

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

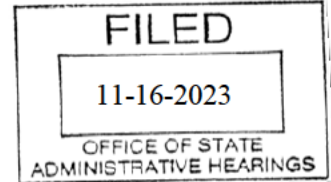
**E [REDACTED] G [REDACTED],**  
Petitioner,

v.

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

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

Agency Reference No.: [REDACTED]



**FINAL DECISION**

**I. INTRODUCTION**

Petitioner, E [REDACTED] G [REDACTED], through his sisters, S [REDACTED] F [REDACTED] and F [REDACTED] J [REDACTED], appeal the termination of Petitioner’s intellectual/developmental disability services through the Department of Behavioral Health and Developmental Disabilities’ (“DBHDD” or “Respondent”) New Options Waiver/Comprehensive Supports (“NOW/COMP”) Program. Petitioner filed a timely appeal.

A hearing was held before the undersigned Administrative Law Judge over the course of three days. The hearings on July 10, 2023 and August 28, 2023 were in person. The final day of hearings was held virtually on September 18, 2023.<sup>1</sup> Petitioner’s representatives appeared on behalf of Petitioner. Wesley Billiot, Esq., and Ashley Thompson, Esq. appeared 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 and is characterized by significantly sub-average general intellectual functioning; or (2) a closely

---

<sup>1</sup> The undersigned regrets the delay in issuing this decision. The issues are complex, and Petitioner’s case warranted the time and attention it received.

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. It is undisputed that Petitioner is eligible for NOW/COMP services.

2.

The Georgia Comprehensive (COMP) Supports Waiver Program offers a wide array of services to individuals with intellectual and related developmental disabilities (I/DD) who require comprehensive and intensive services. Individuals eligible for the COMP Program need out-of-home residential support and supervision or intensive levels of in-home services to remain in the community. The COMP Waiver Program provides supports to individuals transitioning from ICF-IDDs, nursing facilities and state hospitals as well as those living with family or other natural supporters at the time of admission. The Department of Community Health (DCH), which serves as the State Medicaid Authority, delegates the day-to-day operation of the COMP Program to the Department of Behavioral Health and Developmental Disabilities (DBHDD), Division of Developmental Disabilities. DCH maintains administration of the COMP Program, and oversees DBHDD's performance of operational functions. The DBHDD Central Office performs statewide waiver operational and daily administrative functions. The six DBHDD field offices perform COMP waiver functions at the local level, including intake and evaluation, psychological evaluation to confirm intellectual/developmental disability consistent with admission criteria to ICFs/IDD, crisis resolution, and intervention in cases of service delivery problems or concerns. Individuals access the COMP Program through DBHDD field offices. (Testimony of Robert Bell, DBHDD Director of Community Relations; Respondent's Exhibit R-1, p. 5 of 333.)

3.

Support Coordination services are a set of interrelated activities for identifying, coordinating, and reviewing, and overseeing the delivery of appropriate services for participants. A primary purpose of Support Coordination services is to evaluate and address individual risks and unmet needs in order to maximize the health, wellbeing and safety of waiver participants. Support Coordination services assist participants in coordinating all service needs whether Medicaid reimbursed, services provided through other funding sources, or those performed by natural supporters in the context of family or community life. Support Coordinators are responsible for participating in assessment of individuals through assembling both professionals and non-professionals who provide individualized supports and whose combined expertise and involvement ensures that person-centered plans are developed to address social, educational, transportation, housing, nutritional, healthcare and other needs using a holistic approach. Through advocacy efforts, they encourage and facilitate the use of various community resources through referral and follow up activities. The overall objective of Support Coordination services is to oversee the health, safety and wellbeing of waiver participants while tracking the use and outcomes of services identified in the individual support plan. Responsibilities of Support Coordination include participating in assessment and development of the ISP based on assessed need; monitoring progress toward goals; monitoring satisfaction with and the quality of services; follow up on identified needs including those not funded through the waiver such as medical and dental needs; and completion of the personal focus and goal-setting portion of the ISP. They routinely interact with service providers in order to identify progress and challenges toward goals. On an annual basis, the Support Coordinator participates in formal review and revision of the ISP but at any time during the year that there are significant life changes or stressors in the individual's or

family's life, the Support Coordinator may assist with additional service needs. (Testimony of Robert Bell; Respondent's Exhibit R-2, p. 66 of 333.)

4.

Support Coordination (SC) and Intensive Support Coordination (ISC) are known as statutory access services under the 1915(c) Medicaid Waiver authority. Pursuant to DBHDD Policy 02-441, Respondent's Exhibit 3, all NOW or COMP waiver individuals are required to receive one of these services while receiving waiver services. NOW or COMP waiver individuals choose their SC and ISC service providers. If the individual does not select a provider, the Field Office assigns one using the Rotation Procedure. Once the provider is selected the individual is transitioned from support by the Regional Staff Office to support coordination or intensive support coordination by the provider, as applicable. (Testimony of Robert Bell; Respondent's Exhibit R-3, pp. 1, 2, 4-5 of 6.)

5.

The maximum caseload for Support Coordinators is forty (40) waiver individuals at any given time. The maximum caseload for Intensive Support Coordinators is twenty (20) waiver individuals at any given time. Petitioner requires Intensive Support Coordination services. Mr. Bell acknowledged that some of the SC/ISC providers in the region exceed these caseload limitations for the number of coordinators at the facility and are therefore over capacity. He testified that he receives reports concerning caseloads and whether facilities are over capacity. One of his roles is to contact the facility and obtain feedback on what the facility is doing to reduce the caseloads to comply with the above limitations. The facilities are allowed to exceed capacity, but they need to take steps to reduce the caseloads so as not to be over capacity. During his testimony, Mr. Bell reviewed a couple of caseload reports covering different dates. The reports showed that certain of the support coordination agencies had caseloads that exceeded the agencies'

capacity. Comparing two of the reports showed that over time agencies that are over capacity reduce their caseloads or increase the number of coordinators to comply with the caseload limits. He testified that tracking capacity has not been an issue. DBHDD has a contractor who does audits and the data is available for review. (Testimony of Robert Bell; Respondent's Exhibit R-4, p. 1 of 3.)

