



State of New Jersey

DEPARTMENT OF HUMAN SERVICES
DIVISION OF MEDICAL ASSISTANCE AND HEALTH SERVICES
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CHRIS CHRISTIE
Governor

ELIZABETH CONNOLLY
Acting Commissioner

KIM GUADAGNO
Lt. Governor

VALERIE HARR
Director

STATE OF NEW JERSEY
DEPARTMENT OF HUMAN SERVICES
DIVISION OF MEDICAL ASSISTANCE
AND HEALTH SERVICES

K.B.,

PETITIONER,

v.

DIVISION OF MEDICAL ASSISTANCE

AND HEALTH SERVICES,

RESPONDENT.

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:
:
: ADMINISTRATIVE ACTION
:
: FINAL AGENCY DECISION
:
: OAL DKT. NO. HMA 5526-2015
:
: ON REMAND HMA 7762-2014
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As Director of the Division of Medical Assistance and Health Services, I have reviewed the record in this matter, consisting of the case file, the documents in evidence and the Initial Decision. Respondent filed exceptions. Procedurally, the time period for the Agency Head to file a Final Agency Decision is September 28, 2015 pursuant to an Order of Extension.

This matter concerns Petitioner's placement in a nursing facility. Petitioner suffers from cerebral palsy (CP) which has progressed to render her immobile. She has medical issues such as lung disease, hypertension, idiopathic scoliosis, vein thrombus,

hip dislocation, cellulitis and open skin sores. It is likely she will need breathing apparatus in the future. ID at 3.

Petitioner resides in a community placement through the Division of Developmental Disabilities (DDD). She sought to move into a nursing facility. She has been determined to be in need of nursing home level services through the Pre-Admission Screening (PAS). Due to her CP diagnosis she needed to be screened for a Level II PASRR (Pre-Admission Screening and Resident Review) which is required when the individual is known or suspected to have a mental illness (MI), intellectual disability (ID) or related ID condition to determine the need for specialized services.

In brief, PASRR requires that applicants to Medicaid-certified nursing homes be assessed to identify individuals whose total needs require that they receive additional services for their intellectual disability or serious mental illness. Those individuals who “test positive” at Level I are then evaluated in depth to confirm the determination of MI/ID for PASRR purposes, and the “Level II” assessment produces a set of recommendations for necessary services that are meant to inform the individual’s plan of care.

The Initial Decision found the facts in this case demonstrate that Petitioner does not need specialized services. She has been without these services since October 2014 as she is refusing to accept them. ID at 9.¹ The Initial Decision also concluded that Petitioner “retains her right to reject a community based placement [and] . . . [i]nvoluntarily taking away a disabled individual’s housing choice is no less discriminatory than institutionalizing them.” ID at 12. For the reasons set forth below, I hereby ADOPT the finding that Petitioner does not need specialized services but

¹ To that end, Petitioner has not, as stated in the Initial Decision, been forced to receive specialized services. Rather those services have been authorized and put in place but Petitioner has declined to receive those services. See R-1.

REVERSE the finding with regard to Petitioner's right to reject community placement under Olmstead v. L.C. ex rel. Zimring, 527 U.S. 581, 119 S. Ct. 2176, 144 L. Ed. 2d 540 (1999) (Olmstead).

First, it must be noted that DMAHS, as the Medicaid agency, does not pay for or place DDD individuals in the community. See N.J.S.A. 30:4D-6 for a list of services covered by Medicaid. Indeed, federal law explicitly excludes reimbursement for the cost of room and board. See 42 U.S.C. § 1396n(c)(1); see also H.R. Rep. No. 97-208, at 965-68 (1981) (Conf. Rep.), reprinted in 1981 U.S.C.C.A.N. 1010, 1327-30. The community placement referred to in R-1 is a function of DDD and not DMAHS. The Initial Decision conflates a state funded DDD placement with the federal requirements of the Medicaid program and reiterates the finding that the Americans with Disability Act (ADA), through the seminal case of Olmstead, permits Petitioner to "reject a community based placement." ID at 12. That is simply not supported by more recent and on point decisions. See Sciarrillo v. Christie, No. 13-cv-03478, 2013 U.S. Dist. Lexis 175178 (D.N.J. December 13, 2013), where the court specifically found that "[t]here is no ADA provision that *providing* community placement is a discrimination" (citation omitted) in response to arguments from residents of two developmental centers that were slated to close and sought to have their proposed placement in an integrated community setting be considered a violation of their rights under the ADA.

Moreover, Petitioner's rejection of the community placement and services provided by DDD is not only not violative of the ADA, but the community placement and services are not part of the matter transmitted to OAL as community placement or room and board is not a Medicaid service.

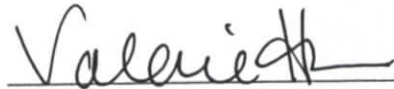
However, the facts in this case present a different medical situation than was present when the PASRR was done in May 2014. Based on the totality of unique facts and circumstances in this case, I FIND that Petitioner no longer requires specialized services. As such her PASRR should be changed to reflect this.

THEREFORE, it is on this 25th day of SEPTEMBER 2015,

ORDERED:

That the Initial Decision is hereby ADOPTED with regard to the finding that Petitioner does not require specialized services; and

That the Initial Decision is REVERSED as set forth above with regard to the effect of the ADA.



Valerie J. Harr, Director
Division of Medical Assistance
and Health Services