

IN THE OFFICE OF STATE ADMINISTRATIVE HEARINGS  
STATE OF GEORGIA



Petitioner, :  
: Docket No.:  
: OSAH-DCH-SOURCE-  
v. :  
: Agency Ref. No.:  
DEPARTMENT OF COMMUNITY HEALTH, :  
Respondent. :

*Kevin Westray*  
Kevin Westray, Legal Assistant

INITIAL DECISION  
ORDER GRANTING RESPONDENT'S MOTION FOR SUMMARY DETERMINATION

I. Introduction

This matter came before the court pursuant to an appeal filed by Casey Moye ("Petitioner") under the Georgia Medical Assistance Act from the decision of the Georgia Department of Community Health ("Respondent") to terminate Petitioner's participation in the Service Options Using Resources in Community Environments program ("SOURCE"). The Court has jurisdiction to hear this matter pursuant to Chapter 13 of Title 50, the "Georgia Administrative Procedure Act." Respondent has moved for summary determination arguing that no genuine issue for determination exists and that it is entitled to judgment as a matter of law. Petitioner failed to file a response to this motion. The Court, having considered the motion, the exhibits, other supporting material, and the applicable law, finds that DCH correctly denied Petitioner's continued placement in the SOURCE program. Accordingly, for the reasons indicated below, Respondent's motion is **GRANTED**.

II. Findings of Fact

1. Petitioner has been diagnosed with mental retardation, obesity, hyperthyroidism, and constipation. (Exhibit 1). Since 2007, Petitioner, a thirty-two year old female, has been receiving services through the

SOURCE program, and is therefore subject to annual re-assessments to determine eligibility for the continuation of benefits.

2. Due to her mental disability, Petitioner needs assistance with bathing and dressing but she is physically able to complete all activities of daily living. She has been encouraged by her personal care physician to exercise to help with obesity problems. Petitioner's father is her primary caregiver.

3. On June 28, 2012, Petitioner was reassessed by a LPN, \_\_\_\_\_ employed with a contractor of the Respondent, but was found to be ineligible as she does not require the intermediate level of care provided by a nursing facility, which is the level of care required to be eligible for the SOURCE program.

4. Petitioner was admitted into the SOURCE Program as a Medicaid recipient in 2007 (Exhibit 2, sec. B) but when re-evaluated in 2012, it was determined that Petitioner did not meet the required level of care to remain in the SOURCE Program (See Exhibit 3) (Part II, Policies and Procedures for Service Options Using Resources in Community Environments, sec. 801.2(e). When notified that she no longer qualified for the SOURCE Program, Petitioner requested a hearing.

### III. Conclusions of Law

1. The applicable manual that governs the SOURCE Program is *Part II, Policies and Procedures for Service Options Using Resources in Community Environments*, (July 1, 2011 version). Respondent is designated by federal and state law as the single agency responsible for administering Medicaid in Georgia. (42 C.F.R. § 431.10, O.C.G.A. § 49-4-142.)

2. All eligible members for SOURCE must meet the following conditions:

- a. Aged 65 and older, or under 65 and disabled;
- b. Receiving Medicaid under SSI or Public Law categories;
- c. Qualifying as voluntary Members of the SOURCE program;
- d. Residing in a SOURCE Enhanced Case Management's designated service area; and
- e. With assistance from SOURCE and/or informal caregivers, capable of safely residing in the community (with consideration for a recipient's right to take calculated risks in how and where he or she lives);
- f. Meets the Nursing Home Level of Care criteria. (Respondent's Exhibit 1, Part II, Policies and Procedures for Service Options Using Resources in Community Environments, Section 701 excerpt)

3. The SOURCE program was established to improve the health outcomes of persons with chronic conditions, through the development of a cost-effective, comprehensive managed care model. The goal of the SOURCE Program is to reduce the need for long-term institutional placement and prevent the level of disability and disease from increasing in chronically ill adults. (Respondent's Exhibit 1, Part II,

Policies and Procedures for Service Options Using Resources in Community Environments, Section 601 and 602 excerpts)

4. Respondent is the agency designated by federal and state law responsible for administering Medicaid in the State of Georgia, and therefore, the SOURCE program was created. (42 C.F.R. § 431.10, O.C.G.A. § 49-4-142.

