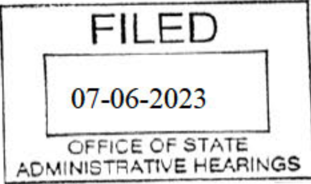
BEFORE THE OFFICE OF STATE ADMINISTRATIVE HEARINGS
STATE OF GEORGIA

K A, **Petitioner,** **v.** **DEPARTMENT OF COMMUNITY HEALTH,** **Respondent.**	**Docket No.: 2324311** **2324311-OSAH-DCH-SOURCE-36-Schroer** **Agency Reference No.: R15-3821**



INITIAL DECISION

I. INTRODUCTION

Petitioner K A, through his daughter, M A, appealed the decision by the Department of Community Health ("DCH") to deny his application for services under the Elderly and Disabled Waiver Program. An evidentiary hearing was held before the undersigned administrative law judge on June 6, 2023 in Augusta, Georgia. Ms. A participated in the hearing on behalf of her father, who was also present. DCH was represented by Cerille Nassau, Esq., an attorney for DCH. For the reasons discussed below, DCH's action is **REVERSED AND REMANDED**.

II. FINDINGS OF FACT

1.

Petitioner is fifty-six years old. He lives with his nineteen-year-old daughter in Appling, Georgia. Petitioner was in the United States Army from 2005 to 2012, serving as a Farsi interpreter overseas. According to his daughter, he participated in over 500 missions while serving and experienced considerable trauma, including two mine explosions. He has Post-Traumatic Stress Disorder ("PTSD") and sustained a knee injury, requiring surgery. Ms. A

testified that Petitioner has other health issues, including a heart condition, diabetes, and severe arthritis, as well as significant memory loss. (Testimony of Ms. A[redacted].)

2.

For a few years after he was discharged, Petitioner was a part-time Uber driver, but his progressive memory loss made it difficult for him to continue. Ms. A[redacted] testified that he also has problems sleeping and wakes up in the night screaming about the explosions and related trauma from his time in the military. In 2018, he began receiving Social Security disability benefits. Currently, he is dependent upon Ms. A[redacted] for most of his activities of daily living. (Testimony of Ms. A[redacted].)

3.

In December 2022, Ms. A[redacted] filed an application on behalf of her father for the Community Care Services Program ("CCSP"). CCSP offers services to eligible Medicaid members pursuant to the Section 1915(c) Home and Community-Based Waiver for Elderly and Disabled Individuals. Georgia's Elderly and Disabled Waiver Program ("EDWP") is intended to allow individuals who have functional impairments due to age or physical disabilities to continue to live in their communities with appropriate supports. Under the approved waiver application, available EDWP services include personal care, housekeeping, home management, proper nutrition, medically-related activities, ambulation, and respite care to caregivers. As part of its responsibilities to oversee the EDWP, DCH has adopted the "Part II – Chapter 1400, Policies and Procedures for EDWP (CCSP and SOURCE), Personal Support

Services/Consumer Direction/Structured Family Caregiver" ("CCSP Manual").[1] (Testimony of Ms. A[redacted] Jill Crump; Exs. R-2, R-3.)

4.

In order to be eligible for CCSP, an individual must meet a nursing home level of care. That is, but for the services offered under the EDWP, the individual would qualify for admission to a nursing home. DCH is required to assess EDWP applicants to determine if they meet this standard. To conduct the initial assessment, DCH uses a Minimum Data Set Home Care (MDS-HC) assessment form, which is completed by a licensed nurse or social worker after a face-to-face meeting in the applicant's home.[2] The information from the MDS-HC is then evaluated by a registered nurse, who uses a rubric known as "Appendix I" to determine if an applicant meets the level of care. Essentially, in addition to having certain medical conditions, an individual must have either an acquired cognitive loss, such as Alzheimer's Disease, or a functional impairment.[3] (Testimony of J. Crump, M. Truitt, T. Howard; Exs. R-2, R-4.)

5.

In December 2022, after receiving Petitioner's application for the EDWP, DCH arranged for Alliant Health Solutions ("Alliant"), a medical management agency under contract with DCH, to conduct an assessment of Petitioner's eligibility for CCSP. Ms. A[redacted] testified

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[1] DCH tendered only Part II/Chapter 1400 of the CCSP Manual into evidence as Exhibit R-2, but the Court took official notice of the entire CCSP Manual in the Notice of Hearing, which is available online at mmis.georgia.gov/portal/. Accordingly, to the extent other portions of the CCSP Manual are pertinent to the issues raised in this appeal, the Court will include citations to the relevant sections.

