



**BEFORE THE OFFICE OF STATE ADMINISTRATIVE HEARINGS
STATE OF GEORGIA**

Kevin Westray
Kevin Westray, Legal Assistant

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

INITIAL DECISION

COUNSEL: .

I. INTRODUCTION:

Petitioner, _____ appeals Georgia Department of Community Health's ("Respondent") decision that Petitioner is no longer eligible to receive benefits under the Service Options Using Resources in Community Environments ("SOURCE") program. The hearing in this matter was held on _____ For the reasons stated herein, Respondent's decision is REVERSED.

II. FINDINGS OF FACT:

1.

Petitioner, a 49 year-old woman, has received assistance from Georgia's SOURCE program since 2004. Petitioner currently receives three (3) hours of personal support services in her home once a week. (Testimony of Petitioner).

2.

_____, an expert in the field of neurology, has been Petitioner's neurologist since 1997. _____ diagnosed Petitioner with chronic demyelinating neuropathy, an idiopathic, non-genetic, non-developmental disease of peripheral nerves. Petitioner's condition causes severe weakness in her hands and feet, muscle atrophy, and sensory loss, making it difficult to walk without falling. Petitioner also has Charcot neuroarthropathy and degenerative back disease. All of these conditions lead to a substantial risk of falling and significant pain. (Deposition of _____ Part 1, p.12; Deposition of _____ Part 2; p.64; Exhibits P-4 & P-7).

3.

Petitioner needs active assistance with multiple activities of daily living. First, Petitioner needs help cleaning and taking out the trash because Petitioner's condition worsens with repetitive motion and these activities carry a high risk of falling. Petitioner needs assistance with cooking because it is dangerous for Petitioner to handle knives and stand at a stove. Also, Petitioner cannot open cans and jars due to tremors in her hands. Petitioner is unable to handle childproof caps on her medication and cannot fasten buttons or pull up a small zipper on her clothing. Petitioner also has difficulty bathing, using the toilet, and walking without assistive devices. Finally, Petitioner has a history of falls resulting in serious injury. The likelihood of injury from a fall is high because Petitioner lives alone. (Testimony of Petitioner, Deposition of _____ 1, p.16; 21-34; Exhibits P-4 & P-7).

4.

testified that without SOURCE assistance, it would not be possible for Petitioner to remain at home because she needs assistance with cleaning, cooking, dressing, eating, and bathing. Additionally, testified that Petitioner's SOURCE assistance substantially decreases her risk of falling. (Deposition of Part 1, p.36; Deposition of Dr. Hopkins Part 2, p.65; Exhibit P-7).

5.

is an expert in the field of foot diseases and pathologies, has treated Petitioner for four (4) years. diagnosed Petitioner with Charcot neuroarthropathy, a disease that leads to ambulation difficulty, breakdown of the skin, ulcerations, and infection. The condition results in an unstable gait and a drop foot gait, making it difficult and dangerous for Petitioner to walk. concluded that Petitioner cannot independently perform activities of daily living because Petitioner needs assistance with ambulating, cooking, bathing, cleaning, and dressing. (Deposition of p. 9-14; Deposition Exhibit P-1; Exhibit P-5).

6.

On April 26, 2012, Bonita Maxwell, a licensed practical nurse, reevaluated Petitioner's SOURCE eligibility using the procedure and instrument authorized by the Centers for Medicaid and Medicare Services (CMS) in the HCBS waiver. Ms. Maxwell completed the level of care assessment instrument tool (MDS-HC) and presented her findings to an interdisciplinary team. The team consisted of provider's from SOURCE

Partners of Atlanta, including Petitioner's case manager, Carrie Johnson; the Clinical Manager, Carolyn Porter; and Medical Director, Dr. Kieran Cooper. The interdisciplinary team determined that Petitioner did not meet the nursing home level of care criteria required for participation in SOURCE. (Testimony of Bonita Maxwell; Testimony of Carolyn Porter; Exhibits R-7 & R-8).

