



Minnesota Department of **Human Services**

**DECISION OF
STATE AGENCY
ON APPEAL**

In the Appeal of: [REDACTED]
For: Medical Assistance Waiver Programs
Agency: [REDACTED] County
Docket: 195755

On August 7, 2017, and August 25, 2017, Human Services Judge John Freeman held evidentiary hearings under Minn. Stat. § 256.045, subd. 3.

The following persons appeared at the hearings:

[REDACTED], Appellant's Mother and Appeal Representative;
[REDACTED], Appellant's Case Manager, [REDACTED] (August 25 only);
[REDACTED], MnCHOICES Assessor, [REDACTED] County (August 25 only); and
[REDACTED], Lead Worker, [REDACTED] County (August 25 only).

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 reduced Appellant's annual Consumer Directed Community Supports budget from \$44,730.75 to \$36,945.30, following Appellant changing from the Community Access for Disability Inclusion waiver to the Developmental Disability waiver.

FINDINGS OF FACT

1. On June 14, 2017, a Notice of Action was sent to [REDACTED] ("Appellant"), informing Appellant's parents that Appellant's Consumer Directed Community Supports ("CDCS") budget through [REDACTED] County ("Agency") would be reduced to \$36,945.30. *Agency Exhibit 1; Testimony of Ms. [REDACTED]* In response, Appellant's mother, [REDACTED], filed an appeal request that was received by the Appeals Office on July 7, 2017. *Appellant Exhibit A.*

2. On August 7, 2017, Human Services Judge John Freeman held an evidentiary hearing by telephone conference, with only Ms. [REDACTED] in attendance. The Agency's representative, [REDACTED], provided a telephone number in the Agency's appeal submission, but Ms. [REDACTED] could not be reached at that telephone number. During the hearing, the Judge accepted into the record one exhibit from Appellant and one exhibit from the Agency.

3. Following the August 7, 2017, hearing, Judge Freeman learned from Ms. [REDACTED] that the Agency had intended to provide a different number for the hearing and its representatives tried to call into the Appeals Office during the hearing. The Judge, finding good cause, scheduled a second evidentiary hearing to take additional testimony.

4. The second evidentiary hearing took place on August 25, 2017, this time attended by Ms. [REDACTED] Appellant's case manager, Ms. [REDACTED] and another Agency representative. Following the hearing, the Judge held the record open to request additional information from the Minnesota Department of Human Services ("DHS"), as well as responses by the parties to any new information. On September 28, 2017, the record was closed consisting of the testimony of the parties and three exhibits.¹

5. Appellant turned 18 years old on August 12, 2017. *Testimony of Ms. [REDACTED] Agency Exhibit 1.* Appellant is diagnosed with autism, mixed developmental disorder, and chronic sinusitis. *Id.* Appellant is non-verbal, and uses an iPad and physical gestures to communicate. *Testimony of Ms. [REDACTED]* Appellant is at risk for personal danger because

¹ Appellant Exhibit A: Appeal letter; Notice of Action. Agency Exhibit 1: Appeal Summary for Long-Term Services and Supports; Notice of Action; MnCHOICES Assessment. DHS Exhibit 1: Fiscal policy summary.

he will follow strangers, and Appellant has increasingly challenging behaviors. *Testimony of Ms. Beise; Agency Exhibit 1.* Appellant lives at home with his parents. *Id.*

6. On March 7, 2017, Appellant was the subject of a MnCHOICES assessment conducted by the Agency. *Agency Exhibit 1.* Among other things, the assessment determined that Appellant met criteria for participating in the Developmental Disability (“DD”) waiver program. *Id.* Compared to the previous year’s assessment, changes were minimal, with no decreased needs, and increased need in two areas. *Testimony of Ms. [REDACTED]* Specifically, Appellant’s DD score for “PICA (Ingestion of Non-Nutritive Substances)” increased from 01 to 04, and the DD score for “Injury to Others” increased from 01 to 05. *Testimony of Ms. [REDACTED] Agency Exhibit 1.*

7. Appellant was on the Community Access for Disability Inclusion (“CADI”) waiver through April 30, 2017, and changed to the DD waiver effective May 1, 2017, in order to qualify for additional services. *Testimony of Ms. [REDACTED]* Appellant has had a CDCS budget both before and after this change. *Testimony of Ms. [REDACTED] Agency Exhibit 1.* Prior to the March 7, 2017, MnCHOICES reassessment, Appellant’s CDCS budget was \$44,639.50. *Testimony of Ms. [REDACTED]*

