



Minnesota Department of **Human Services**

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**DECISION OF  
STATE AGENCY  
ON APPEAL**

In the Appeal of: [REDACTED] by [REDACTED]

For: Medical Assistance – Community Alternatives for Disabled  
Individuals (CADI) Program

Agency: [REDACTED] County

Docket: 204577

On February 28, 2018, Human Services Judge Ngoc Nguyen held evidentiary hearings under Minn. Stat. § 256.045, subd. 3.

The following persons appeared at the hearings:

[REDACTED], Appellant's Mother;  
[REDACTED], Social Services Supervisor.

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 Appellant's needs in its annual Developmental Disabilities Waiver reassessment, which resulted in a reduction in his Consumer Directed Community Supports (CDCS) budget from \$45,051.95 to \$43,230.65.

## FINDINGS OF FACT

### 1. ***Procedural History.***

a. On January 17, 2018, ██████████ County ("Agency") sent a Notice of Action to Appellant's mother ██████████, informing her that Appellant's Consumer Directed Community Supports ("CDCS") budget would be decreased from \$45,051.95 to \$43,230.65 effective February 1, 2018. *Exhibit 2, Attach. A.* In response, Appellant submitted an appeal, which was received by the Appeals Office on February 5, 2018. *Id.*

b. On February 28, 2018, Human Services Judge Ngoc Nguyen held an evidentiary hearing by telephone conference. The Judge accepted into the record two exhibits with attachments.<sup>1</sup>

2. ***Appellant.*** ██████████ ("Appellant") is 36 years old and lives with family. *Testimony of ██████████.* She is diagnosed mild mental handicap. Appellant was born missing part of her corpus callosum and is blind in one eye. Appellant has a developmental disability and is a participant in the Medical Assistance Developmental Disabilities Waiver ("DD Waiver") program. *Exhibit 2.*

### 3. ***DD Waiver Assessment.***

a. Appellant's DD Waiver services have been and continue to be administered through ██████████ County. On November 9, 2017, an annual DD assessment of Appellant's needs was conducted face-to-face. This reassessment used the DD Screening Document that was used for Appellant's previous assessment. *Exhibit 1, Attach. A; Testimony of agency.*

b. The screening require the assessor to rank Appellant's level of need in numerous areas, such as medical, expressive, leisure recreation, aggress/physical, and support services. *Exhibit 1.* Answers are entered into a system and are provided a weight. The system then determines a budget. *Id; Testimony of agency.*

c. The assessment on November 9, 2017 determined Appellant's CDCS budget as \$43,230.65. *Exhibit 1, Attach. A.* This was a decrease from the CDCS budget the previous year. Appellant's previous CDCS budget was in the amount of \$45,051.95.

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<sup>1</sup> Exhibit 1: Agency Appeals Summary and Addendum with attachments: (A) DD Screening; (B) DD Codebook; Exhibit 2: Appeal with Notice of Action.

*Id.*

d. The agency reported that there were some areas that changed in this current assessment that would have increased the budget; however there are three areas that decreased and are the subject of disagreement. *Exhibit 1; Testimony of agency;* [REDACTED]

e. The agency reported that the three areas of disagreement are:

1. *Leisure and Recreation.* The agency gave Appellant a 03 in this area versus the previous score of 04. *Exhibit 1, Attach. A, B; Testimony of agency.* The following is the definition of Leisure and Recreation: Age appropriate skills necessary for participation in individual and group-oriented leisure and recreational activities... This includes the person's abilities to initiate or engage in leisure/recreational activities, demonstration of preferences and participation in activities. *Id.* The agency asserted that a score of 03 requires instruction to perform the activity with expected outcome of increased independence. A score of 04 is defined as a person participates with another's assistance for all or portions of an activity. *Id.* The agency gave Appellant a score of 03 because Appellant needs prompts to participate but loves the activities and does not need physical hands on assistance for the activity. *Id.* Ms. [REDACTED] informed the agency that Appellant requires direction with leisure activities otherwise she would "probably just sit and watch TV all day." Ms. [REDACTED] makes suggestions on activities and will often prompt Appellant throughout the activity. *Id.* The change resulted in approximately a \$2/day difference in the budget. *Id.*

