

otherwise provided through generic resources, the Supports Program, or through the State Plan, which address an identified need (including improving and maintaining the participant's opportunities for full membership in the community) and meet the following requirements: the item or service would decrease the need for other Medicaid services; and/or promote inclusion in the community; and/or increase the participant's safety in the home environment; and, the participant does not have the funds to purchase the item or service or the item or service is not available through another source." Section 17.9.1 Supports Program Manual.

The service in question here is an out-of state camp, Camp HASC, located in New York. Petitioner had been attending the camp at his own expense. His parents sought to have Medicaid funds cover his attendance in 2019 by forwarding a \$9,100 bill to DDD. ID at 5. Petitioner had been attending the camp for the prior 20 years. ID at 4. DDD, which administers the Supports Program, denied the request as Camp HASC was neither a Medicaid/DDD provider nor was the camp covered as a respite service as it did not have the required qualifications. ID at 5. Petitioner appealed this denial.

For the reasons that follow I hereby ADOPT the Initial Decision's finding that the request was properly denied.. The rules surrounding Goods and Services states that "[a]ll providers of Goods & Services must exist primarily to serve the general public. If a provider primarily exists to serve individuals with disabilities, that provider must become a Medicaid/DDD approved provider for other services detailed through Section 17 of this manual and receive payment through claims submitted to Medicaid. . . In addition, staff providing Goods & Services must meet the qualifications/standards mandated by the relevant industry from which the specific service is being provided." Section 17.9.3. Camp HACS provides services to individuals with developmental disability while following the beliefs and practice of Orthodox Judaism. ID at 4. As its purpose is to provide services to disabled individuals and not the general public, Camp HASC must become a

Medicaid/DDD provider to be covered under the Supports Program with Medicaid funds. It is undisputed that Camp HASC is not a Medicaid/DDD provider. Moreover, as a camp it must be approved by the New Jersey Department of Health (DOH) to provide youth camp services. Camp HASC possesses none of these qualifications. The Initial Decision found that any challenge about Camp HASC's ability or inability to be qualified to receive Medicaid payment lies with Camp HASC. Petitioner cannot stand in Camp HASC's shoes to challenge whether it meets the qualifications to receive Medicaid funding.

The Initial Decision lays out the various other requirements that Camp HASC would need to comply with in order to become a provider or an authorized respite provider for the Supports Program. It is undisputed that Camp HASC is not authorized through DDD or Medicaid to be reimbursed under the various provisions and regulations that govern the Supports Program.

Additionally, goods and services must be part of the individual service plan (ISP) in order to be authorized. The ISP identifies the services needed to help achieve Petitioner's outcomes. There is no evidence that Petitioner's ISP contained approval for out of home overnight respite services. ID at 14. Petitioner's submission of the bill does not comply with the numerous pre-requisites to obtain prior authorization and permit payment to an authorized provider.

Turning to Petitioner's claims that DDD's policy that respite provider be in New Jersey and comply with New Jersey regulations violates his right to exercise his religion and freedom of association. The Initial Decision is correct that a facial attack to the constitutionality of regulations are under the jurisdiction of the Appellate Division. In concluding that the Petitioner's challenge is not a facial challenge, the decision turns to whether the application of the regulations violate Petitioner's constitutional rights.

In a well-reasoned decision, the ALJ found that Petitioner's constitutional rights were not violated by the application of DDD's rules and regulations surrounding the

Supports Program. These rules and regulations “do not target religious conduct, do not suppress the religious belief of any individual or prevent an association with other religious persons.” ID at 19. Petitioner can attend out-of-state Camp HASC just as he’s done for the past 20 years. Rather DDD demonstrated that the rules surrounding in-state entities being providers of goods and services under the Supports Program is based on safety and health concerns. The rules stem from statutes passed by the New Jersey Legislature to heighten the protections of residents such as Petitioner by requiring providers who are funded, licensed or regulated by DDD comply with these safeguards. N.J.S.A. 6D-1 to 12.6. Thus for the reasons set forth above and in the Initial Decision, I concur with the conclusions that Petitioner has not provided any evidence that the rules that form the basis of the denial unduly interfere with Petitioner’s ability to associate based on his religion or burden his constitutional rights “any more than needed to further [DDD’s] obligation to the welfare of individuals with developmental disabilities.” ID at 20.

THEREFORE, it is on this 3rd day of AUGUST 2020,

ORDERED:

That the Initial Decision is hereby ADOPTED.



Jennifer Langer Jacobs, Assistant Commissioner
Division of Medical Assistance
and Health Services