7.

Ms. Maxwell completed Petitioner's MDS-HC after meeting with her for approximately forty (40) minutes.¹ Ms. Maxwell listed Petitioner's conditions as hypothyroidism, pain, and neuropathy. In the MDS-HC, Ms. Maxwell recorded that Petitioner was independent on almost all activities of daily life. The MDS-HC stated that Petitioner did not require an assistive device for walking and that Petitioner had not fallen within the last ninety (90) days. The document reflected that Petitioner had an unsteady gait, but stated that it was not exhibited in the last three (3) days. (Testimony of Bonita Maxwell; Exhibit R-7).

8.

Ms. Maxwell also completed a fall risk assessment document where she recorded a fall risk score of two (2) out of a possible nineteen (19) points. A score of eight (8) or more indicates a high risk of falling. Petitioner received two (2) points because she takes medications that predispose her to falling. The fall assessment did not reflect that Petitioner had a history of falls, abnormal gait, and that Petitioner used assistive devices to walk. It also failed to report that Petitioner has medical conditions that predispose her

¹ Ms. Maxwell only has contact with Petitioner during the annual reevaluation.

to falls or that Petitioner lived alone. Under cross examination, Ms. Maxwell admitted that she should have recorded more points. Ms. Maxwell admitted that she would have liked more information about Petitioner's ambulation problems and history of falling. Ms. Maxwell stated that if Petitioner's doctor said she had a history of falls, the value should be raised. (Testimony of Bonita Maxwell; Exhibit P-10).

9.

Carolyn Porter, a SOURCE nurse, determines whether an individual meets the level of care requirement. To make that determination, Ms. Porter reviews the MDS-HC, the member's medical chart, and all assessment documents completed by Ms. Maxwell. Ms. Porter's analysis is reflected in the Appendix F, a legal document used by the interdisciplinary team to record its determination of the nursing home level of care for a patient. Petitioner's Appendix F stated that Petitioner was independent with eating, transferring, bathing, and ambulation, but needed assistance with dressing. Ms. Porter determined that Petitioner's medical conditions do not prevent her from self-executing any activities of daily living. (Testimony of Carolyn Porter; Testimony of Lorrie Stewart; Exhibit R-7).

10.

Dr. Kiernan Cooper, the Medical Director of SOURCE Partners of Atlanta, determined that Petitioner was not eligible for SOURCE based on the Appendix F and the MDS-HC. Dr. Cooper did not review Petitioner's medical records. Dr. Cooper testified, "I just look at what the nurses tell me about [Petitioner's] daily activities." Dr. Cooper

stated that if Petitioner had a history of repetitive falls with serious injury she would meet the intermediate level of nursing home care criteria. Dr. Cooper admitted that as a general practitioner, he generally defers to the opinions of specialists such as Petitioner's neurologist, Dr. Hopkins, and Petitioner's podiatrist, Dr. Bell. (Testimony of Dr. Cooper).

11.

Dr. Diana Bennett-Johnson of the Georgia Medical Care Foundation evaluated Petitioner's SOURCE eligibility for Respondent. After reviewing Petitioner's case, Dr. Bennett-Johnson determined that Petitioner had a "significant" disability, but was ineligible for SOURCE benefits. In making her determination, Dr. Bennett-Johnson was aware of statements from Dr. Hopkins and Dr. Bell that Petitioner met the intermediate nursing home level of care. However, Dr. Bennett-Johnson deferred to Ms. Maxwell on the issue of whether Petitioner could perform activities of daily living independently.²

III. CONCLUSIONS OF LAW:

Based on the foregoing Findings of Fact, the undersigned makes the following conclusions of law:

1.

