
In the Matter of

M.C.

FINAL DECISION

M.C., through his father S.C. (Petitioner), appeals the Division of Developmental Disabilities' (Division) denial of a special circumstances request relating to M.C.'s contribution to care.

On February 24, 2015, an administrative review officer issued a Recommended Decision in this matter, finding that the Division's actions were proper. Pursuant to N.J.A.C. 10:48, the parties were given the opportunity to file exceptions to the Recommended Decision; Petitioner did so on March 18, 2015. I now issue the Final Decision.

The following items were reviewed in preparation of this Final Decision: Petitioner's letters to the Division dated September 23, 2014, October 23, 2014 and January 8, 2015; a letter from a Division Fiscal Coordinator to Petitioner dated September 25, 2014; a memorandum from the Division's Fiscal Supervisor to the Administrative Practice Officer dated December 8, 2014; the Recommended Decision; Petitioner's Exceptions; the Division's file on M.C.; and applicable statutes, regulations and case law cited in Petitioner's submissions and this Final Decision.

BACKGROUND

M.C. was born on June 1, 1990 and has been eligible to receive Division services since 2008. During the time period relevant to this matter, petitioner resided in a placement funded by the Division. Individuals residing in placements funded by the

Division are responsible for contributing financially to the cost of providing their care and maintenance. N.J.S.A. 30:4-60.

The amount of the financial contribution is determined based upon the individual's income. Specifically, individuals are required to contribute 75% of their unearned income, less a personal needs allowance of \$40. N.J.A.C. 10:46D-3.1. This amount is referred to as the "contribution to care" amount. The Division may reduce an individual's contribution to care under certain special circumstances set forth in the Contribution to Care and Maintenance Requirements regulation. See N.J.A.C. 10:46D-3.1(g). To obtain a special circumstance reduction, the individual or his or her guardian submits a request to the Division for its review and a determination of whether the request will be granted. Those items eligible to be considered as a special circumstance are set forth in regulation as follows:

(g) Any request to retain funds beyond 25 percent shall be based exclusively on the following circumstances... The individual or representative payee shall provide verification of the extraordinary need which shall be limited to the following circumstances:

1. The individual's reasonable costs related to food or shelter, including heat and utilities in a supervised apartment that exceed the amount provided in the agency contract;
2. Major "unavoidable" medical costs that are covered by Medicaid but exceed the frequency of service established by Medicaid or other unavoidable medical costs as reviewed and approved by the Division;
3. Replacement of personal items due to destructive behavior based upon documentation in a specific behavior plan and not covered by the contract or third party;
4. For individuals who do not already have one, establishment of an irrevocable burial fund. The individual shall be permitted to retain no more than an additional ten percent per month of the Disposable Income until such time as the burial contract is paid in full; and
5. For individuals who will move from a residential placement to independent living within six months, the individual may retain up to \$2,000 to establish his or her household. Once the individual

lives independently, he or she will have all his or her funds available; no contribution is required. The \$2,000 must be spent, as it is needed; the individual cannot accumulate these funds. N.J.A.C. 10:46D-3.1(g).

Petitioner submitted a special circumstance request to the Division for expenses that occurred beginning in May 2013, when the Division placed M.C. in an emergency placement following his discharge from Trinitas Hospital.¹ M.C. then moved to a long-term residential placement funded by the Division in September 2013. Petitioner was residing in this placement in September 2014, when he made the request at issue here. Petitioner asserts that during the time period in question, the Division did not provide appropriate services to M.C., requiring him to provide services at his own expense, and to seek the assistance of a psychological consultant and attorney. Petitioner's request is as follows:

- A medical bill in the amount of \$160 for eye care.
- YMCA fees in the amount of \$1,230.
- Transportation costs in the amount of \$8,807.13.
- Psychological consultant fees in the amount of \$11,700.
- Legal fees in the amount of \$63,916.10.

The total amount of petitioner's special circumstance request is \$85,813.23.

Petitioner's current outstanding amount owed to the Division for contribution to care is \$22,527.19. His monthly assessment calculated utilizing the regulatory formula was approximately \$940 in May 2013, and rose to approximately \$1240 when the request was made in September 2014. The outstanding amount owed includes assessments through December 2014. After that time, M.C. was not residing in a

¹ Emergency services are available to individuals who the Division has found to be homeless or in imminent peril within their living situation. See N.J.A.C. 10:46B-3.3.

Division-funded placement. M.C. has not made any contribution to care payments from May 2013 forward.

