



Minnesota Department of **Human Services**

**DECISION OF
STATE AGENCY
ON APPEAL**

In the Appeal of: [REDACTED] by [REDACTED]
For: Elderly Waiver (EW) Program
Agency: [REDACTED] County and Blue Plus
Docket: 168887

On December 17, 2015, Human Services Judge Christopher Cimafranca held an evidentiary hearing under Minnesota Statutes, § 256.045, subdivision 3.

The following people appeared at the hearing:

[REDACTED], Appellant's daughter;
[REDACTED], Blue Plus Liaison;
[REDACTED], Blue Plus Partner Relations Consultant;
[REDACTED], Blue Plus Partner Relations Consultant;
[REDACTED], [REDACTED] County Supervisor; and
[REDACTED], [REDACTED] County Case Manager.

The 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 ISSUES

The issues raised in this appeal are:

Whether the Appellant is eligible to exceed the Elderly Waiver (EW) Program monthly budget cap.

Whether the Agency correctly reduced the Appellant's personal care assistance (PCA) services to 8.75 hours per day even though she was determined eligible through a PCA assessment to receive 12 hours per day.

Whether the Appellant is eligible to receive extended waiver PCA services.

FINDINGS OF FACT

1. On October 9, 2015, the Appellant requested to exceed the Case Mix Cap so that she could receive additional PCA services and skilled nursing visits. *Exhibit 1*. BluePlus (Agency) is only allowing the Appellant to receive a total of 8.75 hours per day in PCA services under the Medical Assistance (MA) state plan even though she was determined eligible to receive 12 hours per day in PCA services through a PCA assessment. *Exhibit 1; Testimony of [REDACTED]* The Agency determined that the Appellant's PCA services through MA was limited by her waiver monthly budget cap. *Exhibit 1; Testimony of [REDACTED]*

2. On October 23, 2015, the Agency denied the Appellant's request because it determined that the Appellant's request exceeded the waiver benefit level, the request did not keep the Appellant out of nursing home, and because it was not an effective and appropriate use of Medical Assistance waiver funds. *Exhibit 1*. The Agency also determined that the Appellant's home care needs were met by the MA health plan. *Exhibit 1*.

3. On November 2, 2015, the Appellant filed an appeal. *Exhibit 1*. The Appellant is requesting that she be allowed to exceed the EW program monthly budget cap so that she could receive additional PCA services. *Exhibit 1*. The Appellant believes the increase is necessary in order to ensure that she receive quality home care including personal care assistance, home health aide, and skilled nursing visits so that she could continue to live at home. *Exhibit 1*.

4. After one continuance for the benefit of the Appellant, on December 17, 2015, Human Services Judge Christopher Cimafranca held an evidentiary hearing by telephone conference. The record closed at the end of the hearing consisting of two exhibits (Blue Plus State Agency Appeal Summary with attachments, Exhibit 1 and [REDACTED] County State Agency Appeal Summary with attachments, Exhibit 2).

5. The Appellant has been a recipient of the Elderly Waiver (EW) Program through Minnesota Senior Health Options. *Exhibit 1*. Her Case Mix Classification is K. *Exhibit 1*. She currently receives personal care assistance (PCA) services through the Medical Assistance state plan. *Exhibit 1; Exhibit 2*.

6. The Agency determined through a PCA assessment that the Appellant was eligible to receive 12 hours per day in PCA services. *Exhibit 1*. The cost of 12 hours per day in PCA services is \$6,234.00 per month. *Exhibit 1; Exhibit 2*. The EW program monthly budget cap for Case Mix K effective July 1, 2015 is \$5,547.00. <http://mn.gov/dhs/images/HistoricRates.pdf>.

7. In January 2015, the Appellant had a stroke. *Exhibit 1*. Because of this, she is unable to use blood thinners and someone must move her legs every few hours to prevent blood clots. *Exhibit 1*. She requires underwear changes frequently to prevent Urinary Tract Infections (UTI). *Exhibit 1*. She also has a severe cognitive deficit due to a brain tumor. *Exhibit 1*.

8. The Appellant's daughter believes that the Appellant's needs are quite high and that the Appellant requires constant monitoring. *Exhibit 1*.