6.

The Department's Policy Manual, 02-432, Respondent's Exhibit 4, provides in pertinent part:

**C. Standards for Individual Admission and Discharge**

1. SC agencies accept individuals for admission to services based on choice or rotation method. The agency must provide its services to any eligible waiver individual who resides within their geographical area of service delivery. Selective admission is not permitted, unless the agency lacks capacity to serve an individual within a specific geographical area.
2. Discharge of individuals from SC and ISC service providers can only occur with approval by the DBHDD Regional Field Office.
3. If a SC agency is unable to meet the needs of an individual despite considerable attempts, the agency is required to contact the DBHDD Regional Field Office to request assistance in resolving the inability, and shall cooperate with the DBHDD Regional Field Office in attempts to resolve the inability, before sending a thirty (30) day notice to discharge the individual. The agency retains the right to determine if it is unsafe for its staff to continue to support the individual; however, discharge of the individual is only facilitated by the DBHDD Regional Field Office.

(Respondent's Exhibit 4).

7.

On April 5, 2023, the Department sent Petitioner a Notice of Termination from NOW/COMP Services. The Department stated in paragraph 2 C) of the Notice that **“You are not able to receive a service required for continued enrollment in the NOW/COMP waiver. a.** Further Information: As of March 31<sup>st</sup>, 2023, there will be no Support Coordination Agency

providing services and all provider agencies in the region will either not have capacity in their caseload and/or have previously provided a 30-day notice. (Respondent's Exhibit 5).

8.

Mr. Bell testified that in his fifteen years with the Department, this has never happened before. All six of the support coordination agencies in the region have previously issued 30-day notices and discharged Petitioner. When the last support coordination agency to serve Petitioner, CareStar of Georgia, issued a 30-day notice, the Department contacted all the other agencies in the region and they could not provide services because they were over capacity or they were unable to provide services. Mr. Bell testified that the support coordination agencies are allowed to exceed capacity, but that an agency can decline to admit an otherwise eligible individual based on the best interest of staff safety and well-being. (Testimony of Robert Bell).

9.

George Allen Morgan, the Director of Field Operations with DBHDD testified that he has oversight of the six regions in the state and is responsible for addressing issues that arise that could not be resolved at the regional level. He testified that Mr. G ■■■ has had challenges over the years and that all major decisions were referred to his sisters. He became directly involved with Petitioner and his sisters while Petitioner was at Benchmark Human Services. Mr. Morgan attempted to schedule a meeting with Benchmark and the sisters in October 2022. The sisters did not show up for the meeting.<sup>2</sup> Benchmark gave 30-day notice because the established relationships it had with the direct providers of services to Mr. G ■■■ could not be maintained, i.e., the providers refused to continue to provide services. Additionally, Benchmark was unable to obtain new relationships with direct providers to provide services. (Testimony of Allen Morgan; Respondent's

---

<sup>2</sup> During cross-examination, Petitioner's sister referenced Exhibit 6, and via the questions asked, alluded to the decision not to attend as based on the lack of an agenda.

Exhibit 6).

10.

On June 23, 2023, the Department sent a Supplemental Notice of Termination from NOW/COMP Services that was signed by Allen Morgan. The Supplemental Notice stated:

You received 30-day notice and were discharged from all available Support Coordination agencies. All six Support Coordination agencies in the region provided services to you and each agency's staff received communications from your natural supports that were so hostile that they could not continue to provide services. Support Coordination is a required service under the waiver, and the history of interactions between Support Coordination providers and your natural supports has resulted in your inability to receive this service.

(Testimony of Allen Morgan, Respondent's Exhibit 7).

11.

Adrienne Reynolds is currently the Planning List Administrator for DBHDD Region 3. Previously, she was an intensive support coordinator for CareStar and provided ISC for Petitioner. She has been a support coordinator for eight years and was with CareStar for one year before joining DBHDD Region 3. CareStar was the last of the six intensive support coordination providers in Region 3 to serve Petitioner. She was with CareStar when it issued the 30-day discharge notice to Petitioner. She testified that Petitioner's sisters, his natural supports, were difficult to work and made providing services to Petitioner very challenging. She testified that on at least one occasion, she had to excuse herself from a call with one of the sisters because she continued to raise her voice. This event is recorded in a support coordination note dated February 21, 2023, Respondent's 8. She testified that CareStar sought assistance from DBHDD. After discussing this issue and ongoing issues with Petitioner's transfer to another facility, CareStar decided to issue the 30-day notice. On cross examination Ms. Reynolds was questioned regarding the time within which an intensive support coordinator is supposed to make a personal visit to a new client. She acknowledged that she did not meet the required time frame, but that Mr. G

was in the hospital, which was not permitting visitors due to COVID restrictions. Tucker Wellness, a rehabilitation facility where he went after the hospital, had similar restrictions due to COVID. She was ultimately able to visit him at the Frazier Center where Mr. G ■ went for a day program. Both Respondent and Petitioner called Ms. Reynolds as a witness. During cross examination both times it was evident to the undersigned that the relationship between Ms. Reynolds and Ms. J ■ was tense and strained. Ms. J ■ had to be admonished on multiple occasions to stop badgering the witness and Ms. Reynolds asked the Court if she must answer questions when she is being treated in an uncivil manner. Ms. Reynolds did acknowledge that while many of the sisters' demands were unreasonable, many were based on legitimate concerns. (Testimony of Adrienne Reynolds; Respondent's Exhibits 8 and 9).<sup>3</sup>

12.