[2] Due to the COVID-related public health emergency declaration, applicants for waiver services could choose to have the initial assessment done by telephone. (Testimony of Jill Crump.)

[3] Appendix I provides that in order to meet an intermediate nursing home level of care the individual must meet two criteria in Column A (Medical Status) and at least one item from Column B (Mental Status) or Column C (Functional Status).

that she received a call from Jackie, who identified herself as a nurse from B and B Care Services ("B & B"), who was assigned Petitioner's initial assessment.[4] Ms. A[redacted] collected all her father's original medical records in a binder and scheduled a face-to-face meeting with Jackie. Jackie came to Petitioner's home, interviewed Ms. A[redacted] and observed Petitioner's functioning in his home. At the end of the 90-minute visit, Jackie took the binder with Petitioner's original medical records to review as part of the initial assessment. (Testimony of Ms. A[redacted].)

6.

After about ten days, Ms. A[redacted] called B & B to inquire about the status of Petitioner's application. She was told that Jackie no longer worked at B & B due to "family issues," and B & B did not have either a completed MDS-HC from Jackie or the binder of Petitioner's medical records. Instead, B & B reassigned Petitioner's application to another employee, Tonya Howard, who scheduled a second assessment for January 26, 2023, by telephone. The telephone assessment lasted about an hour, and Ms. Howard then completed the MDS-HC form.[5] She indicated in her initial history notes that Petitioner had "diagnoses of Alzheimer's (with no current medications in place), diabetes, diabetic retinopathy, neuropathy, hearing loss, arthritis, and PTSD. Mr. K[redacted] is fluent in both English and native language Farci [sic]. Daughter reports due to cognition decline he reverts to speaking in native language." Ms. Howard's MDS-HC reflected Petitioner's total dependence on others for meal preparation,

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[4] A document attached to Exhibit R-4 states that B & B received a referral for the assessment on January 5, 2023, and it was assigned to "Jackie Lowe-Johnson."

[5] The January 26, 2023 MDS-HC completed by Ms. Howard indicated that B & B completed the assessment in a timely manner, within 15 days of the referral. It did not mention that Petitioner filed the application in December 2022 or that the application was referred to B & B for assessment on January 5, 2023 and assigned to Jackie Lowe-Johnson. Ms. Howard testified that she had not been informed by B & B of the prior assessment and has never seen any documentation relating to Jackie's involvement. (Ex. R-4.)

ordinary housework, managing finances and medications, shopping, and transportation, and his need for maximum assistance for other activities of daily living, such as bathing, personal hygiene, dressing his lower body, and toileting. According to the MDS-HC, he cannot be left alone and requires reminder cues, supervision, and prompting throughout the day. With respect to his diagnosis of Alzheimer's disease, the MDS-HC indicates that the diagnosis is "present, monitored but no active treatment." (Testimony of Ms. Howard, Ms. A[redacted]; Ex. R-5.)

7.

Ms. Howard testified that she does not typically ask applicants to provide documentation at the time of the initial assessment and did not request anything from Ms. A[redacted]. Nevertheless, there were some documents attached to the MDS-HC, including a Harmony Information Systems document, which contained a list of Petitioner's medications and other basic health information, such as the contact information for Petitioner's physicians. In addition, the MDS-HC attached a document entitled "DHS – Division of Aging Services, CCSP – Alliant and Service Provider Brokering Referral Report" ("CCSP Referral Report").[6] The CCSP Referral Report indicated that a staff member conducted a screening assessment on November 15, 2022, and assessed Petitioner's level of impairment with respect to activities of daily living ("ADLs"). The CCSP Referral Report referenced Petitioner's Alzheimer's disease and arthritis, and indicated that his daughter assisted him with his ADLs and "was unable to work due to her caregiving duties." Although Ms. Howard did not make the level of care

[6] In Chapter 1800 of the CCSP Manual, the Area Agency of Aging completes an initial telephone screening and makes an initial eligibility determination, which is then forwarded to a case management nurse to perform a face-to-face assessment, if funding is available. See mimms.georgia.gov/portal/, Traditional/Enhanced EDWP Case Management, Chapter 1800, at XVIII-31. This part of the manual also contains a note that "Alzheimer's and other types of dementia are physical conditions." Id. at XVIII-32.

determination for Petitioner's application, she testified that the information she collected on the MDS-HC appeared to satisfy the criteria on Appendix I. (Testimony of Ms. Howard; Ex. R-5.)

8.

