



FILED
OSAH

JUL 18 2013

IN THE OFFICE OF STATE ADMINISTRATIVE HEARINGS
STATE OF GEORGIA

Kevin Westray, Legal Assistant

	:	
Petitioner,	:	Docket No.:
	:	OSAH-
v.	:	Woodard
	:	
DEPARTMENT OF COMMUNITY	:	
HEALTH,	:	
Respondent.	:	

**INITIAL DECISION
ORDER GRANTING RESPONDENT'S MOTION FOR SUMMARY DETERMINATION**

I. Introduction

This matter came before the Court pursuant to an appeal filed by or on behalf of [redacted] ("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 terminated Petitioner from participation in the SOURCE program. Accordingly, for the reasons indicated below, Respondent's motion is **GRANTED**.

II. Findings of Fact

1.

SOURCE was established to improve the health outcomes of persons with chronic conditions, through the development of a cost-effective, comprehensive managed care model. SOURCE is distinguished from other Medicaid waiver programs in Georgia by the linkage of primary medical care to community services, through a Primary Care Physician/Case Manager team. Community and physician services for SOURCE members are covered under conventional Medicaid fee-for-service reimbursement. (Part II, Policies and Procedures for SOURCE, §601.)

2.

Petitioner was initially enrolled in SOURCE in 2006. Petitioner has been an eligible member of the SOURCE program at all times relevant to this Decision. She has received Personal Support Services funded through SOURCE (Exhibits 1 and 2 to Respondent's Motion for Summary Determination ("MSD")).

3.

In November 2012, Petitioner underwent a physical and mental assessment to determine her continued eligibility to participate in the SOURCE. Program. (Exhibit 1 to MSD).

4.

At the time of this assessment, Petitioner was a 16 year old female with primary diagnoses of Autism, Congenital Abnormalities, and Aphasia. She has no impairment of hearing, paralysis, or motion. She does not require assistance with most activities of daily living, including eating, ambulation, and transfers, but she does need some help with bathing and dressing. (Exhibit 1 to MSD).

5.

Based on this evaluation, Respondent determined that Petitioner suffered from a primary mental health disability of Autism. As all members of the SOURCE target population must be over age 65 or have a physical disability, Respondent concluded that Petitioner was no longer eligible for SOURCE benefits. Respondent also concluded that Petitioner did not meet the minimum level of care for a nursing home resident, which was another reason for terminating her SOURCE case. Petitioner was notified in a notice titled "Appendix Z" dated December 11, 2012 that she would be terminated from the SOURCE Program. Petitioner or her representative appealed, and her SOURCE case has not been closed pending issuance of this Decision by the administrative law judge. (Exhibit 3)

6.

Prior to the scheduling of an evidentiary hearing, Respondent filed a Motion for Summary Determination on May 13, 2013, and Petitioner was allowed through May 31, 2013 to file a response. As of the date of entry of this Initial Decision and Order, Petitioner has not filed a response to the Motion for Summary Determination. Therefore, the factual allegations found in Respondent's Motion for Summary Determination are deemed admitted.

III. Conclusions of Law

1.

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. The Respondent is the state agency responsible for adopting and administering the State of Georgia's plan. O.C.G.A. § 49-4-142. SOURCE is a class of Medicaid included in Georgia's plan.

2.

Respondent publishes the terms and conditions for receipt of medical assistance in its Policy and Procedure Manuals. Ga. Comp. R. & Reg. r. 350-1-.02(3). Specific program rules are found in Part II of this series of

manuals. “[I]ndividuals eligible for SOURCE are... [r]eceiving Medicaid under SSI or Public Law categories.”¹ Part II Policies and Procedures for SOURCE, § 701(b).

3.

The Omnibus Budget Reconciliation Act of 1986 allows the Secretary of Health and Human Services to waive various statutory requirements that apply to Medicaid funds to “provide home and community-based health services for those who but for the waiver, would require admission into a nursing facility.” 42 U.S.C. 1396n(c)(2000) and 42 CFR 433.300 (2007).

4.

The Secretary of HHS will not grant a waiver and may terminate a waiver unless the state provides assurances that:

- A. Evaluation and reevaluation will be provided to verify that eligible participants require the level of care furnished in a nursing facility;
- B. Individuals 65 years or older would need nursing facility care but for the availability of waiver services; and
- C. The procedures used to assess level of care must be at least as stringent as any existing State procedures applicable to individuals entering a nursing facility. 42 CFR 441.352(c)(2007).

