

STATE OF VERMONT

HUMAN SERVICES BOARD

In re) Fair Hearing No. B-01/14-32
)
Appeal of)

INTRODUCTION

Petitioner appeals the determination of the Department of Disabilities, Aging, and Independent Living, ("DAIL") that he is eligible for some, but not all, of the developmental services requested from DAIL. The following facts are based on written information submitted by the parties.¹

FINDINGS OF FACT

1. Petitioner is a twenty-year-old man currently living with his parents.² He has been diagnosed with Asperger's disorder.

2. The local mental health agency working with petitioner and his family submitted an application on his behalf for developmental services through DAIL. The request for eligibility and services was comprised of two hours per

¹ There have been several phone status conferences in this case and the matter was delayed for a period of time while petitioner pursued a Commissioner's Review of the initial decision.

² Petitioner's mother has appeared on his behalf throughout this appeal.

week of service coordination, 20 hours per week of community supports, and respite support of 36 days per year.

3. The "Equity Committee" functioning under DAIL's auspices found petitioner eligible for services, awarding him one hour per week of service coordination and respite support of 36 days per year, but no hours of community support.

4. Petitioner appealed this decision to the Board. While the appeal was pending, petitioner opted for a Commissioner's review of the decision. The Commissioner's review, in a decision dated March 19, 2014, affirmed the original decision.

5. The Commissioner's review found that the primary subject in dispute, 20 hours per week of community support, does not meet a System of Care Plan funding priority because it is not "needed to prevent imminent risk to the individual's health and safety."

6. Petitioner submitted psychological evaluations into the record dated May 23, 2012 and October 19, 2011. Each evaluation confirms his diagnosis of Asperger's Disorder. Neither evaluation directly addresses petitioner's need for community supports or the nature of that need.

7. Petitioner also submitted a letter of support from an employment consultant, dated April 3, 2014, opining that

he "will require a great deal of assistance identifying jobs which will provide him with a supportive environment in which he can be successful."

8. Upon receipt of the Commissioner's review decision, the hearing officer, by memo dated April 21, requested that the Department forward the information provided to the Equity Committee in support of petitioner's initial request for services. The memo also gave petitioner an opportunity to provide additional information related to his need for community supports.

9. The Department provided the information submitted to the Equity Committee. Within those materials, the local mental health agency provides:

Community Supports: 20 hours of contracted community support is needed weekly to provide the support [petitioner] needs in the community to develop necessary safety skills to increase his ability to become independent in the community. [Petitioner] has a poor sense of safety, is vulnerable, and cannot navigate safely without support. He does not drive or access public transportation and relies solely on his parents. His parents are unable to assist him daily and this has become more challenging with the loss of school.

10. The local mental health agency also indicates in a "Needs Assessment Summary" that petitioner has "Non/minimal" need in the areas of Communication, Contenance, Health/Medical, Mobility, Wandering, and Criminal Behavior.

The Needs Assessment Summary indicates that petitioner has "Moderate" need in the areas of Self-Care, Independent Living Skills, Sleep Disturbance, and Other Behavioral Challenges. No areas are identified as a "Significant" area of need.

ORDER

DAIL's decision is affirmed.

REASONS

The Department funds developmental services according to priorities set out in a System of Care Plan developed every three (3) years. The funding priority forming the basis of petitioner's request is that of "Health and Safety," which is specified as "[o]ngoing, direct supports and/or supervision are needed to prevent imminent risk to the individual's personal health or safety."³ No other funding priorities have been raised or are apparent.

The preponderance of evidence supports affirming DAIL's decision. There is insufficient evidence that the services denied by DAIL, primarily community supports, are needed to

³ "Imminent" is defined as presently occurring or expected to occur within 45 days. "Risk to the individual's personal health and safety" means an individual has substantial needs in one or more areas that without paid supports put the individual at serious risk of danger, injury or harm (as determined through the needs assessment). See Vermont State System of Care Plan, FY2012-2014, p. 21 (FY14 Update).

prevent imminent risk to petitioner's personal health or safety, as defined in the system of care plan. Petitioner's evidence does not directly address this issue. The evidence submitted to DAIL by the local mental health agency asserts in mostly conclusory fashion that community supports are required to maintain petitioner's health and safety, but also finds that petitioner has no significant needs in any area.⁴

DAIL's decision is therefore consistent with the applicable rules and must be affirmed.⁵ 3 V.S.A. § 3091(d), Fair Hearing Rule No. 1000.4D.

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⁴ For its part the Department argues that respite care was awarded because of the risk presented by stressors on the family in wholly taking on the care of petitioner. The Department also assures that respite support is flexible and may be used to take petitioner out in the community.

⁵ There is nothing preventing petitioner from reapplying for additional services in the future if new information becomes available or his circumstances change.