

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

R [REDACTED] H [REDACTED]  
Petitioner,

v.

**DEPT. OF BEHAVIORAL HEALTH &  
DEVELOPMENT DISABILITIES,  
Respondent.**

Docket No.: [REDACTED]  
[REDACTED]-OSAH-DBHDD-NOWCOMP-44-  
Fry

Agency Reference No.: [REDACTED]



11/22/2022

**INITIAL DECISION**

**I. INTRODUCTION**

A handwritten signature in brown ink, appearing to read 'Kristan Moses', is written over a horizontal line.

**Kristan Moses, Legal Assistant**

Petitioner, R [REDACTED] H [REDACTED], is a current recipient of intellectual/developmental disability services through the Department of Behavioral Health and Developmental Disabilities’ (“DBHDD” or “Respondent”) New Options Waiver/Comprehensive Supports (“NOW/COMP”) Program. DBHDD reduced Petitioner’s benefits. Petitioner filed a timely appeal.

A hearing was held before the undersigned Administrative Law Judge via video teleconference on October 18, 2022.<sup>1</sup> Petitioner’s mother and guardian, B [REDACTED] W [REDACTED], and Petitioner’s nurse and caretaker, Kelli Johnson, appeared for Petitioner. Ashlee Thompson, Esq., appeared on behalf of Respondent. Tasha Foster, Bobbie Davidson, and Dr. Dana Scott testified on behalf of Respondent.

**II. FINDINGS OF FACT**

1.

To be eligible for NOW/COMP services, an individual must either have: (1) an intellectual disability with onset prior to the age of eighteen that significantly impairs adaptive functioning

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1. The record was kept open in this case until October 28, 2022, for the Respondent to prepare and for Petitioner to review and comment on a table of the Petitioner’s feeding times and his medication administration times.

and is characterized by significantly sub-average general intellectual functioning; or (2) a closely related condition, other than mental illness, with onset prior to the age of twenty-two that results in substantial impairment of general intellectual functioning or adaptive behavior similar to that of persons with an intellectual disability. Petitioner's eligibility is not in dispute.

2.

Dr. Dana Nicole Scott, who is the Director of the Office of Health and Wellness with Respondent, testified that participants in the NOW/COMP program are given nursing assessments under several circumstances: initial determination of eligibility, annual assessment of level of care needs, a level of care change request, and a request for direct support. The assessment includes all of the various nursing services that the participant requires. Skilled tasks, such as administration of medications or operation of a feeding tube, requires an LPN or a RN. Unskilled tasks, such as transfers and turning, can be performed by CNA. This information is used by a team of calculators who determine the type of care needed and the number of units of time necessary to perform the various required services. The output of the assessment is the number of direct support hours that can be performed by an LPN or a RN and the number of oversight hours that can be performed by a RN. PRN services, which are "as needed" nursing services, are counted and included based on historical averages. The calculated time is subject to a second review before it is authorized. The time is authorized in bulk so the family/caretaker can schedule the services as needed. She also testified that the assessment is based on the services that are in place at the time of the assessment and not based on subsequent changes to required services or medications. Changes that occur after an annual assessment that need to be addressed before the next annual assessment are to be raised by a participant through a level of care change request. The Respondent would review the request

and decide whether it requires a change in the number and types of services, whether, in turn, it requires a change in the number of hours of care. [Testimony of Dr. Scott].

3.

Nurse Tasha Foster testified that she completed Petitioner's 2022 Nursing Assessment on January 7, 2022. [Respondent's Exhibit R-4]. She testified that she has completed over 550 assessments. She obtained the information to complete the assessment from Nurse Johnson, Petitioner's nurse/caretaker. She reviewed the Health Risk Screening Tool (HRST), the Supports Intensity Scale (SIS), the current doctors' orders, current hydration and nutrition orders (times, frequencies and types), and medication orders to prepare the assessment. [Testimony of Nurse Foster].

4.

Ms. Bobbie Davidson is a RN and works for the Office of Health and Wellness as a nurse consultant. She is a supervisor in the area that performs the counting analysis to move from the number, type and character of nursing events to the number of direct nursing service hours and supervisory nursing hours required to perform those services. Nurse Davidson testified that if medications are given at the same time or within one hour of a feeding it should not be counted as a separate event. If it is counted separately, it results in a duplication of services. She testified that the reduction in services from 2021, as reflected in Respondent's Exhibit R-3, and from 2022, as reflected in Respondent's Exhibit R-4 was due to the elimination of duplicate services. She testified that it reduced the number of separately counted medication events from six to two. She testified that when she reviewed the Nursing Assessment, (R-4) she had three nurses trained in performing the calculations, redo the calculations independently to ensure that the results are consistent. [Testimony of Nurse Davidson]

5.