Georgia has also been approved by HHS to grant SOURCE benefits only to individuals under age 65 who are physically disabled. Therefore, the “Target Group” population is limited only to applicants who are (1) Aged, or (2) Physically Disabled. 1915(c) Waiver Application.

5.

In the present case, Petitioner has a primary diagnosis of Autism. This is a mental health impairment, and not a physical disability. Therefore, Respondent correctly determined that Petitioner is not a member of the target group population, and therefore she cannot be eligible for SOURCE benefits.

6.

Respondent also determined that even if Petitioner met the target group requirement, she would not be eligible for SOURCE benefits as she does not meet the minimum nursing home level of care requirements. The minimal requirements for an applicant to qualify for a nursing facility level of care specify that the applicant must meet at least one criterion from the following three sections, which are separated into columns marked “A,” “B,” and “C”:

- A. Be diagnosed with a stable medical condition requiring intermittent skilled nursing services

¹ Supplemental Security Income (“SSI”) is a federally mandated financial assistance program which provides payments and Medicaid benefits to low income individuals who are aged, blind or disabled. Public law recipients of Medicaid benefits meet specific criteria for certain deductions from their income. If, after the income deductions, a person qualifies for SSI, the person can also qualify for Medicaid.

under the direction of a licensed physician;

B. Have a mental status more than occasional forgetfulness; AND

C. Have a functional status requiring at least one of the following conditions, with the exception of bullet 5:

- Transfer and locomotion performance of resident requires limited/excessive assistance by staff through help or one-person physical assist.
- Assistance with feeding. Continuous stand-by supervision, encouragement or cueing required and set-up help of meals.
- Requires direct assistance of another person to maintain continence.
- Documented communication deficits in making self-understood or understanding others. Deficit must be addressed in medical record with etiologic diagnosis address on MDS/care plan for continued placement.
- Direct stand-by supervision or cueing with one-person physical assistance from staff to complete dressing and personal hygiene. (if this is the only evaluation of care identified, another deficit in function status is required).

7.

Petitioner's diagnosis does not criteria "A" above, as she has a mental health diagnosis rather than a medical diagnosis. Further, the record shows that Petitioner does not have a functional impairment that would prevent her from self-executing any nursing care he may require or prevent him from self-executing any activities of daily living other than with dressing and personal hygiene. This activity requires an additional functional status, which Petitioner does not exhibit.

8.

SOURCE providers have been given guidance in how to evaluate and reevaluate level of care in Appendix I of the SOURCE Manual: (Exhibit H, Id.; SOURCE Manual, Section 1302).

9.

Summary determination under Ga. Comp. R. & Regs. r. 616-1-2-.15 is analogous to a summary judgment under O.C.G.A. § 9-11-56. "To prevail at summary judgment, the moving party must demonstrate that there is no genuine issue of material fact and that the undisputed facts, viewed in the light most favorable to the nonmoving party, warrant judgment as a matter of law." Lau's Corp. v. Haskins, 261 Ga. 491 (1991).² Thus, "summary judgment is appropriate when the court, viewing all the facts and reasonable inferences from those facts in a light most favorable to the non-moving party, concludes that the evidence does not create a triable issue as to each essential element of the case." Id. at 495.

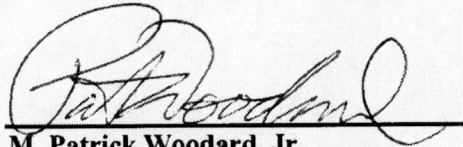
10.

Having carefully considered the motion, the Court concludes that the Respondent has demonstrated that there is no genuine issue of material fact that would lead to a conclusion that Petitioner meets the minimum level of care criteria as required for SOURCE eligibility. Therefore, the undisputed facts, viewed in the light most favorable to the Petitioner, warrant judgment as a matter of law.

IV. Decision

IT IS HEREBY ORDERED that the Respondent's Motion for Summary Determination is **GRANTED**. Accordingly, Respondent's decision to terminate Petitioner's benefits under the SOURCE program is **AFFIRMED**.

SO ORDERED THIS 18th day of July, 2013.



M. Patrick Woodard, Jr.
Administrative Law Judge

² See also Ga. Comp. R. and Regs. r. 616-1-2-.15 (1).