5. The SOURCE Program is regulated, as are all other Medicaid program, by Respondent, within the boundaries of federal regulations as promulgated by the Centers for Medicare and Medicaid Services (CMS), a division of the United States Department of Health and Human Services. (42 C.F.R. § 430.0, 42 C.F.R. § 430.25)

6. CMS has waived certain statutory requirements to allow "waiver" programs to offer services outside the boundaries of usual federal Medicaid service. (42 C.F.R. § 441.300). These "waiver" programs offer more cost effective services, and in the SOURCE program, home and community based services are some of the benefits. (42 C.F.R. § 430.25). Under the Respondent's Disabled and Elderly Care 1915c HCBS (Home and Community Based Services) waiver, the SOURCE program provides for the services in the personal home in which Petitioner resides.<sup>1</sup>

7. However, all requests to CMS for waiver programs must meet the requirements of 42 C.F.R. § 441.301, "contents of a request for waiver." If Georgia's waiver request furnishes home and community-based services, "the waiver request must ...(6) be limited to one of the following target groups or any subgroup thereof that the State may define: (i) Aged or disabled, or both (ii) Mentally retarded or developmentally disabled, or both (iii) Mentally ill." (42 C.F.R. § 441.301(b)(6))

8. Respondent specified that all recipients under this 1915c waiver would be either "aged" (minimum age of 65 years old) or "disabled (physical)." CMS approved Respondent's application for 1915c waiver, thereby limiting eligibility for the programs created under this SOURCE waiver to recipients who are either aged or physically disabled or both. (See, Exhibit 6)

9. The categories of "aged" and "physically disabled" were further defined in section 1 of the waiver, "Request for Information (2 of 3)." (Exhibit 7) The SOURCE waiver specifies that Respondent must choose a level of care each recipient must meet in order to receive services. Respondent chose the nursing facility level of care as defined in 42 C.F.R. § 440.40 and 42 C.F.R. § 440.155. Consequently, in order to receive services under the 1915 c waiver, a recipient must have circumstances caused by age or physical disability that would cause the recipient to meet the nursing facility level of care. (42 C.F.R. § 440.40 and 42 C.F.R. § 440.155)

10. Because Petitioner does not have medical conditions based on age or physical disabilities that meet the required level of care, Petitioner is not eligible for the services provided under the 1915c waiver, the

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<sup>1</sup> SOURCE was originally created as a part of Georgia's state plan for Medicaid. In 2008 the SOURCE program was removed from the state plan and transferred to a 1915c "Home and Community Based Waiver Program." (Respondent's Exhibit 1)

SOURCE Program. Petitioner exhibits no physical disabilities or disabilities based on age that would meet the "nursing home level of care." (*Id.*)(See Exhibit 2, Section 35. N)

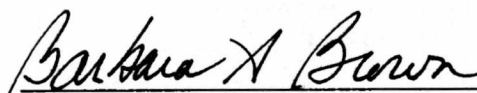
11. OSAH Rule 15 concerning Summary Determination, states as follows: "A party may move, based on supporting affidavits or other probative evidence, for summary determination in its favor on any of the issues being adjudicated on the basis that there is no genuine issue of material fact for determination. There shall be included in the motion or attached thereto a short and concise statement of each of the material facts as to which the moving party contends there is no genuine issue for determination. Such a motion must be filed and served on all parties no later than thirty (30) days before the date set for hearing. For good cause shown, a motion may be filed at any time before the close of the hearing."

12. In this matter, the Respondent filed a Motion for Summary Determination in a timely manner, as there was no genuine issue of fact for determination. In this case, Petitioner is not physically disabled nor is she over the age of 65, nor is she physically disabled as defined by the federal regulations controlling the admissibility criteria for the SOURCE Program. Federal regulations prohibit Respondent from providing SOURCE services to recipients based exclusively on mental disabilities. Consequently, the granting of a Motion for Summary Determination is proper in this case, and Petitioner's request for a hearing is hereby dismissed.

#### IV. Decision

The Respondent's Motion for Summary Determination is hereby GRANTED, and Petitioner's termination from the SOURCE Program by Respondent was proper.

SO ORDERED, this   16   day of



Barbara A. Brown  
Administrative Law Judge