



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 Disability  
Inclusion (CADI) Waiver  
Agency: [REDACTED] County  
Docket: 189536

On March 24, 2017 and May 5, 2017, Human Services Judge Tonja J. Rolfson held an evidentiary hearing under Minnesota Statutes § 256.045, subdivision 3. The following people appeared at the hearing:

[REDACTED], Appellant;  
[REDACTED], CADI Waiver Coordinator, [REDACTED] County; and  
[REDACTED], CADI Waiver, [REDACTED] County (observing).

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(S)

The issue(s) raised in this appeal is/are:

Whether the agency was correct to involuntarily exist the appellant from the Consumer Directed Community Supports (CDCS) services program.

## FINDINGS OF FACT

1. The agency sent [REDACTED] (Appellant) written notice dated February 7, 2017 stating that CDCS services for her son [REDACTED] would end on February 28, 2017 as “a result of misuse of CDCS funds, and the consistent use of overtime, which is not allowed.” *Agency Exhibit A4*. The appellant filed an appeal with the state agency appeals office on February 9, 2017. *Appellant Exhibit 1*. The judge scheduled a telephone hearing for March 24, 2017 for the appeals involving [REDACTED] (Docket 189536) and the appellant’s other son [REDACTED] (Docket 189535) who was also voluntarily exited from CDCS services. The judge continued the hearing to April 17, 2017 for the benefit of the appellant. The appellant failed to appear for the April 17, 2017 hearing. However, the judge continued the hearing to May 5, 2017 because the appellant had good cause for failing to appear. The judge held a telephone hearing on May 5, 2017. The judge took official notice of Appendix F of the Minnesota Department of Human Services’ Consumer Directed Community Supports Consumer Handbook<sup>1</sup> and included it in evidence as Agency Exhibit F. The judge took official notice of Section 12 of the Minnesota Department of Human Services CDCS Lead Agency Operations Manual<sup>2</sup> and included it in the record as Agency Exhibit G. The judge included the Expense Summary for [REDACTED] into evidence as Agency Exhibit H. The judge accepted 16 exhibits<sup>3</sup> into evidence and closed the record at the end of the hearing.

2. [REDACTED] is the mother of [REDACTED]. *Testimony of [REDACTED]*. [REDACTED]. The agency approved a Consumer Directed Community Supports (CDCS) plan on July 28, 2016. *Agency Exhibit D*. The plan extended from August 1, 2016 through July 31, 2017. *Id.* According to the Community Support Plan, the appellant was authorized to

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<sup>1</sup> The Consumer Directed Community Supports Consumer Handbook is found online at <https://edocs.dhs.state.mn.us/lfserver/Public/DHS-4317-ENG>.

<sup>2</sup> The CDCS Lead Agency Manual is found online at <https://edocs.dhs.state.mn.us/lfserver/Public/DHS-4270-ENG>.

<sup>3</sup> Appellant Exhibit 1 is the appellant’s appeal request. The agency exhibits are as follows: A1) First Technical Assistance Notice Dated December 7, 2016; A2) Second Technical Assistance Notice Dated January 24, 2017; A3) Third Technical Assistance Notice Dated February 6, 2017; A4) Letter Dated February 7, 2017 and February 7, 2017 Notice of Action; B) E-Mails from [REDACTED] to Appellant; B1) E-Mails from [REDACTED]; C) Notices from [REDACTED]; C1) [REDACTED] FSE Expense Summaries; D) Original CDCS Plan; D1) CDCS Change Notice dated January 31, 2017; D2) CDCS Participation Agreement Signed June 16, 2016; E) Case Notes; F) Appendix F of the Minnesota Department of Human Services’ Consumer Directed Community Supports Consumer Handbook; G) Minnesota Department of Human Services CDCS Lead Agency Operations Manual, Section 12; and H) Expense Summary for [REDACTED].

receive 30 hours per week of personal care assistance (PCA) services at a rate of \$14.95 per hour. *Agency Exhibit D, page 4*. The appellant is a paid parent provider. *Id.* According to the plan, the hours must not exceed 40 hours per week. *Id. at page 7*. Hours are limited to those approved in the child's Community Support Plan. *Id.*

