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Kevin Westray, Legal Assistant

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

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| [redacted], **Petitioner,** | : | |
| | : | **Docket No.:** |
| **v.** | : | **OSAH-DCH-CIS-[redacted]Miller** |
| | : | |
| **DEPARTMENT OF COMMUNITY HEALTH,** | : | **Agency Reference No.: R15-1187** |
| **Respondent.** | : | |

## ORDER GRANTING PETITIONER'S MOTION FOR AMENDED NOTICE OF FINAL DETERMINATION

This matter is an appeal filed by the Petitioner, [redacted], from the decision of the Respondent, the Department of Community Health ("Department"), to issue a partial denial of her request for prior approval to increase the number of occupational therapy units she receives through the Children's Intervention Services ("CIS") program. On June 14, 2016, the Petitioner moved for an order requiring the Department to amend its Final Review Determination ("Final Determination"), on the grounds that the Final Determination did not provide her with adequate notice of the reasons for the Department's decision. The Department filed a response on June 24, 2016, and the Petitioner replied on July 27, 2018. After consideration of the parties' arguments and submissions, and for the reasons stated below, the Petitioner's motion is **GRANTED**, and the matter is **REMANDED** to the Department for the issuance of an amended Final Determination.

The Department must give written notice and an opportunity to request a fair hearing whenever it proposes to take an action affecting the claim of a Medicaid recipient. Goldberg v. Kelly, 397 U.S. 254, 266-70 (1970); 42 C.F.R. § 431.206. In cases involving the denial of prior approval for a child's therapy services, the written notice must include the following:

(1) The medical procedure or service for which such entity is refusing to grant prior approval;

(2) Any additional information needed from the recipient's medical provider which could change the decision of such entity; and

(3) The **specific reason** used by the entity to determine that the procedure is not medically necessary to the Medicaid recipient, **including facts pertinent to the individual case**.

O.C.G.A. § 49-4-169.3(b) (emphasis added); see also 42 C.F.R. § 431.210 (requiring, *inter alia*, "the reasons for the intended action"). The United States Supreme Court has held that due process requires that a party receive "timely and adequate notice detailing the reasons . . . and an effective opportunity to defend by confronting any adverse witnesses and by presenting his own arguments and evidence orally." Goldberg, 397 U.S. at 267-68. "At a minimum, due process requires the agency to explain, in terms comprehensible to the claimant, exactly what the agency proposes to do and why the agency is taking this action." Ortiz v. Eichler, 616 F. Supp. 1046, 1061 (D. Del. 1985), aff'd 794 F.2d 889 (3rd Cir. 1986).

In this case, the first page of the Department's Final Determination includes a chart that lists the therapy units requested and indicates whether each request was approved or denied. On the second page, under the heading "Final Decision," the Final Determination states:

> Documnetation [sic] does not support 2 times week
> Approved CPT code 97533 for 4 units on 4 week
> Months (April, June, and July) to equal 12 units/months
> Requested for this submission period
>
> ***CIS policy manual April 1, 2016, Chap 800, section 802.2, pg VIII-6, "A PA is only granted for services that are documented to be medically necessary and appropriate. PA is based solely on medical needs of the child."***

(Emphasis in original).

The Department contends that this notice meets fundamental due process standards and provides the Petitioner with adequate notice of the reasons for its decision. The Court disagrees.

In fact, the "Final Decision" segment of the Final Determination is so lacking in grammar and syntax that it is largely incomprehensible. Moreover, even if one assumes that the Department intended to inform the Petitioner that it had denied prior approval for some services because the unspecified "documentation" showed that they were not needed twice per week, this reason is not specific and does not include facts pertinent to the Petitioner's individual case, as required by O.C.G.A. § 49-4-169.3(b)(3). Likewise, the Final Determination does not provide the "detailing" of reasons demanded under federal law. Goldberg, 397 U.S. at 267-68. Because the Final Determination does not provide any factual information specific to the Petitioner, it does not afford her a meaningful opportunity to challenge the Department's findings, thereby rendering the notice constitutionally insufficient. Id.; see also Rodriguez v. Chen, 985 F. Supp. 1189, 1194 (D. Ariz. 1996).

For the reasons stated above, the Court concludes that the Department failed to provide the Petitioner with the notice required under O.C.G.A. § 49-4-169.3(b) and Goldberg, 397 U.S. 254. Accordingly, the Petitioner's Motion is **GRANTED**, and this matter is **REMANDED** to the Department. The Department is **ORDERED** to issue an amended Final Determination within fourteen days of the entry of this Order.

**SO ORDERED**, this 3rd day of August, 2016.

**KRISTIN L. MILLER**
**Administrative Law Judge**