



Minnesota Department of **Human Services**

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**DECISION OF  
STATE AGENCY  
ON APPEAL**

In the Appeal of: [REDACTED]  
For: Medical Assistance - Consumer Directed Community Supports  
Agency: [REDACTED] County Social Services  
Docket: 197621

On October 3, 2017, Human Services Judge Michael P. Harralson held evidentiary hearings under Minnesota Statutes § 256.045, subdivision 3.

The following people appeared at the hearings:

[REDACTED], Appellant Representative (mother);  
[REDACTED], Community Living Services Supervisor, Agency  
Representative.

Based on the evidence in the record and considering the arguments of the parties, I recommend the following findings of fact, conclusions of law, and order.

## STATEMENT OF ISSUES

The issue raised in this appeal is:

Whether the Agency properly reduced Appellant's Developmental Disability (DD) budget effective September 1, 2017.

## FINDINGS OF FACT

1. On August 18, 2017, [REDACTED] County Human Services (Agency) sent Appellant Representative notice that Appellant's DD waiver was being reduced effective September 1, 2017. *Exhibit 2A*. The Appeals Office received a letter requesting an appeal hearing from Appellant on August 25, 2017. *Exhibit 1*. On October 3, 2017, Human Services Judge Harralson conducted an evidentiary hearing via telephone conference. The record was closed at the conclusion of the hearing and consists of the testimony provided during the hearing and 15 exhibits<sup>1</sup>.

2. On June 14, 2017, the Agency conducted a DD screening assessment. *Testimony of Agency Representative, Exhibit 2E*.

3. As a result of the June 14, 2017 assessment, Appellant's maximum CDCS budget allocation was reduced from \$76,076.95 to \$70,853.80. *Testimony of Agency Representative, Exhibit 2A*.

4. The changes from Appellant's previous assessment conducted on June 10, 2016 and the June 14, 2017 assessment were that Appellant exhibited an increase in expressive language and a decrease in running away. *Testimony of Agency Representative, Exhibits 2D-2H*. All other categories of the assessment remained the same. *Id.*

5. The expressive communication change does not factor into the CDCS budget. *Testimony of Agency Representative, Exhibit 2F*.

6. The running away criteria was reduced from a score of 5 to a score of 3. *Testimony of Agency Representative, Exhibits 2D-2H*. Appellant's score was decreased, because Appellant is not trying to leave her home and she does not intentionally run away while in public, but it can happen that Appellant wanders away if she is not supervised. *Testimony of Agency Representative, Exhibit 2F*. Appellant's appeal letter indicates that

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<sup>1</sup> Exhibit 1 – Appeal to State Agency received August 25, 2017. Exhibit 2 – State Agency Appeals Summary (including: 2A – Notice of Action dated August 18, 2017; 2B – Appeal Request; 2C – Notice of Hearing; 2D – DD Screening Document dated June 10, 2016; 2E – DD Screening Document dated June 14, 2017; 2F – Summary of Changes from 2016 and 2017; 2G – DD Screening Document from WMS for June 10, 2016; 2H – DD Screening Document from WMS for June 14, 2017; 2I – CBSM on CDCS; 2J – DD Waiver Methodology; 2K – Variables for DD Waiver; 2L – DD Screening Codebook Portions; 2M – Challenging Behavior Screening Rating Scale).

Appellant must be watched at all times while out in the community otherwise she can get separated from those whom she is with and if she is unaware of her environment. *Exhibit 1*.

7. Additionally, there was an error entering Appellant's information from the June 10, 2016 assessment. *Testimony of Agency Representative, Exhibit 2D-2H*. Appellant's score was entered as a 5 for physical aggression, but it should have been entered as a 4. *Id.* This score was corrected during the 2017 assessment. *Id.* A score of 4 for physical aggression, means that Appellant's tendency to be physically aggressive is severe. *Exhibit 2K*.

8. Appellant Representative stated that Appellant's physical aggression has been pretty extreme, and that it may have been that she was in a good place at the time of the June 14, 2017 assessment. *Testimony of Appellant Representative*. Additionally, in regard to Appellant's expressive communication, someone who is unfamiliar listening to Appellant needs interpretation in order to communicate with Appellant. *Id.*

### CONCLUSIONS OF LAW

1. 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*. In this case, Appellant's appeal was filed within 30 days of the agency's notice of action. Therefore, the appeal is timely and the Commissioner of Human Services has jurisdiction over this appeal.