The agency shall bear the burden of proof. OSAH Rule 616-1-2-.07. The standard of proof on all issues shall be a preponderance of the evidence. OSAH Rule 616-1-2-.21(4). In proceedings before this Court, "[t]he independent determination and de novo [review] mandated by [the Court's] rules require the [Court] to consider the applicable facts and law anew, without according deference or presumption of

² However, Dr. Bennett-Johnson testified that Dr. Hopkins was highly respected in his field.

correctness to the [Department's] decision, and to render an independent decision. . . .”
Longleaf Energy Associates, LLC v. Friends of the Chattahoochee, Inc., 298 Ga. App.
753, *10, 681 S.E. 2d 203, 214 (2009).

2.

Title XIX of the Social Security Act, 42 U.S.C. §1396 *et seq.*, permits states to create medical assistance (“Medicaid”) plans which are partially funded by the federal government. Respondent is the state agency responsible for adopting and administering Georgia’s state plan for medical assistance. O.C.G.A. § 49-4-142. SOURCE is one of several optional waiver programs offered under Georgia’s State Plan pursuant to 42 U.S.C. §1396n(d) and is included in Georgia’s Home and Community Based Waiver for Elderly and Disabled Individuals (“HCBS Waiver”). SOURCE Policy Manual, § 601.

3.

SOURCE members are evaluated for continued eligibility annually. Reevaluations confirm that the member continues to be eligible for SOURCE and allows for adjustment of the CarePath goals and service plan. SOURCE Policy Manual, § 904.

4.

The Level of Care criteria utilized in the SOURCE Program is an Intermediate Nursing Home Level of Care. The minimal requirements for an individual to qualify for a nursing facility level of care specify that the individual be

A. Diagnosed with a stable medical condition requiring intermittent skilled nursing services under the direction of a licensed physician; AND

B. Have a mental or functional impairment that would prevent self-execution of the required nursing care or

C. Have a physical functional impairment which prevents self-executions of the activities of daily living.

Part II, Policies and Procedures for Nursing Facility Services, p. VIII-3; See Exhibit R-6, Appendix I.

5.

A recipient of SOURCE must be in need of services to assist with the performance of activities of daily living (ADLs). SOURCE Policy Manual, §601. ADLs include fundamental activities related to community living, such as eating, bathing/dressing, grooming, transferring/locomotion and toileting. Part II, Policies and Procedures for Nursing Facility Services, Definitions/Abbreviations, p.i.

6.

Petitioner needs SOURCE services to assist with the performance of activities of daily living. According to _____ Petitioner requires help with eating, cleaning, bathing, walking, and dressing. Petitioner needs assistance with these activities to reduce the risk of falling, prevent injury, and avoid exacerbating her condition.

7.

Petitioner is at a great risk of falling if she is left without assistance. Dr. Cooper, the SOURCE Medical Director, testified at trial that if Petitioner is at great risk for falling, she would meet the intermediate nursing home level of care.

concluded that Petitioner has a substantial risk of falling. In fact, Petitioner has a long history of falls that are documented in medical records. Petitioner also risks serious injury from falling because she lives alone.

8.

Petitioner meets the nursing home level of care criteria required for participation in SOURCE. Petitioner meets the first prong of SOURCE's qualification criteria because she has been diagnosed with medical conditions that require intermittent skilled nursing service. Petitioner also requires assistance with multiple activities of daily living and is at great risk of falling, and therefore meets the additional required prong.

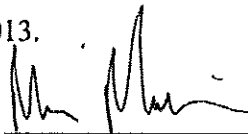
9.

Petitioner is eligible for SOURCE benefits because she qualifies for the intermediate level of nursing home care and should continue to receive assistance.

IV. DECISION:

For all of the foregoing reasons, Respondent's decision to terminate Petitioner's SOURCE assistance is **HEREBY REVERSED**.

SO ORDERED, this 4th day of January, 2013.



MICHAEL MALIHI
Administrative Law Judge

Either party may appeal this decision to the Department of Community Health within 30 days of the entry of the Initial Decision. The request should be sent to: Georgia Department of Community Health, Appeals Reviewer, 2 Peachtree Street, N.W., 40th Floor, Atlanta, Georgia 30303-3159.