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In the Matter of

C.L.

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FINAL AGENCY DECISION

C.L., through his mother and co-guardian M.L., (petitioner) appeals the Division of Developmental Disabilities' (Division) determination that he cannot utilize his Self-Directed Day Services (SDDS) budget to pay M.L. to provide support services for him.

In preparing this Final Agency Decision, the following items were reviewed: the petitioner's submissions; the Division's Recommended Decision; the Regional Administrative Practice Officer's Informal Conference report; the petitioner's file with the Division; and applicable statutes and regulations.

**BACKGROUND**

C.L. was born on June 4, 1991. He lives at home with his parents. His parents, along with an uncle, are his legal co-guardians. Petitioner aged out of his educational entitlement in June 2012, and shortly thereafter began receiving Division services through the SDDS program. The SDDS program provides individuals with an annual "up to" budget determined based upon assessed need. With the assistance of a support coordinator, individuals utilize this budget to purchase services and supports for employment and day habilitation activities. The policies and procedures governing the program are contained in the Division's "Self-Directed Services (SDS) Policies & Procedures" manual, which

can be found on the Division's website.<sup>1</sup>

C.L.'s SDDS annual budget was \$26,700, and has recently been updated to \$28,780. This budget is funded through State dollars. C.L. is on the Division's waiting list for the Medicaid Community Care Waiver.

C.L. utilizes his budget primarily to pay for support services provided by a direct support professional staff person. He has also received services through the Personal Preference Program administered by the Division of Disability Services.

M.L. manages C.L.'s SDDS services. She had difficulty retaining staff to provide supports for him. She indicates that she has performed the duties of a direct support professional, and seeks to be compensated through petitioner's SDDS budget. The Division denied this request on the basis of its policy that a legal guardian cannot serve as a paid support provider.

Petitioner appealed the Division's denial by letter dated October 13, 2013. In December 2013, M.L. participated in an informal conference with Division staff in an attempt to resolve the matter. A resolution was not reached, and on May 12, 2014, the Division issued an informal conference report finding that the denial was proper. Petitioner continued the appeal by letter dated September 22, 2014. The Division again found the denial to be proper in a Recommended Decision dated October 24, 2014. Petitioner submitted exceptions to the Recommended Decision and this Final Agency Decision follows.

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<sup>1</sup> The manual was updated effective February 2014, after this appeal began. However, the provisions relevant to this matter are unchanged from the previous version dated July 2013.

## DISCUSSION

In the section entitled "Issues Related to Payment for Services - Parent/Stepparent, Spouse, Guardian, or Relative Residing in the Individual's Residence," the Division's manual setting forth the policies and procedures applicable to self-directed services provides as follows:

- Payment will not (*emphasis in original*) be made for services furnished by the individual's parent/stepparent, spouse, guardian, or relative residing in the service recipient's residence.
- Exception – For no more than 30 days within an individual's plan year, a relative residing in the individual's home – other than the legally responsible relative – may provide Individual Support Service during the transition or hiring of new staff. (Section J3a)

Pursuant to this policy, C.L. may not use his self-directed budget to pay M.L. for support services. She is his parent, co-guardian and a legally responsible relative. She resides in C.L.'s home. Therefore, C.L. may not provide payment to her under either the general provision or the exception.

Petitioner acknowledges that M.L. is C.L.'s parent and co-guardian, and does not argue that the policy is inapplicable to her. Rather, petitioner argues that "it is discriminatory not to allow legal guardians to be paid providers." Petitioner asserts that there are entities other than the Division that allow individuals to use program funds to pay parents and co-guardians to provide support services. In essence, petitioner disagrees with the policy and seeks to have it abandoned.

The Division's policy in this matter is clear and has been made available to the public and to individuals self-directing their services and their families. It is

applied consistently to all individuals receiving services through the self-directed model. The policy is designed to further sound administration of the self-directed program by promoting appropriate oversight of the services provided and the payments rendered for those services. As such, the policy is not "discriminatory." I encourage M.L. to continue to work with C.L.'s support coordinator and case manager to identify appropriate services and staff for him.

### **CONCLUSION**

For the reasons outlined above, I find that the Division's determination that C.L. may not pay M.L. to provide support services to him through the SDDS program was proper.

This is my Final Decision.

Dated: 1/22/15

  
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Elizabeth M. Shea  
Assistant Commissioner  
Division of Developmental Disabilities