8. Shortly after the March 7, 2017, assessment, Appellant’s case manager at [REDACTED] was informed by the Agency that the new CDCS budget based on the new MnCHOICES assessment, would increase slightly to \$44,730.75. *Testimony of Ms. [REDACTED]* *Testimony of Ms. [REDACTED]* This increase was memorialized to [REDACTED]. through an email to Ms. [REDACTED] *Id.*

9. On June 14, 2017, Ms. [REDACTED] was informed by the Agency that the budget under the DD waiver would actually be \$36,945.30, and Ms. [REDACTED] sent a notice of action to Appellant to that effect, which is the subject of this appeal. *Testimony of Ms. [REDACTED]* *Testimony of Ms. [REDACTED]* *Testimony of Ms. [REDACTED]*

10. No hearing participant was able to explain why the budget decreased, other than to suggest generally that it must have to do with the change from the CADI to the DD waiver. *Testimony of Ms. [REDACTED]* *Testimony of Ms. [REDACTED]* *Testimony of Ms. [REDACTED]* *Testimony of Ms. [REDACTED]* Nevertheless, the budget change took effect 10 days later – on June 24, 2017. *Testimony of Ms. [REDACTED]* *Testimony of Ms. [REDACTED]* *Agency Exhibit 1; Appellant Exhibit A.* The Agency notes that the budget is determined separately by the Minnesota Department of Human Services. *Testimony of Ms. [REDACTED]*

11. Following a request from Judge Freeman, a fiscal policy specialist with the DHS Disability Services Division explained that waiver budgets under the CADI and DD waivers use distinct methodologies, and take into account different aspects of the MnCHOICES assessment (referred to as “variables”). *DHS Exhibit 1.* After listing the variables for each waiver program, the fiscal policy specialist provided the following:

The variables used in the two formulas are assigned weights, which are listed on the variables page for each formula. When calculated, these formulas produce the participant's individual state set CDCS budget. Because the variables and weights used in each formula differ, even though the same assessment's scores were used for both Mr. [REDACTED] CADI CDCS budget and his DD CDCS budget, the resulting state set budget amounts differ because the methodologies, variables, and assigned weights used in each formula are different.

Id.

CONCLUSIONS OF LAW

1. ***Jurisdiction.*** This appeal is timely, and the Commissioner of Human Services has jurisdiction over its subject matter. *Minn. Stat. § 256.045, subd. 3.*

2. ***Burden of Persuasion.*** In an administrative appeal, the burden of persuasion is governed by state or federal laws that apply to the hearing. *Minn. Stat. § 256.0451, subd. 17.* When there is no specific burden of persuasion provision, the party seeking 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 reduction of Appellant's CDCS budget, the Agency proposing the reduction has the burden of showing why its determinations were correct.

3. ***Developing the Record; Comment by DHS.***

a. The Human Services Judge shall ensure for all cases that the record is sufficiently complete to make a fair and accurate decision. *Minn. Stat. § 256.0451, subd. 19.*

b. The Human Services Judge or the Commissioner of Human Services may determine that a written comment by DHS about the policy implications of a specific legal issue could help resolve a pending appeal. *Minn. Stat. § 256.0451, subd. 18.* Such a written policy comment from DHS shall be obtained only by a written request that is also sent to the person involved and to the Agency or its representative. *Id.* When such a written comment is received, both the person involved in the hearing and the Agency shall have adequate opportunity to review, evaluate, and respond to the written comment, including submission of additional testimony or evidence, and cross-examination concerning the written comment. *Id.*

4. ***Notice of Reduced Services.*** The Agency shall send Medical Assistance recipients a written notice, in the format prescribed by DHS, when the Agency denies prior authorization, restricts free choice of provider, or reduces services, or reduces, denies, or terminates the person's Medical Assistance eligibility. *Minn. R. 9505.0125, subp. 1.* The notice must clearly state the proposed action, the reason for the action, the

person's right to appeal the proposed action, and the person's right to reapply for eligibility or additional eligibility. *Id.*

5. ***Waiver Programs.*** The Minnesota Department of Human Services ("DHS") 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 and DD waiver programs.