There were several incidents that appear to have created particularly tense situations but the primary one was the transition of Mr. G ■ from Tucker Wellness, a rehabilitation facility, to a group home in early 2023. This occurred while CareStar was the support coordination provider. Mr. G ■ had been in Emory hospital and transferred to Tucker Wellness for rehab after leaving the hospital. He was supposed to be there for approximately 21 days. As that period was coming to an end, Tucker Wellness wanted him out. The group home was not ready to receive him for a variety of reasons including the absence of a bed that could both accommodate Mr. G ■'s very large frame and suit the desires of his sisters. The director of the group home, Mr. Darrell Drake had a death in the family, which delayed the initial date that was planned. Although the testimony from various witnesses was somewhat vague, but Mr. Drake needed male staff to be able to take

---

<sup>3</sup> Respondent's Exhibits 8 and 9 were admitted during the hearing as Respondent's 15 and 16. The exhibits were renumbered in the final version of admitted Respondent's exhibits. Exhibits 15 and 16 became Exhibits 8 and 9. Exhibit Nos. 15 and 16 were assigned to other documents that were later admitted.



Mr. G■■■■. It was unclear whether Mr. Drake hired male staff and had to let them go or whether Mr. Drake had male staff ready to start once Mr. G■■■■ moved to the group home so that the group home could start getting paid. In the end, that detail was irrelevant as the delay with the transfer resulted in Mr. Drake not having the male staff he needed to provide services for Mr. G■■■■. Mr. Drake testified that Mr. G■■■■ would be a good fit if Mr. Drake could get male staff in place. Regarding the bed, medical beds are strong enough to hold Mr. G■■■■'s weight, but not wide enough. Mr. Drake did not consider it his responsibility to arrange for a bed. He considered it the family members' responsibility since it was something the family specifically wanted. During this time, there was also an issue regarding Mr. G■■■■'s belongings which were located at the group home where he was previously a resident. Mr. Drake testified that he did not consider it to be his responsibility to pick up the belongings. He was concerned about possible liability for damage in transit and expressed concern that there was no inventory to document precisely what he was bringing into his facility. Ms. Reynolds' support coordination notes cover aspects of this in more detail. The notes show that on or about January 11, 2023, Ms. Reynolds was advised that Mr. G■■■■ would be transferred to Tucker Wellness for approximately 21 days. On January 27, 2023, Ms. Reynolds noted that she received a call from the Social Services Director at Tucker inquiring as to the anticipated date when Mr. G■■■■ would be moved to his group home. Ms. Reynolds' note on February 2, 2023 indicates that the planned date for the move was February 14, 2023. That note is a summary of a meeting that included Ms. Reynolds, Tawanda Scales (Assistant Director of Field Operations), Mary Washington (a nurse with New Beginnings), Chandra Booker (Supervisor CareStar), F■■■■ J■■■■ (Ms. G■■■■'s sister), S■■■■ P■■■■ (Mr. G■■■■'s sister), Darrell Drake (provider, New Beginnings) and Lakeisha Murphy (RO). Ms. Reynolds testified that the February 14, 2023 date fell through due to a death in Mr. Drake's family such that he was

out of town. Mr. Drake testified that no alternate date was established. Although Mr. Drake testified that it was not his responsibility to move Mr. G■■■■'s belongings, and expressed concern about liability and having an inventory, the February 2, note indicates that, at least at that time, Mr. Drake had expressed that he could arrange to have the belongings moved. The February 21, 2023 note, however, states that Mr. Drake advised Ms. Reynolds that Mr. G■■■■ "cannot come to the home today," which indicates that there was at least a tentative plan for the move to occur on February 21, 2023. There are no support coordination notes between February 2, 2023 and February 21, 2023. There are, however, eleven notes on February 21 and 22. The support note on March 14, 2023, states that Mr. Drake advised the group during a conference call that he would not be able to accept Mr. G■■■■ because his male staff left. On cross-examination he stated that he was aware that Mr. G■■■■'s previous arrangements did not go well and that there were serious run-ins between the family and the facilities. (Testimony of Adrienne Reynolds and Darrell Drake; Respondent's Exhibit 19).

13.

Tawanda Scales is the Assistant Director of Field Operations for DBHDD was assigned to assist with G■■■■'s case in or around November 2022. Her primary role was to promote communications with Mr. G■■■■'s natural supports (sisters). In November 2022, there was a residential services transition for Mr. G■■■■ and she testified that the Region 3 office was "exhausted." The residential provider had provided 30-day notice. Mr. G■■■■ did not transition to a new residential provider. CareStar was the support coordination agency at the time. Ms. Scales testified that she was the central point of contact for the division to communicate with the natural supports. She testified that providers were not expected to come to her with issues, but that they could do so. She testified that during this period, late 2022 and early 2023, Mr. G■■■■ had issues

with the rehabilitation facility and there were challenges with communications with the natural supports. She testified that there were issues with who was to schedule transportation and an appointment with a nutritionist. Ms. Scales testified that the natural supports yelled at and berated Ms. Reynolds and her supervisor and that they felt like they were being attacked. (Testimony of Tawanda Scales).

14.

