

DEPARTMENT OF HEALTH AND HUMAN SERVICES
OFFICE OF DIRECTOR

ACTION REFERRAL

| | |
|-------------------|----------------------------|
| TO <i>Hess</i> | DATE <i>6-10-11</i> |
|-------------------|----------------------------|

| DIRECTOR'S USE ONLY | ACTION REQUESTED |
|--|---|
| 1. LOC NUMBER <div style="text-align: center; font-size: 1.2em;"><i>101559</i></div> | <input type="checkbox"/> I Prepare reply for the Director's signature DATE DUE _____ |
| 2. DATE SIGNED BY DIRECTOR <div style="text-align: center; font-size: 1.2em;"><i>cc: Singleton, Waldrop</i></div> | <input checked="" type="checkbox"/> Prepare reply for appropriate signature DATE DUE <i>6-21-11</i> <div style="text-align: center; font-size: 0.8em;"> <input type="checkbox"/> FOIA DATE DUE _____ <input type="checkbox"/> Necessary Action </div> |

Should be N/A. Meaning will be schedule. See attached e-mail.

| APPROVALS <small>(Only when prepared for director's signature)</small> | APPROVE | * DISAPPROVE <small>(Note reason for disapproval and return to preparer.)</small> | COMMENT |
|---|---------|--|---------|
| 1. <i>Cleared 7/18/11, letter attached.</i> | | | |
| 2. | | | |
| 3. | | | |
| 4. | | | |

PATRICIA L. HARRISON
ATTORNEY AT LAW
611 HOLLY STREET
COLUMBIA, SOUTH CAROLINA 29205

TELEPHONE (803) 256-2017

FAX (803) 256-2213

June 7, 2011
via fax and mail

RECEIVED

JUN 10 2011

Mr. Robert French
Division of Appeals and Hearings
SC Health and Human Services
PO Box 8206
Columbia, SC 29202-8206

Department of Health & Human Services
OFFICE OF THE DIRECTOR

Re: Ian Hazlett

Dear Mr. French:

We are appealing the proposed termination of adult day health care services for Ian Hazlett. A copy of the notice of denial of reconsideration signed by Dr. Buscemi is enclosed. We are also appealing other violations of the Medicaid Act and the Supremacy Clause of the United States Constitution. This appeal is based on the following grounds and others that may be presented at Matthew's fair hearing.

1. Notice of termination, elimination or reduction of services was defective.
2. Adult day health care services are medically necessary for Ian in order to prevent regression and to allow Ian to function with the most independence possible and to protect his health and welfare.
3. Adult Day Health Care services have been ordered by Ian's treating physicians and it is a violation of the South Carolina Medical Practice Act to terminate these services without a qualified physician examining him and determining that these services are not medically necessary. Such notice may not be conducted after receipt of this notice without written notice to Ian's counsel and to his parents.
4. SCDHHS has violated the Supremacy Clause of the United States Constitution and the following provisions of the Medicaid Act: free choice (42 U.S.C. § 1396(a)(23)); comparability (42 U.S.C. § 1396(a)(10)); reasonable standards (42 U.S.C. § 1396a(a)(17)) and equal access (42 U.S.C. § 1396a(a)(30)).

We are requesting that adult day health care services be continued during this appeal. By copy of this letter to SCDHHS and RichLex we are withdrawing any consent previously given to share any information about Ian without notice to his legal counsel. The only exception is to share financial information necessary for billing for services. We are requesting that SCDDSN,

SCDHHS and RichLex provide copies of any documents or information shared with another entity after receipt of this notice. We are requesting notice of any evaluations of Ian's mental or physical condition and copies of the evidence used by SCDHHS and/or SCDDSN to determine that these services are not medically necessary. Copies may be provided electronically to plh.colia@at.net under the heading of "Ian Hazlett Medical Records" or paper copies may be sent to me at the address on the letterhead of this correspondence.

We are requesting legal fees and costs. We are also requesting immediate notice of any communication between the Office of Hearings and Appeals and any of its staff or hearing officers and other offices or employees of SCDHHS or SCDDSN. We respectfully request that no ex parte communications take place between the Office of Appeals and Hearings and SCDHHS or SCDDSN employees or their agents during this appeal. Thank you for your assistance with this appeal.