6. ***CDCS Budget.***

a. Among the services that can be authorized through the CADI and DD waivers are Consumer Directed Community Supports. *Minnesota Department of Human Services Community-Based Services Manual ("CBS Manual") – Consumer directed community supports (CDCS).*² The CDCS service option provides the recipient with more flexibility and responsibility for directing his services and supports, including hiring and managing direct care staff. *Id.* Those who receive CDCS services receive individual budgets that include the costs of all authorized waiver services. *Id.*

b. Reassessments may change the CDCS budget, in which case the Agency must inform the recipient of the new amount. *Consumer Directed Community Supports Lead Agency Operations Manual ("CDCS Operations Manual") § 4.4.*³ If the budget is increased, the recipient should determine whether there are currently unmet needs and if so, revise the Community Support Plan and submit to the lead agency for approval and/or re-authorization. *Id.* If the budget decreases, and is less than the amount currently authorized, the recipient must determine changes to services or supports within the new budget amount. *Id.*

c. The CDCS budget is based on the Agency's scores and a federally-approved formula that uses those scores that factor into the CDCS budget methodology. *Consumer Directed Community Support (CDCS) Manual ("CDCS Manual").*⁴ The Agency determines a person's total daily weight using specific variables and a constant, which then results in the budget. *Id.*

d. The budget methodologies and variables are set out in the CDCS Manual, and differ greatly between those on the DD waiver on the one hand, and those on

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."

³ The Consumer Directed Community Supports Lead Agency Operations Manual can be accessed from the DHS website at <http://mn.gov/dhs>. Specifically, select "General Public", then "Publications, forms and resources", then "Manuals", and then "Consumer Directed Community Supports Lead Agency Operations Manual".

⁴ The Consumer Directed Community Supports (CDCS) Manual can be accessed from the DHS website at http://www.dhs.state.mn.us/main/ideplg?IdcService=GET_DYNAMIC_CONVERSION&RevisionSelectionMethod=LatestReleased&dDocName=cdfs_home.

the CADI waiver (or Community Alternative Care or Brain Injury waiver) on the other hand. *CDCS Manual: Budget methodology for DD Waiver; Variables used in budget methodology for DD Waiver; Budget methodology for CCB waivers; Variables used in budget methodology for CCB waivers.* While the DD waiver's methodology uses 28 factors from the assessment, the CADI waiver only uses six factors. *Id.* As a result, substantial portions of the MnCHOICES assessment are disregarded when creating a CDCS budget under the CADI waiver, and those are reintroduced for CDCS budgets under the DD waiver. *Id.* Additionally, the two waivers use distinct budget methodologies, so that each factor (or variable) considered is assigned a different weight depending on the waiver program. *Id.*

7. Analysis and Conclusion.

a. In this case, there is no dispute regarding Appellant's eligibility for the DD Waiver or for CDCS services. Instead, the dispute centers on the budget that resulted from the MnCHOICES assessment.

b. As explained above, there is a drastic difference in the budget methodologies used for the DD and CADI waiver programs, including a drastic difference in which aspects of the assessment ("variables") are used within that methodology. Thus, even with identical or very similar assessments from one year to the next, significant budgetary changes would be expected when a recipient moves from the CADI waiver to the DD waiver, or vice versa. Importantly, these budget methodologies are federally-approved under the waiver plans themselves. Just as those waiver plans allow for differences in the services provided under each waiver (which prompted Ms. [REDACTED] to change Appellant's waiver in the first place), they also allow for differences in the budgets that result from each assessment.

c. It is unfortunate, in my view, that Ms. [REDACTED] does not appear to have been informed of the fact that the budget would be expected to change under a new waiver program. While the Agency was aware of changes in available services between the waivers, the Agency did not know how this would affect the budget. Still, the budget formulas are federally-approved and required. Further, the record does not indicate that there were any substantive errors in the assessment itself, and in fact Ms. [REDACTED] expressed agreement with the substance of the assessment itself. For these reasons, I believe the budget reduction must be affirmed, and I recommend accordingly.

RECOMMENDED ORDER

THE HUMAN SERVICES JUDGE RECOMMENDS THAT the Commissioner of Human Services AFFIRM the Agency's reduction of Appellant's annual CDCS budget from \$44,730.75 to \$36,945.30, because the preponderance of the evidence supports the budget reduction resulting from changing from the CADI to the DD waiver.

John Freeman
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 the Commissioner's final decision.

FOR THE COMMISSIONER OF HUMAN SERVICES:

Date

cc: [REDACTED], Appellant

[REDACTED] County

[REDACTED], Minnesota Department of Human Services (DHS-0967)

[REDACTED], Minnesota Department of Human Services (DHS-0967)

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 7.⁵

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 C.F.R. § 273.15(q)(2) and Minnesota Statute § 256J.40.