2. *(Challenging Behaviors) Sexual Behaviors.* The agency gave Appellant a 01 from the previous score of 02. *Exhibit 1, Attach. A, B; Testimony of agency.* Inappropriate Sexual Behaviors occurs when a person expresses himself/herself in a sexual manner that is socially unacceptable, offensive or injurious to self or others. Actions include masturbation in public, exposure of private body areas to others, and forces others to participate in sexual acts. *Id.* Ms. [REDACTED] reported to the agency that Appellant has a history of a sexual abusive situation with another man who is now incarcerated. Ms. [REDACTED] reported that Appellant will ask men who come into the home if they are single/married/have a girlfriend. Ms. [REDACTED] has to warn the men to tell Appellant that they have a girlfriend even if they don't otherwise Appellant will ask them on a date. It was reported to the agency that Appellant is trusting and vulnerable to men and would hug everyone. *Id.* The agency asserted that Appellant's behavior does not meet the definition. The change resulted in a \$4/day change in the budget. *Id.*

3. *Special Support Services: Mental Health.* The agency gave Appellant a "no" to this question as at the time of the assessment, Appellant

was no longer seeing her psychologist or mental health provider. Since the assessment, Ms. [REDACTED] reported to the agency that Appellant does receive kinesthetic therapy on a regular basis. The agency does believe that this meets the criteria for special support services and is willing to change the response back to “yes.” Ms. [REDACTED] was in agreement and satisfied with this. *Id.*; *Testimony of [REDACTED]*. The change to a “yes” would result in an increase in the budget by \$10-\$14/day. *Testimony of agency*.

4. ***Appellant’s position.*** Ms. [REDACTED] asserted that she has to constantly motivate Appellant to do things otherwise she would just sit on the couch and play “Candy Crush” or watch TV. *Testimony of [REDACTED]*. Ms. [REDACTED] reported that Appellant is rarely by herself and she has no filter in her attempts to “find a man.” Ms. [REDACTED] described Appellant as not having boundaries and must be monitored at all times. She described Appellant as being out of touch with what is appropriate conversations. *Id.*

### CONCLUSIONS OF LAW

1. ***Jurisdiction.*** This appeal is timely and the Commissioner of Human Services has jurisdiction over its subject matter, pursuant to Minnesota Statute 256.045, subdivision 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. ***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. *Minn. Stat. § 256B.49; 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 DD Waiver program that Appellant participates in.

4. ***DD Waiver Purpose and Eligibility.***

a. The DD Waiver program provides home- and community-based services that promote the optimal health, independence, safety and integration of persons who would otherwise require the level of care provided in an intermediate care facility. *Minnesota Department of Human Services Community-Based Services Manual (“CBS*

*Manual*”).<sup>2</sup>

b. In addition to requiring the level of care described above, eligibility for the DD Waiver requires that the individual:

- is eligible for Medical Assistance based on a disability diagnosis;
- has a developmental disability or related condition;
- require daily interventions and services, and a 24-hour plan of care;
- needs a residential habilitation service;
- has chosen waiver services instead of intermediate care facility services; and
- has an assessed need for supports and services over and above those available through the Medical Assistance State Plan.

*CBS Manual – DD Waiver.*

5. **Reassessments.** The Agency administering a recipient’s DD Waiver must conduct at least annual reassessments of the individual’s needs. In addition, the plan for serving the individual under the Waiver must be reviewed more often than annually if necessary to meet his needs and preferences. Put simply, the reassessment process involves reviewing the recipient’s circumstances and needs, and assigning values for each of those circumstances and needs. *CBS Manual – BI, CAC, CADI and DD Waiver General Process and Procedures.*

6. **CDCS Budget.**

a. Among the services that can be authorized through the DD Waiver are Consumer Directed Community Supports. *CBS Manual – DD Waiver.* 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. *CBS Manual – Consumer Directed Community Supports.* Those who receive CDCS services receive individual budgets that include the costs of all authorized waiver services. *Id.*

b. The CDCS budget amount is issued annually by DHS, while the Agency is responsible to inform the recipient of his available budget. Based in part on the budget, the Agency develops a person-centered Community Support Plan that includes costs for services up to the annual CDCS budget amount. *Consumer Directed Community Supports Lead Agency Operations Manual (“CDCS Manual”) § 4.4.*<sup>3</sup>

c. Reassessments may change the CDCS budget, in which case the Agency must inform the recipient of the new amount. 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-

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<sup>2</sup> 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”.