Cordially,



Patricia L. Harrison

cc: Mary Leithner

Beverly Byscemi

Anthony Keck

Barbara Wright

Ian's Parents



Beverly A. H. Buscemi, Ph.D.
State Director
David A. Goodsell
Associate State Director
Operations
Kathi K. Lacy, Ph.D.
Associate State Director
Policy
Thomas P. Waring
Associate State Director
Administration

3410-Harden Street East (29203)
PO Box 6706, Columbia, South Carolina 29240
803/296-9600
Toll Free: 888/OSN-INFO
Website: www.walshismat.gov

5 May 2011

Linda Hazzett
106 Lakeside Rd.
Columbia, SC 29212

RE: MR/RD Waiver Request for Reconsideration

Dear Ms. Hazzett:

The South Carolina Department of Disabilities and Special Needs (SCDDSN) received the request that you sent on behalf of your son, Ian, for reconsideration of the termination of Adult Day Health Care (ADHC) Services through the MR/RD Waiver.

I have compared the responses on Ian's Service Coordination Annual Assessment (SCAA) – for which you, his Behavior Support provider and staff from both Helping Hands and his Community Training Home II (CTH II) are all indicated as having provided input – with the criteria in the ADHC Assessment of Need. The responses on the SCAA, coupled with progress notes pertaining to the skills training that he is receiving through waiver-funded Residential Habilitation, indicate that Ian has neither a deficit in one of the specifically defined functional ability categories nor a medically complex condition that would qualify him for ADHC Services. I have not received, nor am I aware of, any documentation to support the claims that ADHC is medically necessary and that Ian is likely to require hospitalization or institutionalization as a result of the termination. Therefore, I uphold the termination of ADHC Services.

If you wish to pursue this matter further, you have the right to request an appeal with the South Carolina Department of Health and Human Services (SCDHHS). The appeal process is attached for your information.

The Richmond/Lexington DSN Board has authorized ADHC Services to continue during the pendency of the SCDDSN Reconsideration/SCDHHS Appeal process.

Thank you for the opportunity to respond to your concern. I encourage you to continue to work with Ian's Service Coordinator, Amy Rheece, to access services that will best meet his needs.

Sincerely,

Beverly A. H. Buscemi, Ph.D.
Beverly A. H. Buscemi, Ph.D.
State Director

Attachment

cc: John King, District I Director
Amy Kaevec, Richmond/Lexington DSN Board
Lori Manns, Richmond/Lexington DSN Board
Vicki Coleman, District I Waiver Coordinator
Kara Lewis, SCDHHS Division of Long Term Care

DISTRICT I

PO Box 390
Columbia, SC 29125-7328
Phone: (803) 938-3497

Midlands Office - Phone: 803/938-7500
Western Office - Phone: 803/938-7733

9901 Miles Junction Road
Spartanburg, SC 29178
Phone: 843/625-5470

DISTRICT II

Central Office - Phone: 803/771-7740
Fox Tree Center - Phone: 843/664-6660
Salkehatchee Center - Phone: 843/332-1110

SCDDSN RECONSIDERATION PROCESS AND SCDHHS MEDICAID APPEALS PROCESS

The SC Department of Disabilities and Special Needs (SCDDSN) is responsible for the day-to-day operations of the Mental Retardation/Related Disability (MR/RD) Waiver, the Community Supports (CSW) Waiver, the Head and Spinal Cord Injury (HASCI) Waiver and the Pervasive Development Disorder (PDD) Waiver. A request for reconsideration of an adverse decision must be sent in writing to the State Director at SCDDSN, P. O. Box 4706, Columbia, SC 29240. The SCDDSN reconsideration process must be completed in its entirety before seeking an appeal from the South Carolina Department of Health and Human Services (SCDHHS).

A formal request for a reconsideration must be made in writing within thirty (30) calendar days of receipt of written notification of the adverse decision. The request must state the basis of the complaint, previous efforts to resolve the complaint and the relief sought. The reconsideration request must be dated and signed by the individual, representative, or person assisting the individual in filing the request. If necessary, staff will assist the individual in filing a written reconsideration.

Note: In order for waiver benefits/services to continue during the reconsideration/appeal process, the individual/representative's request for reconsideration must be submitted within ten (10) calendar days of the written notification of the adverse decision. If the adverse action is upheld, the individual/representative may be required to repay waiver benefits received during the reconsideration/appeal process.

The State Director or his designee shall issue a written decision within ten (10) working days of receipt of the written reconsideration request and shall communicate this decision to the individual/representative. If the State Director upholds the original adverse action/decision, the reason(s) shall be specifically identified in the written decision.

If the individual/representative fully completes the above reconsideration process and is dissatisfied with the results, the individual/representative has the right to request an appeal with the SCDHHS. The purpose of an administrative appeal is to prove error in fact or law. The individual/representative must submit a written request to the following address no later than thirty (30) calendar days from the receipt of the SCDDSN written reconsideration decision.