Representatives from each of the six support coordination agencies testified. Vera Bunyon with Professional Case Management Services of America (Professional) testified that DBHDD contacted them on March 9, 2023. Professional advised DBHDD that they did not have the capacity to take Mr. G■■■. Ms. Bunyon also testified that as of the date of her testimony on July 10, 2023, Professional did not have capacity. Sherrie King, Director of Services at Creative Consulting Services (Creative) testified that DBHDD contacted them on March 22, 2023. DBHDD was told Creative could not provide services for Mr. G■■■ because they were at capacity. Khadijah Williams, Regional Director for Columbus Community Services (Columbus), testified that she was the team leader for providing support coordination for Mr. G■■■ between January 2022 and May 1, 2022. Columbus discharged Mr. G■■■ because Columbus could not meet his needs and could not get providers to support him. In February 2023, DBHDD reached out and they did not have capacity. As of the date of her testimony on July 10, 2023, Columbus did not have capacity. She testified that the support coordinator for Mr. G■■■ would be in tears after being in contact with the family. She stated that she had several interactions with Mr. G■■■'s natural supports and she came to understand what the support coordinator meant by being interrogated. Tawanna Jones, the State Program Director for Compass Coordination (Compass) testified that she authored the email to Ms. Tawanda Scales at DBHDD on March 24, 2023. In that email she

stated that Compass did not currently have any ISC availability, and that Compass had support coordinators handling ISC cases. She also stated that they had “attempted to serve Mr. G [REDACTED] in the past and [were] unsuccessful with meeting his needs and his family’s demands.” The email was admitted as Respondent’s Exhibit 10. Ms. Jones testified that Mr. G [REDACTED] had a history of being aggressive and was sexually inappropriate towards staff. His natural supports used aggressive tones and issues could not be resolved. She stated that the natural supports would get off topic and would focus on things that did not help get Mr. G [REDACTED] the services he needs. She testified that Compass does not have capacity today to provide ISC services to Mr. G [REDACTED]. On cross-examination she acknowledged that it was not uncommon for there to be behavioral challenges and that an assessment can be done to determine if behavior counseling services would be appropriate/ helpful. On redirect, Ms. Jones testified that the natural supports were the real cause of the issues. Heather McBeth, Director of NOW/COMP Services at Benchmark Human Services (Benchmark), testified that the relationship with Mr. G [REDACTED]’s sister was unfriendly and unproductive. She said that Benchmark terminated services in December 2022. The 30-day notice was sent to Mr. G [REDACTED] by Ms. Macbeth on behalf of Benchmark on November 11, 2023. The notice was admitted as Respondent’s Exhibit 11. She sent an email to Ms. J [REDACTED] on November 22, 2023 stating that the notice had been sent to Mr. G [REDACTED] on November 11. In that email string Ms. Macbeth explained that the reason for the discharge was that they did not feel they could meet expectations. The email string was admitted as Respondent’s Exhibit 12. Ms. Macbeth testified that DBHDD approached Compass earlier this year and Compass advised DBHDD that Compass did not have capacity to serve Mr. G [REDACTED], which she further explained meant they did not have enough staff and they were not willing to serve him. Jamie Stewart, the Vice President of Operations at CareStar testified that CareStar could no longer meet his needs due to hostile behavior from Mr. G [REDACTED]’s natural supports.

She stated that CareStar does not have the capacity to serve Mr. G ■ due to behaviors of his natural supports.

15.

S ■ P ■, Mr. G ■'s sister, testified that she has Mr. G ■'s medical power of attorney and that she did the NOW/COMP waiver application. Mr. G ■ lived with their parents until about seven years ago when their father passed away. She stated that Compass was the first support coordination agency to serve Mr. G ■. They did not receive a 30-day notice from Compass when Mr. G ■ was discharged. She testified that she initiated the change from Compass.

Creative was the next support coordination agency. She testified that Creative seemed very interested in supporting Mr. G ■ and that they were proactive in identifying services for him. She said that they had a good working relationship with the ISC. When they were in the process of trying to move Mr. G ■ moved to a new living facility, she had difficulty getting a response from the ISC and called a supervisor to assist. She testified that they got a 30-day notice in response. She believed that reporting the delayed responses resulted in the 30-day notice.

Professional Case Management was the next support coordination agency. Ms. P ■ testified that the first ISC who reached out was unprofessional and noted that Mr. G ■ had more services than anyone she had seen. The first ISC was replaced and the second was also unprofessional. She reported that Mr. G ■ was missing a medication and the ISC refused to do anything. The Director of Professional Case Management felt that a conflict of interest had arisen and issued a 30-day notice. Ms. P ■ questioned whether there was not another way to handle the situation, but the Director felt it was in the company's best interest to issue the notice.

Columbus Community Services had an individual at the home where Mr. G ■ was living and the ISC from Columbus, Ms. Horton, appeared to the sisters to be very on top of things. They

switched to Columbus. Ms. Horton later moved to the Region office. The replacement ISC did not get a turnover from the prior ISC and was not aware of open issues that needed to be addressed. Communications became an issue. Ms. P [REDACTED] had ongoing concerns about the nightshift and problems with Mr. G [REDACTED]'s bipap. The relationship dissolved even though they seemed on the same page. Columbus sent a 30-day notice.

Benchmark Human Services was the next support coordination agency. Mr. G [REDACTED] was at one group home, and they were looking for another. The ISC was helpful and did things such as picking up Mr. G [REDACTED]'s new bipap. Issues started to come up and it created tension. On one occasion the ISC was visiting with Mr. G [REDACTED] and complained about sore feet. Mr. G [REDACTED] offered to and did rub her feet. Ms. P [REDACTED] took offense and reported the incident to the ISC's supervisor. She testified that she was concerned that it could be misinterpreted. The ISC took offense that Ms. P [REDACTED] reported it to the supervisor rather than coming to her. Ms. P [REDACTED] testified that she did not think it was appropriate to confront the ISC. The individual, nevertheless, continued as the ISC. Looking for a replacement home was challenging, and Ms. P [REDACTED] did not feel she was getting help from the ISC, so she went to the supervisor. To Ms. P [REDACTED], a significant part of the problem was that the provider (prospective home) had more information about Mr. G [REDACTED] than the ISC said was provided to a prospective home. The provider apparently told Ms. P [REDACTED] that the information provided by the ISC was not the same as what the ISC told Ms. P [REDACTED] had been provided. The crux of the issue appeared to be that the additional information being provided about Mr. G [REDACTED] was making the providers reluctant to accept him. She testified that she was told that Oasis (a group home) was not licensed but could not get an explanation as to why. After that Benchmark issued a 30-day notice. She observed that any time you complain they issue a 30-day notice.