Nurse Kelli Johnson, Petitioner's caretaker testified that several of the medication administration times did not coincide with feeding times. She testified that Petitioner was fed at 6 AM, 9AM, noon, 3 PM and 6 PM and that certain of his medications were administered at other times. Two of the medication times, 8 PM and midnight were not close to the feeding times. She also testified that Petitioner's medications for constipation were changed and not taken into account in the calculations. She testified that Miralax was changed from PRN (meaning administered as needed) to a specific time each day. She also testified that Enulose and Docusate Sodium were added to his Gtube regimen in June of 2022. [Testimony of Nurse Johnson].

6.

On July 25, 2022, Respondent notified the Petitioner that his nursing services were being reduced from 12 hours of LPN/RN direct nursing services and 4 hours of RN supervisory nursing services to 10 hours of LPN/RN nursing services and 5 hours of RN nursing services. [Respondent's Exhibit R-1]. The Respondent made this adjustment based on a recalculation of the number of hours required to administer Petitioner's feedings and medications that was made during the 2022 annual Nursing Assessment. The Nursing Assessment that was completed by the Respondent on February 5, 2021, [Respondent's Exhibit R-3] included six medication events that were included as separate events. These medications are administered through Petitioner's feeding tube, which is calculated to require the same number hours of preparation, administration and completion as a feeding using the feeding tube. The 2021 Assessment also included five feeding events that were counted separately from the six medication administration events. In Respondent's Nursing Assessment that was completed on January 7, 2022, by Tasha Foster, RN, [Respondent's Exhibit R-4], four of the medication events that are administered via the feeding

tube were combined with feedings that either coincided with or were scheduled to occur within one hour of the time the medications were to be administered. Two of the medication events were outside feeding time frames and were counted as separate events. {Testimony of Dr. Scott, Nurse Foster, Nurse Davidson, Exhibits R-1, R-3 and R-4}.

### III. CONCLUSIONS OF LAW

#### 1.

This matter concerns a reduction of benefits in the NOW/COMP program; therefore, Respondent bears the burden of proof. GA. COMP. R. & REGS. 616-1-2-.07. The standard of proof is a preponderance of the evidence. GA. COMP. R. & REGS. 616-1-2-.21.

#### 2.

Title XIX of the Social Security Act (42 U.S.C. § 1396-1396v) permits states to create medical assistance (“Medicaid”) plans which are partially funded by the federal government. The Department of Community Health (DCH) is the state agency responsible for adopting and administering Georgia’s state plan for medical assistance. O.C.G.A. § 49-4-142 (2014). The New Option Waiver and Comprehensive Supports Waiver Program are two of several waiver programs offered under Georgia’s State Plan pursuant to 42 U.S.C. § 1396n(d) and are included in Georgia’s Home and Community Based Waiver for Elderly and Disabled Individuals (“HCBS Waiver”). The most recent waiver application was approved on July 14, 2022, for a five-year period with an effective date of April 1, 2021.<sup>2</sup> While DCH administers Medicaid, it delegates the day-to-day operation of the NOW/COMP Programs to the Department of Behavioral Health and Developmental Disabilities (DBHDD), Division of Developmental Disabilities. DCH maintains administration over the NOW/COMP Program and oversees DBHDD’s performance of operational functions.

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<sup>2</sup> <https://dch.georgia.gov/document/document/ga0323r0500-cms-approval-letter-signed-7-14-2022/download>

The DBHDD Central Office performs statewide waiver operational and daily administrative functions.<sup>3</sup>

3.

A State Plan may provide for individuals who, but for the provision of home or community-based services, would require the level of care provided in a hospital, nursing facility, or intermediate care facility for individuals with intellectual disabilities (“ICF/ID”). 42 U.S.C. § 1396a(a)(10)(A)(ii)(VI); 42 C.F.R. § 430.25(c)(2).

4.