Mabindou Truitt, a registered nurse with Alliant, reviewed Ms. Howard's MDS-HC and related documentation and then completed the Appendix I. She reviewed the medication list, which did not contain a medication for the treatment of Alzheimer's disease, and determined that the application was "incomplete" without supplemental written confirmation of this diagnosis. She sent an Initial Review letter to Petitioner on March 3, 2023, indicating that Petitioner was not eligible because he did not meet the criteria for Intermediate Nursing Home Level of Care. In the comment section, Ms. Truitt provided the following cryptic, acronym-laden explanation for the denial:

> Incomplete to make a determination. This a 55-year-old applicant requesting admission to EDWP with number one diagnosis Alzheimers. AHS requesting support documentation (i.e. neurology visit note) for Alzheimers to assist with NHLOC determination.

The Initial Review letter also notified Petitioner that if he disagreed with the denial, he could either request a hearing or request a second review. If he chose to request a second review, the letter directed him to submit additional medical information within 30 calendar days. (Testimony of Ms. Truitt; Exs. R-1, R-4.)

9.

Ms. Truitt testified that the Initial Review letter constituted a "request for documentation" relating to Petitioner's diagnosis of Alzheimer's disease, which she did not receive by the 30-day deadline. According to Ms. Truitt, she would have accepted either a neurology note with a formal diagnosis or proof that Petitioner was prescribed a medication to treat Alzheimer's disease. Ms. A[redacted] testified that she provided such documentation in the binder of medical records she gave to

Jackie, and, understandably, she did not interpret the Initial Review letter to be requesting that she resubmit such documentation. Instead, she assisted her father in requesting an appeal of the decision, which led to this administrative proceeding. Ms. A[redacted] credibly testified that she has diligently attempted to obtain new copies of her father's medical records, but that she has encountered difficulties identifying the correct providers and the necessary documentation. She also testified regarding her limited time to undertake this task given her responsibilities as her father's sole caregiver. (Testimony of Ms. Truitt, Ms. A[redacted].)

10.

DCH forwarded Petitioner's hearing request to OSAH on or about April 4, 2023. The Court issued a notice of hearing on April 14, 2023, setting the evidentiary hearing for May 2, 2023. The parties appeared on May 2, 2023 and met informally to discuss the issues in dispute. The parties jointly requested that the hearing be continued, and the Court reset the hearing for June 6, 2023. On June 5, 2023, DCH filed its exhibits and an exhibit list with the Court, but did not serve Petitioner with a copy, despite its certificate of service. Ms. A[redacted] testified at the June 6, 2023 hearing that during the informal conference with DCH's attorney and representatives on May 2, 2023, she was advised that DCH would require a current neurology note documenting Petitioner's Alzheimer's diagnosis and would not accept a medical record from 2022. Consequently, Ms. A[redacted], who was having trouble obtaining a copy of the 2022 neurology note, attempted to schedule a new neurology appointment for her father, but could not do so before the June 6, 2023 hearing date. (Testimony of Ms. A[redacted]; court records.)

II. CONCLUSIONS OF LAW

1.

This matter concerns Respondent's denial of Petitioner's application for a Medicaid waiver program. Therefore, Petitioner 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.

The Medicaid program was created in 1965 "for the purpose of providing federal financial assistance to States that choose to reimburse certain costs of medical treatment for needy persons." Miller v. Wladyslaw Estate, 547 F.3d 273, 277 (5th Cir. 2008) (quoting Harris v. McRae, 448 U.S. 397, 201 (1980)); see Social Security Act, 42 U.S.C § 1396 et seq. ("the Act"). If a state elects to participate in the Medicaid program, it must obtain approval from the Secretary of the Department of Health and Human Services ("the Secretary") of a plan specifying the programs and services it will offer using Medicaid funds. See 42 U.S.C. § 1396a; see also Pharm. Research & Mfrs. of Am. v. Walsh, 538 U.S. 644, 650 (2003). Certain programs are mandatory under the Act, such as inpatient hospital services and laboratory and X-ray services, and other services may be funded through Medicaid "at the option of the State." 42 U.S.C. §§ 1396a(a)(10)(A)(i), 1396d(a)(1), (3), (4); see Skandalis v. Rowe, 14 F.3d 173, 175 (2d Cir. 1994); Susan J. v. Riley, 254 F.R.D. 439, 446 (M.D. Ala. 2008).

3.