The next support coordination agency (and the last of the six in the region) was CareStar. When they switched from Benchmark to CareStar, Mr. G ■ was in Emory Hospital. The first call they received was from Pam Brown and Adrienne Reynolds. There were some issues with getting releases of information signed. Ms. P ■ was not comfortable with signing a partially complete form. They were still looking for a new home. Ms. P ■ found one prospective home and the ISC identified two others. Mr. G ■ went to Tucker Wellness for rehab after he was discharged from Emory. One of the group home providers identified was New Beginnings LLC, which was owned and operated by Darrell Drake. Ms. P ■ testified that Mr. Drake did a shower conversion to accommodate Mr. G ■. Ms. P ■ participated in a call on February 2, 2023 (referenced in Ms. Reynolds' support notes Exhibit R-19), during which those on the call discussed transferring Mr. G ■ from Tucker Wellness to Mr. Drake's home. She understood from that call that Mr. Drake thought Mr. G ■ would be a good fit. They targeted February 14, 2023 as the move in date. Ms. P ■ stated that she was concerned about communications leading up to the move and understood that Mr. Drake would be in touch. She learned that Mr. Drake had a family concern so he could not support February 14. She testified that they agreed to make the move on February 21, 2023. She noted that there was no ISC support between February 2 and February 21. When Monday February 20 arrived, she contacted the Region. She was under the impression that everyone thought Mr. G ■ was moving on February 21. She testified that beginning on March 21 everyone was doing this, that and the other but there was no coordination. She learned that Mr. Drake did not have a hospital bed to accommodate Mr. G ■ when she was at Tucker Wellness with Mr. G ■ after he had been discharged to go to the group home. She testified that Ms. Reynolds called her around 11 and said, "It would help if you would back off and let me coordinate." Ms. P ■ testified that she called Ms. Reynolds' supervisor and advised that there

was no coordination between February 2 and February 21, that Ms. Reynolds never introduced herself or visited Mr. G ■■■, that the only thing Ms. Reynolds does is push papers and that all she did was pop in on Tuesday (February 21) and say it was everyone else's fault. Ms. P ■■■ stated that during this, the Region said the ISC was coordinating and the ISC told her the Region was coordinating. The issue of the move remained unresolved and on March 1, 2023, CareStar gave its 30-day notice. Ms. P ■■■ said that she found out about the notice from the Social Services Director at Tucker Wellness who called to say that she had been asked to read a letter to Mr. G ■■■. Mr. Drake then declined to take Mr. G ■■■ because he lost his male caretakers. On cross-examination, Ms. P ■■■ acknowledged that she probably did speak to a supervisor from every support coordination agency. She considers the ISCs and the supervisors at the support coordination agencies to be unprofessional. She testified that she could not pick up Mr. G ■■■'s belongings because she could physically get them and had no place to store them. (Testimony of S ■■■ P ■■■; Petitioner's Exhibits).

16.

The parties' theories of this case are radically different. The Respondent's theory is simply that Petitioner must receive support coordination services to participate. None of the support coordination entities in Region 3 are willing to provide those services, so Petitioner cannot participate. Petitioner's theory of the case is that the support coordination providers in Region 3 that discharged Petitioner did so without adequate justification, and that termination, therefore, is improper. The Court finds that the evidence showed that Petitioner's natural supports are the primary source of the problem with providing services to Petitioner. The evidence showed that they are demanding, demeaning and verbally abusive toward the support coordination agencies and provides. Ms. J ■■■'s conduct in the courtroom towards Ms. Reynolds, which was offensive



and condescending, was likely toned down substantially from the way she interacted on occasion with the providers and support coordination agencies. Ms. Reynolds acknowledged that while there were unreasonable demands, many of the concerns raised by the Petitioner's natural supports were legitimate. Only one of the support coordination providers had anything negative to say about Petitioner himself and even that was not unexpected from someone in target population for NOW/COMP services.

17.

Based on the testimony and evidence provided, the Court finds that while some of the support coordination agencies were at capacity (under a proper interpretation of that word in Policy 02-432, as discussed below), virtually all of the evidence presented by the support coordination agencies showed only an unwillingness to provide services to Petitioner because of his natural supports. The evidence did not show that the agencies were unable to provide services for Mr. G ■■■. The inability to provide the services an individual needs, is a separate and distinct issue from an unwillingness to work with the individual's natural supports. Policy 02-441 that mandates support coordination for participation is not to be relied on as a sword for cutting off support to an eligible individual, such as Mr. G ■■■, due to challenging advocates. As noted below, the State of Georgia "recognizes its obligation to provide aid in the form of a coordinated system of community facilities, programs, and services to developmentally disabled citizens so that they may achieve a greater measure of independence and fulfillment and more fully enjoy their rights of citizenship." DBHDD has not fulfilled that obligation in Petitioner's case. The Court further finds that while the provision of services may have been difficult and challenging, the evidence failed to show that the support coordination agencies were *unable* to provide the services Mr. G ■■■ needed after

*considerable* attempts to do so.<sup>4</sup> Unwilling, yes, but unable, no. Mr. Drake’s testimony that he needed male support staff was credible and that he was *unable* to provide services to Petitioner without male staff was reasonable. Properly understood, unwillingness to provide services is not an inability to provide services. Mr. Drake’s situation illustrates this distinction.

### III. CONCLUSIONS OF LAW

1.

This matter concerns termination of benefits for NOW/COMP program participation and services; 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. DBHDD 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”).

