



Minnesota Department of **Human Services**

**DECISION OF
STATE AGENCY
ON APPEAL**

In the Appeal of: [REDACTED]

For: Home and Community-Based Services

Agency: [REDACTED] County Health and Human Services

Dockets: 175783

On September 24, 2015, Human Services Judge Victoria M. Lemberger held an evidentiary hearing under Minn. Stat. § 256.045, subd. 3.

The following people took part in the hearing:

[REDACTED], appellant's mother
[REDACTED], Lead Social Worker
[REDACTED], Assessor

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 ISSUES

The issue raised in this appeal is:

Whether [REDACTED] County Social Services correctly calculated the appellant's Developmental Disabilities (DD) grant effective April 11, 2016.

FINDINGS OF FACT

1. The appellant is 24 years old (23 at the time of the assessment) and a recipient of the Developmental Disabilities (DD) waiver through the agency. He lives with his parents. He is autism and type 1 diabetes. *Exhibit 5*. He previously suffered a seizure due to low blood sugar and his blood sugar is tested at least every 3 hours a day. *Appellant testimony*. He receives insulin injections 6 to 8 times a day. *Id.* In November 2015, he suffered a grand mal seizure and the cause is unclear. *Id.*

2. The appellant was reassessed for his DD waiver on January 14, 2016. *Exhibit 8*. On March 9, 2016, the agency sent the appellant a written notice of action that his DD waiver grant would be reduced to \$37,978.25. *Exhibit 4*. The appellant appealed this decision in a letter which was received on March 28, 2016. *Exhibit 1*. On May 3, 2016, the judge held a hearing by telephone conference. The judge closed the record, which consists of nine exhibits, at the end of the hearing.¹

3. The reason for the reduction is because of the appellant's medical rating. *Agency testimony*. In past years, the appellant had awake RN staff throughout the night to monitor his blood sugar. *Id.* This year the agency used the MnCHOICES screening tool.² *Id.* The [REDACTED] is designed to be more objective and provides less ability for interpretation. *Id.* Because the appellant's diabetic condition is without complications, his medical rating was changed from a "5" to a "2" meaning that he needs specialized or frequent medical appointments. *Id.* When the appellant objected to the rating change, the agency revised the assessment and the rating was changed from "2" to "3" which allows for "on-call medical attention." *Id.* This increased the budget to \$ 52,658.55. *Id.* The "5" rating is an indication of an overriding health care condition needing a registered nurse to act as a case manager/service coordinator. *Id.* The "5" rating is generally used when a person is ventilator dependent or requires frequent unscheduled intramuscular medication. *Id.* A "4" rating is when a person needs on-site medical attention less than 24 hours a day. *Id.*

¹ Exhibit 1 – Appeal; Exhibit 2 – Community Support Plan; Exhibit 3 – Agency Appeal Summary; Exhibit 4 – Notice of Agency Action; Exhibit 5 – Medical Records; Exhibit 6 – Conciliation Screen; Exhibit 7 – MMIS Screening; Exhibit 8 – MnCHOICES Assessment; Exhibit 9 – MnCHOICES Revision.

² See the DD Screening Document Codebook, http://www.dhs.state.mn.us/main/idcplg?IdcService=GET_DYNAMIC_CONVERSION&RevisionSelectionMethod=LatestReleased&dDocName=id_008530#

4. The appellant is requesting an annual budget of \$58,980.35. *Appellant testimony.* The appellant argues that the “on-call” rating is insufficient because the blood sugar testing must be done at least every three hours. *Id.* It needs to be done more frequently when the appellant is ill. *Id.* At any event, he also receives an insulin injection at nearly every testing time. *Id.* Because of his autism, he is not able to reliably report low blood sugar symptoms or administer his insulin. *Id.*

CONCLUSIONS OF LAW

1. A person may request a state fair hearing by filing an appeal either: (1) within 30 days of receiving written notice of the action; or (2) within 90 days of such notice if the appellant can show good cause why the request for an appeal was not submitted within the 30 – day time limit. *Minn. Stat. § 256.045, subd. 3.* The appellant submitted her appeal request within the 30 – day statutory time limit. Therefore, the appeal is timely and the Commissioner of Human Services has jurisdiction over this appeal. *Id.*

2. In an administrative appeal, the burden of proof is governed by the state or federal laws that apply to the hearing. *Minn. Stat. § 256.0451, subd. 17.* When there is no specific law, the party who seeks that a certain action be taken must prove the facts at issue by a preponderance of the evidence. *Id.* In this case, the appellant bears the burden to show that he requires a higher budget to meet his needs under his CDCS grant because he is the party seeking to change the status quo.