<sup>3</sup> The Consumer Directed Community Supports Lead Agency Operations 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 “C Consumer Directed Community Supports Lead Agency Operations Manual”.

authorization. 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. *CDCS Manual § 4.4.*

d. As required by the legislature, DHS updated its process for determining DD Waiver recipients' CDCS budgets in 2004. The process was approved by the federal government and went into effect that year. The creation of the budgeting process involved reviewing services commonly needed by DD Waiver recipients, determining the costs of those services, and determining how the costs fluctuate based on the level of need of an individual for those services. Put another way, the process recognizes that services related to some needs are much more costly than services related to other needs, and that within a given area of need, there is variation of the acuteness of that need for each individual. In short, the process attempts to provide similar budgets to those with similar needs. *Developmental Disability Waiver Consumer-Directed Services Budget Formula.*<sup>4</sup>

e. To be more specific, the budget formula referenced above assigns daily budget dollar amounts to each area of potential need for a DD Waiver recipient. The daily dollar amount is then multiplied by the level of need. For example, the daily dollar amount for "Level of Support and Services" is \$48.72. Someone with a level of need of 4 (meaning requires 24 hours awake supervision) would have \$194.88 per day added to their budget, in order to help pay for services to address that need. Someone with a level of need of 3 (meaning requires a 24 hour plan of care) would have \$146.16 per day added to their budget (\$48.72 multiplied by 3). Someone who did not exhibit that need at all would not have their budget changed by this area. *Developmental Disability Waiver Consumer-Directed Services Budget Formula.*

f. With regards to the areas that changed for Appellant, the ratings are as follows: 01 is none; 02 is mild; 03 is moderate; 04 is severe; and 05 is very severe. *DD Screening Document.*

## **7. 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 decrease in the budget. Although Ms. [REDACTED] does not dispute the answers provided for the screening document, she disagrees with the score. As the agency has agreed to change issue #3 to a yes, the only dispute is in the areas of Leisure and Recreation and Sexual Behaviors. I have carefully reviewed this in light of the assessment selections made by the Agency during the reassessment and conclude that the agency did not error in its scoring of these areas. Appellant is able to participate in leisure and recreational activities and enjoys them once prompted. A score of 04 requires assistance in all or portions of the activities and the evidence does not support that Appellant meets this criteria. Lastly, Appellant's desire to "find a man" by asking men about their relationship status does not meet the

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<sup>4</sup> This document can be found at <http://mn.gov/dhs>, by entering 029336 (the document number) into the search field.

criteria for meeting this behavior. Although I can understand Ms. [REDACTED] concerns of Appellant's vulnerability, her behavior is not socially unacceptable, offensive, or injurious to self or others.

b. In summary, I find that the agency correctly scored Appellant in the area of Leisure and Recreation and Sexual Behaviors. I support the agency's decision to change the answer to Yes in the area of Special Support Services. This will change the CDCS budget.

#### RECOMMENDED ORDER

THE HUMAN SERVICES JUDGE RECOMMENDS THAT the Commissioner of Human Services REVERSE the agency's assessment of Appellant's needs in its annual DD Waiver reassessment and ORDER the agency to make the agreed upon correction in the areas of Special Support Services, Mental Health.

\_\_\_\_\_  
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 Human Services Judge's recommendation as the Commissioner's final decision.

FOR THE COMMISSIONER OF HUMAN SERVICES:

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\_\_\_\_\_  
Date

cc: [REDACTED], Appellant's mother  
[REDACTED] County Northern Services Center, Client Intake  
[REDACTED], Minnesota Department of 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.<sup>5</sup>

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<sup>5</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.