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.

---

<sup>4</sup> The issue of any particular discharge is not on appeal. Since DBHDD, however, has predicated its termination on the discharges and legitimacy of those discharges, these findings are necessary to the decision.

The General Assembly has declared the State of Georgia's policy regarding habilitation of the developmentally disabled to be as follows:

The State of Georgia recognizes the capacity of all of its citizens, including those who are developmentally disabled, to be both personally and socially productive; and it further recognizes its obligation to provide aid in the form of a coordinated system of community facilities, programs, and services to developmentally disabled citizens so that they may achieve a greater measure of independence and fulfillment and more fully enjoy their rights of citizenship.

O.C.G.A. § 37-4-1.

The Department of Behavioral Health and Developmental Disabilities has promulgated a policy manual governing the NOW/COMP program applicable here. PART II, POLICIES AND PROCEDURES FOR COMPREHENSIVE SUPPORTS WAIVER PROGRAM (COMP) AND NEW OPTIONS WAIVER PROGRAM (NOW) (hereinafter "NOW/COMP Manual").

5.

DBHDD relies upon the version of DBHDD Policy 02-432 that was in place at the time as the grounds for Petitioner's termination from the program. That policy reference does not provide grounds for termination from the program for at least two reasons.

6.

First, DBHDD's interpretation of "capacity" is fundamentally flawed. Subpart C of Policy 02-432, quoted above, is part of a larger policy statement concerning caseload maximums. The policy statement found at the beginning of 02-432 reads as follows: "Support Coordination Agencies are best able to achieve positive outcomes when caseloads are limited to the maximum numbers set forth below. DBHDD continuously monitors caseload size for each Support Coordination (SC) and Intensive Support Coordination (ISC) Provider." Subsections A and B of Policy 02-432 include a detailed explanation of the policy limitations on caseload numbers including the maximums permitted for support coordination and intensive support coordination.

The word “capacity” in subpart C does not appear in a vacuum. The correct interpretation of that word is based on a reference back to subparts A and B concerning maximum caseloads as part of the context of the word capacity in subpart C. A facility does not have capacity if accepting an individual would place them over the caseload maximums, i.e., the facility would exceed its caseload capacity. The Department’s argument that this should be stretched beyond the alternate meaning of “ability” to mere willingness to accept is not supported by the text of the policy itself. That interpretation would gut the requirement that the agency “*must provide* its services to *any eligible waiver individual* who resides within their geographical area of service delivery.” It would also gut the policy requirement that “selective admission is not permitted.” The policy provides only two exceptions. First, the agency does not have to provide services if “the agency lacks capacity to serve an individual within a specific geographical area.” Second, the policy provides that the “agency retains the right to determine if it is unsafe for its staff to continue to support the individual.” Respondent’s Exhibit 4. The word is not ambiguous and its plain meaning within the context of the policy itself is readily apparent. When the meaning of a word is clear in the context within which it is used, deference to the agency’s interpretation is not required. The Georgia Supreme Court explained the circumstances under which a court is to defer to an agency’s reasonable interpretation of an ambiguous provision as follows:

“A statute draws its meaning, of course, from its text.” *Chan v. Ellis*, 296 Ga. 838, 839 (2015) (citation omitted). When we read the statutory text, “we must presume that the General Assembly meant what it said and said what it meant,” *Deal v. Coleman*, 294 Ga. 170, 172 (2013) (citation and punctuation omitted), and so, “we must read the statutory text in its most natural and reasonable way, as an ordinary speaker of the English language would.” *FDIC v. Loudermilk*, 295 Ga. 579, 588 (2014) (citation and punctuation omitted). “The common and customary usages of the words are important, but so is their context.” *Chan*, 296 Ga. at 839 (citations omitted). “For context, we may look to the other provisions of the same statute, the structure and history of the whole statute, and the other law — constitutional, statutory, and common law alike — that forms the legal background of the statutory provision in question.” *May v. State*, 295 Ga. 388, 391-392 (2014) (citations

omitted).

Even reading the statutory text in this way, we sometimes may find that the statutory text naturally and reasonably can be understood in more than one way. When such a *genuine ambiguity appears*, it usually is for the courts to resolve the ambiguity by ascertaining the *most* natural and reasonable understanding of the text. See *State v. Mulkey*, 252 Ga. 201, 202-204 (1984). But when it appears that the General Assembly has committed the resolution of such an ambiguity to the discretion and expertise of an agency of the Executive Branch that is charged with the administration of the statute, the usual rule may not apply. In those instances, the courts must defer to the way in which the agency has resolved the ambiguity in question, so long as the agency has resolved the ambiguity in the proper exercise of its lawful discretion, and so long as the agency has resolved it upon terms that are reasonable in light of the statutory text. See *Cook v. Glover*, 295 Ga. 495, 500 (2014). See also *Center for a Sustainable Coast v. Coastal Marshlands Protection Committee*, 284 Ga. 736, 741 (2008).

*Tibbles v. Teachers Ret. Sys. of Ga.*, 297 Ga. 557, 558-59 (2105). Since the policy section in question also refers to a provider's ability to provide services, it would be improper to include "ability" as part of the meaning of "capacity" as used in Policy 02-432. If the word were ambiguous, which it is not, Respondent failed to show that the agency resolved the ambiguity in the lawful exercise of its discretion. Finally, Respondent's position that a lack of capacity can be met by a showing of unwillingness is unreasonable.

7.

Policy 02-432 also provides that "If a SC agency is unable to meet the needs of an individual despite considerable attempts, the agency is required to contact the DBHDD Regional Field Office to request assistance in resolving the inability and shall cooperate with the DBHDD Regional Field Office in attempts to resolve the inability, before sending a thirty (30) day notice to discharge the individual." The second reason DBHDD's argument concerning termination is fundamentally flawed is that these provisions are totally silent as to the DBHDD's right to terminate an individual's participation in the program. Thus, while a lack of ability that cannot be resolved might give a support coordination agency the authority to issue a 30-day discharge notice,

the support coordination agency's inability to provide services does not give DBHDD the right to terminate participation in the program.<sup>5</sup>

8.