3. “Preponderance of the evidence” means that, in light of the record as a whole, the evidence leads the human services judge to believe that the finding of fact is more likely to be true than not true. *Minn. Stat. § 256.0451, subd. 22.* The legal claims or arguments of a participant do not constitute either a finding of fact or a conclusion of law, except to the extent the human services judge adopts an argument as a finding of fact or conclusion of law. *Id.* The human services judge’s recommended order must be based on all relevant evidence. *Minn. Stat. § 256.0451, subd. 5.*

4. The Minnesota Department of Human Services (DHS) was authorized to seek permission from the federal government to offer services that exceeded the scope and limitations of the regular Minnesota Medicaid program, but did not exceed 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 DHS. *See Minnesota Department of Human Services Community Based Services Manual.* The DD Waiver is one such home and community-based waiver program developed and managed by DHS. *Id.* 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. *Community Based Services Manual.*

5. The allocations for the waivers authorized by the federal agency are calculated by the Minnesota Department of Human Services (DHS) to reflect a 2004 amendment to the agreement between the federal and state agencies which establishes the various waiver funding mechanisms. The calculation is based on an individual's county screening document. The state assesses a recipient's need based on a number of characteristics that are related to costs and services, including age group. The state uses a weighted formula which reflects the relationship between an individual's characteristics and the cost of care. The Centers for Medicare and Medicaid Services, the federal agency overseeing the agreement, approved the formula. DHS has no discretion in applying the formula. *Community Based Services Manual*.

6. The DD budget formula was adopted to ensure improved consistency in how budgets are established for consumers; however, in using a statistically based formula to set an individual budget, the budget amount provided to an individual reflects an average cost for a group of people or a popular characteristic. *Community Based Services Manual*.

7. Prior to 2015, DD assessments and reassessments of needs were done using the Minnesota Long-Term Care Consultation Services Assessment Form. Beginning in September 2015, however, counties began using the MnCHOICES assessment tool for DD reassessments. According to DHS, MnCHOICES was created as an assessment tool in order to provide greater consistency in eligibility determinations, and to allow for the use of a single, comprehensive tool to determine needs and develop support plans across age, ability and financial statuses.³

8. The laws establishing the DD waiver, budget and assessments have not changed from the last assessment. There is nothing in the record to show why the budget was reduced when it is difficult to point to any actual improvement in the appellant's condition. In fact, the fact that he recently suffered a grand mal seizure suggests that his medical condition has become more fragile rather than less. The agency failed to meet its burden of proof to support its reduction of the appellant's DD budget. It is clear that the appellant needs on site medical attention frequently every day. For this reason, I recommend that the DD budget should be recalculated, changing the medical rating from "3" to "4".

RECOMMENDED ORDER

THE HUMAN SERVICES JUDGE RECOMMENDS THAT the Commissioner of Human Services, according to the findings of fact and conclusions of law, REVERSE the reduction and recalculate the appellant's DD waiver service with the medical rating changed from "3" to "4".

Victoria M. Lemberger
Human Services Judge

Date

³ See, *MnCHOICES Fact Sheet, DHS Form 6477*, at <https://edocs.dhs.state.mn.us/lfserver/Public/DHS-6477-ENG>.

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.

FOR THE COMMISSIONER OF HUMAN SERVICES:

Date

cc: [REDACTED], For the Appellant
[REDACTED] County Health and Human Services
[REDACTED], DHS, [REDACTED]

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 7.⁴

⁴ 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.