9. In the past, the Agency allowed the Appellant to exceed the monthly budget cap. *Exhibit 1*.

10. The Agency has not conducted a Supplemental Waiver PCA Assessment of the Appellant. *Exhibit 1; Exhibit 2; Testimony of [REDACTED]*

11. The Agency contends the Appellant could leave the EW program and have all her needs met by Medical Assistance. *Testimony of [REDACTED]*

12. The Agency contends that the waiver program is akin to being the "payer of last resort." *Testimony of [REDACTED]*

CONCLUSIONS OF LAW

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

Elderly Waiver Program

2. The Minnesota Department of Human Services was authorized to seek permission from the federal government to offer services that exceed the scope and limitations of the regular Minnesota Medical Assistance 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 Community-Based Services Manual (CBSM), Waiver Programs Overview.*

3. The Elderly Waiver (EW) is one such program and it provides funding for home and community-based services for people age 65 years or older, who would otherwise require the level of care provided in a nursing facility and choose to reside in the community. *CBSM, Waiver Programs Overview; Minn. Stat. § 256B.0915.* 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. *CBSM, Elderly Waiver (EW).*

4. EW recipients can receive waiver services and MA services funded through a managed care organization (MCO). This can be through Minnesota Senior Care Plus (MSC+) or Minnesota Senior Health Options (MSHO). *Provider Manual, Elderly Waiver (EW) and Alternative Care (AC) Program.*

EW Covered Services

5. Covered services under the Elderly Waiver (EW) program include adult day service, adult day service bath, adult foster care, family caregiver coaching and counseling/caregiver assessment, family caregiver training and education, case management, case management aide, chore service, companion services, consumer directed community supports, customized living, environmental accessibility adaptations, homemaker services, extended home health service aide, and extended personal care assistance. *Community-Based Services Manual/Disability Services Program Manual, EW; Provider Manual, Elderly Waiver (EW) and Alternative Care (AC) Program.*

EW Program Monthly Budget Cap

6. Minnesota Statutes, § 256B.0915, subdivision 3a(a) says that effective on the first day of the state fiscal year in which the resident assessment system as described in section 256B.438 for nursing home rate determination is implemented and the first day of each subsequent state fiscal year, the monthly limit for the cost of waived services to an individual elderly waiver client shall be the monthly limit of the case mix resident class to which the waiver client would be assigned under Minnesota Rules, parts 9549.0050 to 9549.0059, in effect on the last day of the previous state fiscal year, adjusted by any legislatively adopted home and community-based services percentage rate adjustment.

7. Minnesota Statutes, § 256B.0915, subdivision 3b(a) also provides that for a person who is a nursing facility resident at the time of requesting a determination of eligibility for elderly waived services, a monthly conversion budget limit for the cost of elderly waived services may be requested. The monthly conversion budget limit for the cost of elderly waiver services shall be the resident class assigned under Minnesota Rules,

parts 9549.0050 to 9549.0059, for that resident in the nursing facility where the resident currently resides until July 1 of the state fiscal year in which the resident assessment system as described in section 256B.438 for nursing home rate determination is implemented. *See also Minnesota Department of Human Services Bulletin #09-25-05C and #14-25-08*

(http://www.dhs.state.mn.us/main/groups/publications/documents/pub/dhs16_188455.pdf)

8. The law described above clearly allows for certain persons receiving EW services to access a higher monthly case mix budget cap. However, the record shows that the Appellant was not a resident of a certified nursing facility at the time she requested determination of eligibility for EW services. Therefore, the Appellant does not meet an exception to the monthly service case mix budget cap. The Agency was correct in denying the request to increase the Appellant's case mix budget.

MA Home Care Services

9. According to the Provider Manual, all recipients receiving EW services must first access MA home care services to the highest extent before adding EW services to the community support plan. MA covers the following home care services:

- Home Care Nursing
- Home Health Aide (HHA) visits
- Occupational Therapy (OT)
- RN PCA Supervision
- Personal Care Assistant (PCA)
- Physical Therapy (PT)
- Respiratory Therapy (RT)
- Skilled Nursing Visits (SNV)
- Speech Therapy (ST)

10. For managed care recipients of EW services, the designated care coordinator is responsible for approval and provision of all home care and EW services. *Provider Manual, Elderly Waiver (EW) and Alternative Care (AC) Program.*

Extended Waiver Services

11. According to the Elderly Waiver Program section of the Provider Manual, home care service needs that cannot be met within the MA home care limits may be approved and billed to the waiver as extended MA services within the budget limit available. *Provider Manual, Elderly Waiver (EW) and Alternative Care (AC) Program.* Extended home care services include extended PCA, extended home health aide, and extended home health nursing (RN/LPN). *Provider Manual, Elderly Waiver (EW) and Alternative Care (AC) Program.* Extended waiver PCA service is an increased amount,

duration, or frequency of the state plan PCA service. *PCA Manual, Extended Waiver PCA Service*. The scope of the service is the same as the state plan. *PCA Manual, Extended Waiver PCA Service*.