The provisions governing termination of participation in the NOW/COMP program are contained in Section 707 concerning adverse actions of the NOW/COMP Manual. That section reads in substantial part as follows:

**A. Denial of Eligibility:** The individual and/or his/her representative (legal guardian) will receive written notice of the rights to appeal any COMP/NOW Waiver Program termination. The notice will outline the process for requesting a fair hearing. Eligibility for services under the waivers may be denied for the following reasons:

1. A individual fails to meet the eligibility criteria for NOW/COMP specified in this chapter.
2. The individual or his/her representative has not supplied information needed to complete the eligibility process.
3. The individual or his/her representative indicates a preference for institutional services through the Freedom of Choice document.
4. The individual or his/her representative refuses to sign the Freedom of Choice document, Individual Service Plan, or DMA 6/6-A/7 form.
5. The individual does not meet the eligibility requirements for a specific service or a specific level of service
6. The Individual Service Plan costs are prohibitive because it increases the average cost of the NOW beyond the average ICF/ID costs and/or exceeds the NOW individual cost limit of \$40,000 (Which does not include Support Coordination Services).

An individual denied service, involuntarily terminated from service, or has an involuntarily reduced service is notified in writing by DBHDD. The written notification provides the reason for the adverse action and outlines the procedure to appeal the decision and to request a hearing.

NOTE: A 12 months approval of additional funding up to \$6,000 above the NOW individual cost limit is permitted due to increase needs for services by the individual.

...

**C. Termination from the COMP/NOW Waiver Program due to Department of**

---

<sup>5</sup> The Court notes that Policy 02-432 was revised by DBHDD on May 24, 2023. While this version was not in effect at the time of the discharges by the support coordination agencies in this case, most of the protective provisions that limit the circumstances under which a support coordination agency can discharge an individual have been removed. Respondent did not argue that the updated version of the policy was applicable in this case.

**Community Health Adverse Decision:** *Part I Policies and Procedures for Medicaid/Peachcare for Kids*, Chapter 500, Section 508 provides procedures for the request of a fair hearing should a decision of the Department of Community Health be adverse to an individual.

**D. Termination from the COMP/NOW Waiver Program due to DBHDD Adverse Decision:** The individual and/or his/her representative (legal guardian) will receive written notice of the rights to appeal any COMP/NOW Waiver Program termination. The notice will outline the process for requesting a fair hearing.

**E. Reduction of COMP/NOW Services:** The individual and/or his/her representative (legal guardian) will receive written notice of the rights to appeal any reduction of COMP/NOW services. The notice will outline the process for requesting a fair hearing.

Section 708.4 on individual rights and responsibilities provides additional relevant information:

Providers must acknowledge that individuals have rights and responsibilities regarding participation in the COMP/NOW Waiver. At the time of admission the provider reviews individual rights and responsibilities with the individual and/or individual's representative. After the individual reads and signs a copy of the individual's rights and responsibilities, the provider gives a copy of the rights and responsibilities to the individual and the individual's representative if applicable. The provider places a copy in the individual's record.

...

Individual responsibilities include:

- i. compliance with all applicable policies, including but not limited to those found in the Parts II and III of the NOW and COMP General/Provider Manuals
- ii. refraining from actions that endanger the health and safety of other waiver individuals and/or provider staff
- iii. failure to comply with individual responsibilities may lead to termination of the waiver. Adverse actions will be issued in accordance with section 707(d) of this manual.

None of the sections concerning eligibility for the program, §§ 701, 702 and 703, provide any criteria for participation beyond those addressed by the grounds for termination in §707. In this case, the evidence presented by DBHDD did not show that Petitioner failed to comply with these responsibilities. The evidence also failed to show that the providers complied with the requirement to obtain a signed acknowledgement from Petitioner.

In contrast, for example, in the Elderly and Disabled Waiver Program, the individual responsibilities include “The responsibility to treat provider staff in a courteous and respectful manner, as well as cooperate with and respect the rights of the caregivers providing care.” PART II – Chapters 600 to 1000 POLICIES and PROCEDURES For ELDERLY AND DISABLED WAIVER PROGRAM (EDWP)-(CCSP and SOURCE) GENERAL SERVICES MANUAL § 604.1B. Prior versions of the manual expressly included failure to abide by individual responsibilities that were contained in a signed memorandum of understanding as grounds for termination of services. By way of further example, one of the discharge criteria for the EDWP (CCSP and SOURCE) program reads as follows:

**NOTE:** EDWP (CCSP and SOURCE) service providers may discharge a member who fails to pay cost share. However, a member cannot be discharged from EDWP (CCSP and SOURCE) for failure to pay cost share. Discharge from EDWP (CCSP and SOURCE) occurs when there is no provider who is willing to serve the member. **(Rev. 10/2015)**

*Id.* §606.7. This makes a bright distinction between discharge of a member by a provider and discharge from the program. It also includes, unlike DBHDD’s policy, termination from the program if no provider is willing to serve a member.

There are no similar provisions under DBHDD’s policies that are applicable here and Respondent has failed to show grounds for termination of services under the applicable termination provisions in the NOW/COMP Manual § 707 or § 708.4 (Individual Responsibilities subpart iii).

10.