Division of Appeals and Hearings
SC Department of Health and Human Services
PO Box 8206
Columbia, SC 29202-8206

The individual/representative must attach copy of the written reconsideration notifications received from the SCDDSN regarding the specific matter on appeal. In the appeal request the individual/representative must clearly state with specificity, which issue(s) the individual/representative wishes to appeal.

Unless the request is made to the above address within thirty (30) calendar days of the receipt of the SCDDSN written reconsideration decision, the SCDDSN decision will be final and binding. An appeal request is considered filed at the above address if postmarked by the thirtieth (30th) calendar day following receipt of the SCDDSN written reconsideration decision. The individual/representative shall be advised by the SCDHHS Division of Appeals and Hearings as to the status of the appeal request.

*** TX REPORT ***

TRANSMISSION OK

TX/RX NO

1451

CONNECTION TEL

2558206

SUBADDRESS

CONNECTION ID

ST. TIME

06/07 12:14

USAGE T

01'28

PGS. SENT

4

RESULT

OK

Law Office of Patricia L. Harrison

611 Holly Street

Columbia SC 29205

(803) 256-2017

Fax: (803) 256-2213

FAX TRANSMISSION COVER SHEET

Date: June 7, 2011

To: Robert French

Fax: 803-255-8206

Re: Ian Patrick Hazlett

Sender: Patricia L. Harrison

*YOU SHOULD RECEIVE 4 PAGE(S), INCLUDING THIS COVER SHEET. IF YOU DO
NOT RECEIVE ALL THE PAGES, PLEASE CALL (803) 256-2017.*

RECEIVED

JUN 10 2011

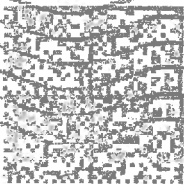
Department of Health & Human Services
OFFICE OF THE DIRECTOR

PATRICIA L. HARRISON
ATTORNEY AT LAW
611 HOLLY STREET
COLUMBIA, SOUTH CAROLINA 29205

TO:

Mr. Anthony Keck
Director, SC Department of Health and Human Services
PO Box 8206
Columbia, SC 29202

COLUMBIA SC 292
WEF 08 JUN 2011 PM



JALIER

Mailed 06/09/11

\$1.75

015H1412

log #557 ✓

From: Annmarie McCanne
To: Brenda James
Date: 06/24/2011 2:25 PM
Subject: Logs...

Can you check Logs ~~557~~, ~~558~~, ~~559~~, & ~~560~~ - Per Roy - Mike Cannon should have sent an email with the hearing number to close these out.

Thanks,
Annie

Log #559

July 18, 2011

FIRST CLASS MAIL

Patricia L. Harrison, Esquire
611 Holly Street
Columbia, SC 29205

RE: Appeal request on behalf of Ian Hazlett

Dear Ms. Harrison:

You copied the Director of the South Carolina Department of Health and Human Services (SCDHHS), Anthony Keck with your appeal letter of June 7, 2011 on behalf of Ian Hazlett. I have been asked to respond to your appeal letter to Mr. Keck.

You have properly appealed SCDHHS' determination in this matter to the SCDHHS Division of Appeals and Hearings and that appeal has been assigned to Hearing Officer Monet Pincus. Ms. Pincus should be sending you correspondence very soon with regard to this appeal. You have requested that certain services continue to be provided to Mr. Hazlett pending the outcome of the appeal and since you have copied Dr. Beverly Buscemi at the South Carolina Department of Disabilities and Special Needs (SCDDSN) with your appeal letter, she will be responsible for handling that. You have also requested copies of certain records that pertain to Mr. Hazlett and since the Division of Appeals and Hearings does not have access to those records, that request will have to be made to the appropriate SCDHHS and SCDDSN staff. You have also requested legal fees and costs and that request will have to be made to Ms. Pincus. You have also requested that no ex parte communications take place between the staff members of the SCDHHS Division of Appeals and Hearings, or between the staff members of the Division of Appeals and Hearings and any other employees of SCDHHS or SCDDSN. The SCDHHS Division of Appeals and Hearings' staff are very aware of the prohibitions against ex parte communications and are continually vigilant about not engaging in these types of communications.

If you do not receive correspondence from Ms. Pincus shortly, or if you have any questions regarding this case, please feel free to contact me directly at 898-2714.

Sincerely,



Robert French, Director
Division of Appeals and Hearings