The Division denied Petitioner's special circumstance request by letter dated September 25, 2014. The letter provided the Division's reasoning, explaining that the eye care and psychological fees were denied because these items are medical services that could be covered by Medicaid when using a Medicaid provider. The requests for transportation costs, YMCA fees and legal services fees were denied because these items fall outside of the delineated categories of special circumstances set forth in regulation.

Petitioner appealed the denial by letter dated October 23, 2014. An administrative paper review pursuant to N.J.A.C. 10:48 followed.

DISCUSSION

I. The Division appropriately denied Petitioner's special circumstance request.

It is well-settled that individuals receiving services funded by the Division in a licensed residential setting are responsible for the full cost of their care and maintenance, and are required to contribute to the cost of that care and maintenance. See, N.J.S.A. 30:4-60 and N.J.A.C. 10:46D. Only in certain particular special circumstances, specifically set forth in regulation, may individuals retain more than 75% of their income. The regulation provides that "[a]ny request to retain funds beyond 25 percent shall be based *exclusively* on the following circumstances." It further provides that "[t]he individual or representative payee shall provide verification of the extraordinary need which shall be *limited* to the following circumstances." N.J.A.C. 10:46D(g). (Emphasis added). Thus, the legal framework establishes that individuals may retain funds beyond 25% only in situations specifically referenced in N.J.A.C. 10:46D(g).

In the present matter, the items for which Petitioner seeks to retain more than 25% of his income do not fall within any of the categories of special circumstances delineated in regulation. Therefore, the Division appropriately denied his request.

Petitioner's exceptions acknowledge that the eye care provider was not a Medicaid provider, and that this cost therefore does not meet the definition of a special circumstance pursuant to N.J.A.C. 10:46D(g)(2). He asserts, however, that the provider was chosen by a staff member of M.C.'s group home. A review of M.C.'s file and consultation with his case manager indicates that Petitioner consented to the use of the eye care provider for M.C. Additionally, in his exceptions, petitioner mischaracterizes the psychological consultant as "requested" by group home staff. The record indicates that petitioner hired the consultant on behalf of M.C. Further, petitioner asserts that the YMCA fees should be considered a special circumstance because they were medically necessary. While exercise may be beneficial to M.C.'s health, the record contains no indication that it is an "unavoidable medical cost" within the meaning of the regulation. Petitioner, and all other similarly situated individuals served by the Division, cover the costs of items such as YMCA fees from their 25% retained income and \$40 personal needs allowance.

Petitioner's exceptions reassert his position that the Division did not provide appropriate services for M.C., causing him to incur the expenses for which he seeks a reduction in contribution to care payments due to special circumstances, most significantly, legal and psychological consultant fees. A special circumstance request is not the proper mechanism to address concerns with the appropriateness of services. Rather, individuals may seek an appeal through the administrative appeal process. See, N.J.A.C. 10:48. Legal fees and psychological consultant fees, as well as the transportation fees, are clearly beyond the scope of special circumstances contemplated by the regulation.

Last, contribution to care assessments are not a "fee" for Medicaid services, as asserted by petitioner. These assessments are statutory and regulatory requirements firmly established by law for individuals residing in Division-funded placements.

II. This matter is a non-contested case as there are no disputed material facts.

Petitioner incorrectly asserts that this matter should be a contested case transmitted to the Office of Administrative Law. There are no material facts in dispute, therefore a paper review of the written record is appropriate pursuant to the governing regulation, which provides as follows:

Where there are no disputed material facts and an appeal sets forth one or more disputed legal issue(s) and presents arguments on these issues, the Director may consider those legal issues and arguments in a paper review of the written record. There shall be no discovery, but the individual, legal guardian or LRR(s) shall have the opportunity to submit written arguments. The Director shall consider these arguments, if any; the materials presented at the pre-transmittal conference, if any; and all prior documents regarding the determination of fees. The Director shall render a written determination that shall constitute the final agency decision in the matter. N.J.A.C. 10:46D-6.1(i).

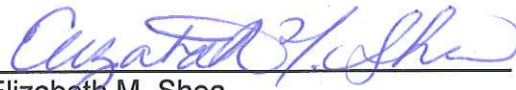
Moreover, the right to a full trial-type hearing is limited to those situations where adjudicatory facts are in issue. Adjudicative facts answer the questions of who did what, where, when, how, why, and with what motive or intent. High Horizon Development Company v. New Jersey Department of Transportation, 120 N.J. 40, 49 (1990). There are no such facts at issue in this matter.

CONCLUSION

For the foregoing reasons, I hereby find that the Division's denial of a special circumstances request for M.C. was proper.

This is my Final Decision.

Dated: 6/22/15



Elizabeth M. Shea
Assistant Commissioner
Division of Developmental Disabilities