The population serviced by the NOW/COMP waiver program has certain similarities to the population in nursing homes protected by the Long-Term Care Bill of rights. Individuals may be discharged from a facility under very limited circumstances. *See* O.C.G.A. § 31-8-116. Nursing home providers are faced with difficult personalities. As to these challenges, court have noted the following:



- Resident could not transfer nor propel herself to inflict physical harm to others. Her vocal outbursts, while disruptive and irritating, were not shown to have a direct relationship to the appetite or weight loss of other residents. Thus, she did not endanger the safety of others. Moreover, since she had no infectious disease, she did not endanger the health of other residents. *In re Z.R.*, California Transfer/Discharge Appeal No. 91-0005 (Aug. 27, 1992) (National Center on Poverty Law Document No. 48,654).
- The resident is not a candidate for a psychiatric facility, and her diagnoses are no different than many other residents in this facility. If her behavior is more disruptive than others, then the physician needs to be made aware of that so he can properly adjust the resident's medication regimen. Because the resident is difficult to manage is not an acceptable reason to discharge her. *In re J.T.*, California Transfer/Discharge Appeal No. 91-0006 (Sept. 22, 1992) (National Center on Poverty Law Document No. 48,653).
- The record shows that [the resident] has chosen to channel his frustrations in obnoxious and vicious behavior toward people he knows to be defenseless. [The resident] was capable of behaving very well when he received the attention he wanted . . . . However, the state and federal regulations offer no exemption for ill-tempered residents. *In re V.P.*, Washington Transfer/Discharge Decision No. 0992 A 332 (Jan. 14, 1993) (National Center on Poverty Law Document No. 48,764).
- While the word "safety" is not defined ... , it cannot possibly encompass emotional outbursts, particularly when those emotional outbursts are directed at staff members and not other residents .... [I]t is not unusual for a nursing home resident to have an emotional outburst and even raise his/her voice, particularly when residents are suffering from psychological disorders or dementia. If a facility were permitted to discharge every resident who experienced an emotional outburst, then the protections and rights ... would be virtually meaningless. Instead, the word "safety" ... must include only significant dangers to residents. While other residents may have been irritated or agitated by the Appellant's raised voice, the undersigned cannot conclude that irritation and agitation are proof of a danger to the safety of any other resident. *In re B.*, Washington Transfer/Discharge Appeal No. 11-2002-A-0495, at 30 (May 16, 3003) (interpreting Washington Law that mirrors federal Nursing Home Reform Law).

Similarly, courts have made observations, perhaps more relevant here, in the case of parents advocating on behalf of their children who have intellectual challenges.

- It is unfortunate that some of the Redding staff have left or have threatened to leave as a result of Plaintiff's alleged hostility. However, the IDEA was passed for the purpose of protecting disabled children, not the jobs of school employees. Though the risk of staff leaving is regrettable, this factor can not detract from pursuit of the purpose of a congressional statute that seeks to help disabled children by creating a system of rights for their parents, even hostile parents, to advocate on their behalf. *Lillbask v. Sergi*, 117 F. Supp. 2d 182, 199-200 (2000), *citing Warren G. v. Cumberland County Sch. Dist.*, 190 F.3d 80, 86 (3d Cir. 1999). (Dkt. No. 172 at 32.) ("The conduct of parents

should not be permitted to defeat the purpose of the Act," and "vigorous advocacy is an anticipated by-product of a policy encouraging parental involvement.”)

11.


Challenging participants and challenging advocates are part of the landscape of providing services such as the NOW/COMP services at issue here. The fact that this situation has never arisen before speaks volumes about the level of effort that DBHDD has expended to provide services to those individuals who qualify for NOW/COMP benefits. In this case, however, DBHDD has nevertheless failed to live up to the commitment expressed by the General Assembly in O.C.G.A § 37-4-1. It also speaks volumes about the degree to which the abusive, demeaning, and obstreperous behavior of Petitioner’s natural supports degrades rather than enhances the care their brother receives. It should be abundantly apparent to Petitioner’s sisters that aggressive and abusive tactics do not help get Mr. G ■ the support he needs. The three days of hearings consisted mostly of finger pointing by both sides while Mr. G ■’s future hung in the balance. Both sides and the support coordination agencies appeared to have lost site of Mr. G ■ and his needs. To be eligible for NOW/COMP programs requires that the individual needs the level of care provided in an Intermediate Care Facility for Persons with Intellectual Disability, i.e., an institution. The purpose of the program is to provide services that enable the individual to stay out of such an institution. The natural supports must recognize that Mr. G ■ is not the only individual in the program and that support coordinators and providers have a monumental challenge providing services to Mr. G ■ and others in the target population for these programs. If the sisters fail to do so, unless the sisters are willing and able to take over his total care, he will likely have to be placed in an institution. Presumably, everyone, particularly Mr. G ■, wants to avoid that outcome. This, however, does not change the fact that the evidence presented by DBHDD showed only an

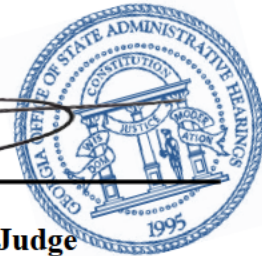
unwillingness, not an inability, on the part of support coordination agencies to provide support,<sup>6</sup> and failed to show that the support coordination agencies and DBHDD expended considerable effort to resolve the challenges. Respondent failed to show that termination of the Petitioner from the NOW/COMP program under DBHDD's policy for termination as set forth in NOW/COMP Manual § 707 or § 708.4 was proper or justified.

#### IV. DECISION

In accordance with the foregoing Findings of Fact and Conclusions of Law, DBHDD's decision to terminate Petitioner's NOW/COMP Waiver services benefits is **REVERSED**.

**SO ORDERED**, this 16<sup>th</sup> day of November, 2023.

  
\_\_\_\_\_  
**John Fry**  
**Administrative Law Judge**



---

<sup>6</sup> The evidence did show at certain discrete points in time, one or more of the support coordination agencies exceeded their caseload limits, i.e., were over capacity as that term is properly defined.