3. The appellant has another son ([REDACTED]) for whom she is also a paid care provider. *Agency Exhibit B1*. The evidence shows the appellant billed for more than 40 hours per week (totaling both boys hours together) for the weeks of October 2, October 16, October 23, October 30, November 6, November 13, November 20, November 27, December 4, and December 25, 2017 and for the weeks of January 1 and January 8, 2018. *Agency Exhibit C1 and Agency Exhibit H*. However, beginning the week of November 27, 2017 and going forward, the appellant did not claim more than 40 hours per week for either boy individually. *Id.*

4. The agency sent the appellant a Notice of Technical Assistance and/or Support dated December 7, 2016. *Agency Exhibit A1*.

- The problem identified was: "CDCS staff for [REDACTED] has been working overtime during several pay periods."
- The corrective action needed was identified as: "CDCS staff must not work more than 40 hours per week, within a pay period."
- The timeline to accomplish the corrective action was identified as: "If over time is needed to ensure the health and safety of [REDACTED] [sic], than [sic] the support planner must be contacted and an addendum needs to occur."

5. The agency sent the appellant a Notice of Technical Assistance and/or Support dated January 24, 2017. *Agency Exhibit A2*.

- The problem identified was: "CDCS for [REDACTED] has been working overtime during several pay periods."
- The corrective action needed was identified as: "CDCS staff must not work more than 40 hours per week, within a pay period."
- The timeline to accomplish the corrective action was identified as: "If over time is needed to ensure the health and safety of [REDACTED] than [sic] the support planner must be contacted and an addendum needs to occur."

6. The agency sent the appellant a Notice of Technical Assistance and/or Support dated February 6, 2017. *Agency Exhibit A3*.

- The problem identified was: "CDCS staff for [REDACTED] have been working overtime during several pay periods."
- The corrective action needed was identified as: "CDCS staff must not work more than 40 hours per week, within a pay period."
- The timeline to accomplish the corrective action was identified as: "If over time is needed to ensure the health and safety of [REDACTED], than the support planner must

be contacted and an addendum needs to occur.”

7. The agency sent the appellant a written notice of action dated February 7, 2017 terminating CDCS services effective February 28, 2017 due to “misuse of CDCS funds, and the consistent use of overtime, which is not allowed.” *Agency Exhibit A4*.

8. The appellant’s appeal request said the following: “I have been great full to work for the boys and yes some overtime been doing I have read and the company have gave me booklet were if it go overtime other way I can use I would love continue because I’m aware there conditions health.” *Appellant Exhibit 1*.

### CONCLUSIONS OF LAW

1. The appeal is timely and the Commissioner of Human Services has jurisdiction over this appeal under Minnesota Statutes § 256.045, subdivision 3.

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*. Several home and community-based waiver programs were developed and are managed by the Department of Human Services. *Minnesota Department of Human Services Community-Based Services Manual (CBSM)*,<sup>4</sup> *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 Community Alternatives for Disability Inclusion (CADI) Waiver is one of the waiver programs. It provides funding for home and community-based services necessary as an alternative to institutionalization that promote the optimal health, independence, safety and integration of a person who would otherwise require the level of care provided in a nursing facility. *CBSM, Waivers, CADI*.

4. Consumer Directed Community Supports (CDCS) is an option available under the CADI Waiver that gives people more flexibility and responsibility for directing their services and supports, including hiring and managing direct care staff. *CBSM, Waivers, CADI*. 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.* Those who receive CDCS services receive individual budgets that include

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<sup>4</sup> The CBSM is found online at <http://mn.gov/dhs> by clicking on “General Public”, then “Publications, Forms and Resources”, then “Manuals” and then “Consumer Directed Community Supports Lead Agency Operations Manual.”

the costs of all authorized waiver services. *Id.* The CDCS budget amount is determined by DHS.