At the request of the Court, Respondent prepared, and Petitioner reviewed and commented on a chart that shows a breakdown of Petitioner’s feeding times and the times medications are administered. The submission also includes a list, broken down by time of day, of the feeding and medication administration times that occur in a 24-hour period. The chart helps “visualize” the “overlap” of feeding and medication administration times that resulted in the determination that there was a duplication of services and the consequent reduction of six separate medication administration events to two. The chart and supporting information are admitted as ALJ-1. An image of the chart is reproduced below.

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<sup>3</sup> [https://medicaid.georgia.gov/sites/medicaid.georgia.gov/files/related\\_files/document/17NOW\\_COMP.pdf](https://medicaid.georgia.gov/sites/medicaid.georgia.gov/files/related_files/document/17NOW_COMP.pdf)

**Task/Medication Times**

		600	800	900	1200	1400	1500	1700	1800	2000*	2400*	
<b>Feeding</b>	G-Tube Feeding and Water Flushes	600		900	12N		1500		1800			
<b>Meds</b>	Claritin (2)		800									
	Benadryl (3)	600			12N				1800		12M	
	Baclofen (4)		800		12N					2000		
	Alfuzosin (6)		800									
	Ferrous sulfate (7)		800									
	Fluticasone (8) inhaler		800									listed individually on calculation
	Tizanidine (9)		800		12N					2000		
	Miralax (10)		800									
	Depakote (11)		800			1400				2000		
	Keppra (12)		800					1700				
	Trileptal (13)		800					1700				
	Vimpat (14)		800					1700				
	Famotidine (15)		800					1700				
	Lactobacillus (18)		800					1700				
	Albuterol (19) neb tx		800									listed individually on calculation
	Tylenol (1)		800									
	Mucinex (5)		800									
	Desitin (16) topical		800									listed individually on calculation
	Temazepam (17) pre-sed		800									
		Duplicate	Duplicate	Duplicate	Duplicate	Duplicate	Duplicate	Duplicate	Duplicate	* Counted	*Counted	

s Duplication is defined as administration of meds within hour before/after ordered time/feeding.

5.

ALJ-1 shows that there are a total of ten feeding and medication administration events each day. The noon events are the only ones that directly overlap. The stand-alone medication administration times, according to the chart, are 8 AM, 2 PM, 5 PM, 8 PM and midnight. During Petitioner’s review of the chart, Petitioner advised Respondent that the 8 AM administration of medications instead occurred at 7 AM.

6.

Respondent presented evidence that according to policy and practice, medications may be administered within one hour of the time prescribed. This allows for the practical problem that the nursing staff likely must administer medications to multiple patients at the same or proximate

times. It would be impractical and unrealistic to demand or expect that medications would be administered at the precise time prescribed in the doctors' orders. Here, except for the 8 PM and midnight medication administration events, all of the medication administration events either coincide with a feeding event or are within one hour of a feeding event. Based on the evidence of record, it was proper for Respondent to group feedings and medication administration events together such that the total number of stand-alone (i.e., counted) medication administration events was reduced from six to two.

7.

Regarding the constipation medications, ALJ-1 shows that Miralax was included in the 8 AM medication administration event, i.e., already considered. Additionally, R-4 shows on page 13 that Medication 10, Miralax, was listed as administered daily at 8 AM by Gtube and not as a PRN. In providing comments on ALJ-1, Petitioner noted that Miralax is also administered at 9 PM. This is not reflected on the 2022 Nursing Assessment, which shows Miralax as administered only at 8 AM. Nevertheless, it is within one hour of the 8 PM scheduled medication administration time, is properly grouped with that event and not separately counted. According to Nurse Johnson, both Enulose and Docusate Sodium were added in June 2022, well after the January 7, 2022 assessment. Consequently, those changes in care is not properly within the scope of this proceeding, as it concerns Petitioner's nursing requirements as of January 7, 2022. The subsequent changes need to be raised by the Petitioner in a level of care change request.

8.

Respondent carried the burden of proof that the reduction of skilled nursing hours from 12/4 to 10/5 was proper. Petitioner raised no other arguments that the calculations were otherwise flawed or incorrect.



**IV. DECISION**

**IT IS HEREBY ORDERED THAT** Respondent's modification of Petitioner's authorized skilled nursing services hours that prompted the appeal is **AFFIRMED**.

**SO ORDERED**, this 22nd day of November, 2022.

  
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**John Fry**  
**Administrative Law Judge**

