

STATE OF VERMONT

HUMAN SERVICES BOARD

In re ) Fair Hearing No. R-12/16-1061  
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Appeal of )  
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INTRODUCTION

The petitioner appeals the decision by the Department of Disabilities, Aging and Independent Living (DAIL) refusing to order the provider of his personal care services under the Choices for Care (CFC) program to provide him with additional hours of service to assist him with certain instrumental activities of daily living (IADLs).

Following a telephone status conference on December 21, 2016, a telephone hearing was held on February 3, 2016. The following findings of fact are based on the representations of the parties at that hearing.

FINDINGS OF FACT

1. The petitioner is a disabled single man. Among his chronic medical problems are diabetes, Crohn's disease, and sleep apnea. He has recently undergone a series of surgeries involving the progressive amputations of his left foot and lower leg.

2. Following such surgery in December 2016, DAIL approved the petitioner for 49.25 hours every two weeks of personal care services under its CFC program. Those hours were based on an assessment by DAIL of the petitioner's ability to perform a variety of "activities of daily living" (ADLs) and "instrumental activities of daily living (IADLs).

3. The petitioner currently receives CFC personal care services through the Rutland Visiting Nurses. Those services include assistance with both ADLs and IADLs.

4. Under the CFC regulations, "approved" ADL services can include assistance with dressing, bathing, personal hygiene, toileting, bed mobility, assistance with adaptive devices, transferring, mobility, and eating. IADL services can include meal preparation, medication management, using the telephone, money management, household maintenance, light housekeeping, laundry, shopping, transportation, and care of medical or adaptive equipment. (Choices for Care Manual § IV.3.D, see *infra*).

5. The regulations limit personal care services to those approved under a current service plan. *Id.* § IV.3.E.2. Personal care services for IADLs not including meal preparation and medication management are "limited" to 4.5 hours per week (or 9 hours every 2 weeks). *Id.* § IV.3.E.3.

Currently, DAIL has approved the petitioner for the maximum of allowable IADL services.

6. At the hearing, the petitioner did not dispute the Department's representation that since December he has not utilized the full amount of the hours of personal care services for assistance with ADLs for which he was approved. The petitioner's appeal is based on the visiting nurses refusal to provide additional assistance with IADL's, in particular shopping and laundry, above the limit for those services prescribed in the regulations. The petitioner argues that he should be allowed to allocate additional personal care services for shopping and laundry out of the hours approved for assistance with ADLs that he doesn't use.

7. The petitioner does not allege that he eschews some of the assistance with ADLs for which he has been approved based on any medical, rather than personal, reasons.

8. The petitioner also does not dispute that under the regulations SVCOA cannot bill DAIL for assistance it provides him with IADLs beyond the limits prescribed in the regulations. Nor does he claim that the visiting nurses are not currently providing him with (and billing DAIL for) all the assistance with IADLs for which he was approved.

9. The petitioner presented no medical evidence or opinion that he has a medical need for assistance with IADLs, especially shopping and laundry, beyond the limits prescribed in the regulations. His demands appear to be based on his current lifestyle preferences and priorities.<sup>1</sup>

ORDER

DAIL's decision refusing to order SVCOA to provide the petitioner with additional personal care services for assistance with IADLs is affirmed.

REASONS

The Choices for Care (CFC) program is a Medicaid waiver program that allows individuals who need nursing home level of care the means to choose whether to remain in their own home, a community setting, or enter a nursing home.

The general policy of the CFC program "shall be based on person-centered planning, and shall be designed to ensure quality and to protect the health and welfare of the individuals receiving services." CFC 1115 Long-term Care Medicaid Waiver Regulations (CFC Regulations) Section I.A.

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<sup>1</sup>This petitioner's frequent shopping habits and preference not to wear protective undergarments were noted by the Board in one of the several other appeals he has recently brought. See Fair Hearing No. R-03/16-224.

As a result, each individual's case turns on information specific to the individual.

Once an individual is eligible, he/she is reassessed on a regular basis. DAIL has adopted procedures by which minutes and hours of personal care services are allotted based on an individual's assessed ability to perform listed ADLs and IADLs.<sup>2</sup>

If DAIL's decision on any particular assessment includes a reduction in the amount of time from a prior assessment regarding particular activities and/or circumstances, DAIL bears the burden of proof in justifying the reduction of services. If DAIL has denied an individual's request for additional time above a prior assessment, the burden is on that individual to demonstrate the necessity for that request. See Fair Hearing Nos. R-03/16-224 and A-07/09-404.

In this case, the petitioner has not provided any medical evidence or opinion that the current amount of personal care services for which he has been approved for assistance with both ADLs and IADLs is insufficient to meet his needs. The record is also clear that DAIL's decision in

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<sup>2</sup>The regulations allow DAIL to grant variances that are "necessary to protect or maintain the health, safety or welfare of the individual". Id. § V.8.III.B.2.

this matter is consistent with its regulations, as set forth above.

In light of the foregoing, DAIL's decision in this matter must be affirmed. 3 V.S.A. § 3091(d), Fair Hearing Rule No. 1000.4D.

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