): As [REDACTED] noted, appellant participates in a center-based non-work activity. Question 41 should therefore include 44 under "current services" and "planned services."

RECOMMENDED ORDER

Based on all of the evidence, I recommend that the Commissioner of Human Services REVERSE the agency as to the following ratings in the 2018 DD screening:

- Qt. 12 (Diagnosis): Change to F72, severe intellectual disabilities.
- Qt. 32 (Expressive Communication): Change rating to 06 ("uses single signs or gestures to express wants or needs").
- Qt. 33 (Receptive Communication): Change rating to 03 ("limited comprehension - one to two words").
- Qt. 36B (Daily Living Skills/House Management): Change rating to 05 ("person is unable to participate in activity").

- Qt. 36D (Community Living): Change rating to 05 ("person is unable to participate in activity").
- Qt. 37 (Level of Supports and Services): Change rating to 04 ("person requires 24-hour awake supervision").
- Qt. 38A (Eating non-nutritive substances): Change rating to 03 (moderate).
- Qt. 38E (Inappropriate Sexual Behavior): Change to 04 (severe).
- Qt. 41 (Current Services/Planned Services): Change to include 44 under "current services" and "planned services."

KEVIN T. SLATOR
Human Services Judge

Date

ORDER

On behalf of the Commissioner of Human Services and for the reasons stated above, I adopt the recommended Findings of Fact, Conclusions of Law, and Recommended Order as the final decision of the Department of Human Services.

Date

cc:

,  County Coordinated Care
, DHS-

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. If you propose additional evidence, you must explain why the evidence was not provided at the hearing. **The request must be in writing and be made within 30 days of the date this decision was issued by the co-chief human services judge.** You can mail the request to: Appeals Division, Minnesota Department of Human Services, P.O. Box 64941, St. Paul, MN 55164-0941. You can also fax the request to (651) 431-7523. **You must send a copy of the request to the other parties.** To ensure timely processing of your request, please include the name of the human services judge assigned to your appeal and the docket number. The law that describes this process is Minnesota Statutes, section 256.0451, subdivision 24.
- **Start an appeal in the district court.** This is a separate legal proceeding that you must start **within 30 days of the date this decision was issued by the co-chief human services judge.** You start this proceeding by: 1) serving a written copy of a notice of appeal upon the Commissioner of Human Services and upon any other adverse party of record; and 2) 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 Statutes, section 256.045, subdivision 7.⁵

⁵ 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 Code of Federal Regulations, section 273.15(q)(2), and Minnesota Statutes, section 256J.40. A prepaid health plan may not appeal this order under Minnesota Statutes, section 256.045, subdivision 7.