5. Appendix F of the Minnesota Department of Human Services' Consumer Directed Community Supports Consumer Handbook<sup>5</sup> states the following:

Parents of minor and spouses may NOT provide services and supports for more than 40 hours per week. For parents of minors, this is the total amount that may be provided regardless of whether both parents are providing the services and supports. This is true even if there is more than one child receiving services in the home.

6. Under the terms of the federal waiver, a person may be involuntarily exited from CDCS services for the following reasons:

- Immediate health and safety concerns;
- Maltreatment of consumers;
- Suspected fraud or misuse of funds;
- Inability to implement the approved support plan or comply with CDCS requirements despite reasonable efforts to provide additional technical assistance and oversight. *CDCS Lead Agency Operations Manual § 12.*

7. “Involuntary exit” means only the CDCS services is terminated, not the program. *CDCS Lead Agency Operations Manual § 12.1.*

8. “Immediate concern” is defined as:

- Any matter jeopardizing health and safety;
- Evidence of unreported fraud;
- Maltreatment of the consumer; and
- Unapproved expenditures. *CDCS Lead Agency Operations Manual § 12.1.*

9. “Additional technical assistance and oversight” means the ongoing involvement of the lead agency to resolve issues surrounding plan implementation or expenditure of funds. This is assistance and oversight beyond that provided to all consumers through materials and completion of required case manager functions. *CDCS Lead Agency Operations Manual § 12.1*

10. “Reasonable efforts” is defined as three documented events of need for additional technical assistance and oversight during one plan year. This documentation

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<sup>5</sup> The Consumer Directed Community Supports Consumer Handbook is found online at <https://edocs.dhs.state.mn.us/lfserver/Public/DHS-4317-ENG>.

must include:

- Identification of the problem;
- Corrective action needed;
- A timeline in which to accomplish the action or change.

*CDCS Lead Agency Operations Manual § 12.1.*

11. When health and safety concerns arise, or fraud or misuse of funds are evident or a fourth occurrence from the date of the CDCS authorization requiring corrective action (additional technical assistance) is encountered, consumers may be immediately exited from CDCS and returned to conventional waiver of Alternative Care (AC) services. *CDCS Lead Agency Operations Manual § 12.2.*

12. Some examples of matters that would indicate a need for additional technical assistance and oversight include:

- not spending enough for services needed to support health and safety without a reasonable explanation
- overspending at a rate that suggests the plan will not be sustainable over the service plan year
- ongoing difficulty in arranging for services needed for health and safety
- unapproved expenditures
- failure to respond to notices requesting missing information from the Fiscal Support Entity (FSE)
- not implementing the Community Support Plan is approved. *CDCS Lead Agency Operations Manual § 12.3.*

13. The December 7, 2016 and January 24, 2017 and February 6, 2017 Notices of Technical Assistance and/or Support did not contain deadlines for accomplishment of the corrective actions cited which are required before termination from the CDCS program can occur. Additionally, the February 6, 2017 Notice was sent the day before the agency sent the February 7, 2017 written notice of action terminating CDCS services. This did not provide the appellant with an adequate opportunity to come into compliance. Because the agency did not demonstrate it made reasonable efforts to provide technical assistance, the Commissioner should reverse the agency's decision to involuntarily exit the appellant from CDCS services and remand the matter back to the agency to determine whether, at this time, the appellant desires the CDCS option and whether the appellant meets the criteria for CDCS services.

RECOMMENDED ORDER

THE HUMAN SERVICES JUDGE RECOMMENDS THAT the Commissioner of Human Services REVERSE the agency's decision to involuntarily exit the appellant from CDCS services and remand the matter back to the agency to determine whether, at this time, the appellant desires the CDCS option and whether the appellant meets the criteria for CDCS services.

\_\_\_\_\_  
Tonja J. Rolfson  
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:

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\_\_\_\_\_  
Date

cc: [REDACTED] by [REDACTED], Appellant  
[REDACTED], [REDACTED] County Human Services  
Department of Human Services, [REDACTED]—0967  
DHS—[REDACTED], 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 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.