Home and community-based services are optional services, and may be reimbursed under a state plan if the state applies for and obtains a "waiver" from the Secretary to provide such services under Section 1915(c) of the Act [42 U.S.C. § 1396n(c)]. See 42 U.S.C. § 1396a(a)(10)(A)(ii)(VI); 42 C.F.R. § 430.25; Susan J., 254 F.R.D. at 446. "The term 'waiver

comes from Section 1915(c) of the Social Security Act, enacted in 1981, which gave the Secretary . . . the power to waive certain requirements of the Medicaid Act." Id.; see 42 C.F.R. § 441.300 ("Section 1915(c) of the Act permits States to offer, under a waiver of statutory requirements, an array of home and community-based services that an individual needs to avoid institutionalization."). "[O]nce a state opts to implement a waiver program and sets out eligibility requirements for that program, eligible individuals are entitled to those services and to the associated protections of the Medicaid Act." Boulet v. Cellucci, 107 F. Supp. 2d 61, 76 (D. Mass. 2000).

4.

As with any Medicaid application, DCH and its agents are required to "provide assistance to any individual seeking help with the application or renewal process. . . ." 42 C.F.R. § 435.908(a). In addition, DCH's policies and procedures "must ensure that eligibility is determined in a manner consistent with simplicity of administration and the best interest of the applicant or beneficiary." 42 C.F.R. § 435.902. DCH must also furnish information about eligibility requirements and the responsibilities of applicants "in plain language and in a manner that is accessible and timely. . . ." 42 C.F.R. § 435.905(a) & (b). In Part II - Chapter 1800 of the CCSP Manual, DCH establishes procedures for conducting an Initial Assessment for CCSP. In step 4 of those procedures, the CCSP Manual provides that "[w]hile medical record submission is not required for all level of care reviews, any reviews that fall in the following categories may be supported by medical records:"

- Assessments that reflect functional impairment not clearly associated with a medical diagnosis
- Assessments that reflect one or more behavioral health diagnoses with functional impairment not clearly associated with a medical diagnosis
- Assessments that reflect diagnoses not typically expected to result in long term functional impairment such as a hip fracture or knee replacement.

"Alliant Health Solutions and/or DCH staff may request medical records to support any level of care determination." See CCSP Manual, Chapter 18, at Section 1826, p. XVIII-57.

5.

Based on these procedures, Alliant was permitted, but not required, to request medical records as part of its level of care determination in this case. However, the preponderance of the credible evidence presented at the hearing proved that Petitioner did, in fact, provide his medical records to Alliant. That is, the evidence in the record proved that Ms. A[redacted] provided all Petitioner's medical records to an agent of Alliant, B & B's employee Jackie Lowe-Johnson, during the first face-to-face assessment. Then, when Jackie left B & B without completing the assessment and without returning the records to Petitioner, the preponderance of the evidence proved that the second B & B assessor, Ms. Howard, did not request any additional medical records from Petitioner to complete the MDS-HC. Finally, the Court concludes that the letter sent by Ms. Truitt after Alliant made its initial eligibility determination did not constitute a request for medical records "in plain language and in a manner that is accessible and timely" as required by federal law. Rather, the Initial Review letter was written in a style and manner that the Court found difficult to decipher, at best, and that did not reasonably notify Ms. A[redacted] that she was responsible for obtaining and resubmitting a neurology note that she had already provided.

6.

After review of the evidence in the record of this case, the Court concludes that Alliant's initial decision finding Petitioner ineligible for CCSP because his application was "incomplete" was improper. In reaching this conclusion, the Court has taken into account DCH and Alliant's disavowal of any responsibility for Alliant's agent's apparent mishandling of an applicant's original medical records, their failure to clearly notify Petitioner of an obligation to obtain a

duplicate copy of such medical records, and the lack of any evidence that Alliant or DCH offered assistance to Petitioner's nineteen-year-old daughter and full-time caregiver when she told them that she was having difficulty finding and obtaining such records. The Court concludes that the denial of Petitioner's application was inconsistent with the federal regulations that require DCH to provide assistance to applicants, to use plain and accessible language to notify them of their responsibilities, and perhaps most importantly, to adopt and implement procedures that ensure that eligibility is determined in a manner consistent with the best interest of the applicant.

7.

Based on the evidence in the record, Petitioner has fully complied with his responsibilities to cooperate with the assessment and provide requested documentation, including medical records. The Court concludes that based on the information on the MDS-HC, Petitioner meets the level of care criteria for intermediate nursing home admission. If DCH wishes to confirm or clarify information in Petitioner's medical records, the CCSP Manual provide a mechanism, through release of records and other authorizations, for it to do so on its own initiative.

IV. Decision

Based on the foregoing Findings of Fact and Conclusions of Law, DCH's decision to deny Petitioner's application for enrollment in CCSP because he did not meet the level of care is hereby **REVERSED.** The matter is **REMANDED** to the agency for further action on the application consistent with this Initial Decision.

SO ORDERED, this 6th day of July, 2023.

Kimberly W. Schroer
Administrative Law Judge