Extended Waiver PCA Service

12. Minnesota Statutes, § 256B.0659, subdivision 1(g) says that "extended personal care assistance service" means personal care assistance services included in a service plan under one of the home and community-based services waivers authorized under sections 256B.0915, 256B.092, subdivision 5, and 256B.49, which exceed the amount, duration, and frequency of the state plan personal care assistance services for participants who:

- (1) need assistance provided periodically during a week, but less than daily will not be able to remain in their homes without the assistance, and other replacement services are more expensive or are not available when personal care assistance services are to be reduced; or
- (2) *need additional personal care assistance services beyond the amount authorized by the state plan personal care assistance assessment in order to ensure that their safety, health, and welfare are provided for in their homes.*

13. The Extended Waiver Service section of the PCA Manual explains that all policies and limitations of the PCA program apply to extended PCA except for the amount and duration of the service. For both PCA and extended PCA, the frequency of service is flexible according to the needs of the person. Lead agencies may only authorize extended waiver PCA services when all of the following conditions have been met.

1. State plan non-waiver PCA services are authorized.
2. Person has a need for PCA services identified during the waiver and PCA assessments.
3. Need for PCA services is of greater amount or duration than would be authorized on the state plan.
4. PCA services do not duplicate other services on the person's individual service plan / community support plan.

State plan and waiver PCA services are part of the person's support plan. Case managers determine the duration and amount of extended waiver PCA service based on the needs of the person identified in the Long Term Care Consultation Assessment or DD Screening Document. Extended PCA services cannot be authorized when the person does not meet basic access criteria for PCA service. *PCA Manual, Extended Waiver PCA Service*.

14. In addition, according to the PCA manual, Extended Waiver PCA service, the case manager determines the need for PCA and extended waiver PCA based on all of the following:

1. Assessments (PCA and waiver)
2. Choice of the person
3. Need for services
4. Other services and supports available to the person

15. It is clear from the provisions above that home and community-based programs cover certain services that exceed the amount, scope, and duration of regular Medical Assistance home care services. It is also clear from the manual that non-waiver PCA service is separate from the extended PCA waiver service and that non-waiver PCA service is not limited by the monthly waiver case mix budget cap. For these reasons, I recommend reversing the Agency's reduction of the MA state plan PCA services to 8.75 hours per day and recommend ordering the Agency to authorize 12 hours per day in PCA services through the MA state plan.

16. Moreover, there is sufficient evidence in the record that shows additional PCA services may help the Appellant avoid institutionalization and/or function with greater independence in the community. As such, I recommend ordering that the Agency to conduct a Supplemental Waiver PCA assessment so that it could determine whether the Appellant qualifies for extended waiver PCA services.

RECOMMENDED ORDER

THE HUMAN SERVICES JUDGE RECOMMENDS THAT the Commissioner AFFIRM the Agency's determination that the Appellant is not eligible to exceed the Elderly Waiver Program Case Mix monthly budget cap.

THE HUMAN SERVICES JUDGE RECOMMENDS THAT the Commissioner REVERSE the Agency's determination to reduce the Appellant's MA state plan PCA services to 8.75 hours per day and ORDER the Agency to authorize 12 hours per day in PCA services through the MA state plan.

THE HUMAN SERVICES JUDGE RECOMMENDS THAT the Commissioner ORDER the Agency to conduct a Supplemental Waiver PCA assessment of the Appellant.

Christopher Cimafranca
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 her final decision.

Date

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
Fax: (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 notice of appeal upon the other parties and the Commissioner, and filing

the original notice and proof of service with the county district court. The law that describes this process is Minnesota Statute § 256.045, subdivision 7.¹

cc: [REDACTED], Appellant
[REDACTED], [REDACTED] County Adult Service
[REDACTED], Minnesota Department of Human Services
[REDACTED], Minnesota Department of Human Services
[REDACTED], Blue Plus
[REDACTED], DHS - Managed Care Ombudsman

¹ 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.