2. The Minnesota Department of Human Services was authorized to seek permission from the federal government to offer services exceeding the scope and limitations of the regular Minnesota Medicaid program, but not exceeding the comparable cost of institutionalization, in order to make broader services available to address recipient needs unmet by Medical Assistance. *Minn. Stat. § 256B.49*. As such, several home and community-based waiver programs were developed and are managed by the Department of Human Services. *Minnesota Department of Human Services Disability Services Program Manual Disability Services Program Manual, Waiver Programs Overview*. Services authorized under all waiver program plans must help a person avoid institutionalization and/or function with greater independence in the community, and meet authorization guidelines set by the federally approved state waiver plans. *Id.*

3. The Developmental Disabilities (DD) Waiver is one of the waiver programs, and it provides funding for home and community-based services for persons with mental retardation or a related condition who need the level of care provided in an Intermediate Care Facility for Persons with Mental Retardation or Related conditions

(ICF/MR). *Disability Services Program Manual, Waiver Program Overview*.

4. Consumer Directed Community Supports (CDCS) is a service available under the DD Waiver <sup>[4]</sup> that gives persons more flexibility and responsibility for directing their services and supports, including hiring and managing direct care staff. *Disability Services Program Manual, Waivers, DD*. CDCS may include services, support and/or items currently available through the DD waiver, as well as additional allowable services that are needed to support recipients. *Id.* CDCS is not actually a separate service, but it offers recipients an alternative more flexible management process for obtaining services.

5. Minnesota law requires home and community based services funded by medical assistance to be provided to developmentally disabled persons in compliance with the federally approved waiver application. *Minn. Stat. § 256B.092, Subd. 4(a)*. The County of financial responsibility must approve any changes in the service plan developed for an individual under the developmental disability waiver. *Minn. Stat. § 256B.092, Subd. 8a(a)*.

6. Runs away needs level 3 means that someone is at moderate risk for running away, while level 5 mean an individual is very severe run away risk. *CDCS-DD Waiver Variables*.

7. The Agency has the burden of proving by a preponderance of the evidence that it properly reassessed the Appellant's condition. The Appellant has the burden of proving by a preponderance of evidence that she is entitled to the higher assessment scores that she is seeking. A preponderance of evidence is a standard which demonstrates that it is more likely than not that the facts of a case entitle the Appellant to the additional units of service that she seeks. *Minn. Stat. § 256.0451, subd. 17 and 22(b)*.

8. In this case, Appellant's ranking in the domain of Runs Away was decreased from a score of 5 in 2016 to a score of 3 in 2017. Since it appears that Appellant does not intentionally run away and that it can occur that she gets separated from the people that she is with if she is not supervised, the Agency's decrease in this category should be affirmed.

9. Appellant was scored a 4 in Physical Aggression in 2016, but it was incorrectly entered into Appellant's CDCS budget as a score of 5. This score was corrected in the 2017 budget to reflect a score of 4. Given the evidence in the record, it appears that Appellant's physical aggression is severe and the Agency's score of 4 should be affirmed.

10. The Agency stated that the decrease in Expressive Communication was not factored into Appellant's CDCS budget.

11. Therefore, since the Agency's decrease score in Run Away and the correction for Physical Aggression should be affirmed, and since those were the factors that account for the decrease in Appellant's CDCS budget, the Agency's determination that Appellant's maximum CDCS budget allocation be reduced from \$76,076.95 to \$70,853.80 should be affirmed.

RECOMMENDED ORDER

THE HUMAN SERVICES JUDGE RECOMMENDS THAT the Commissioner of Human Services AFFIRM the Agency's determination that Appellant's maximum CDCS budget allocation be reduced from \$76,076.95 to \$70,853.80 should be affirmed.

\_\_\_\_\_  
Michael P. Harralson  
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 Human Services Judge's recommendation as her final decision.

FOR THE COMMISSIONER OF HUMAN SERVICES:

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Date

cc: [REDACTED], Appellant Representative o/b/o [REDACTED], Appellant  
[REDACTED], Minnesota Department of Human Services  
[REDACTED] County Human Services, Northern Services Center Client Intake

## **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.<sup>2</sup>

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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.