

DEPARTMENT OF HEALTH AND HUMAN SERVICES  
OFFICE OF DIRECTOR

**ACTION REFERRAL**

TO	DATE
Hess	10-10-11

<b>DIRECTOR'S USE ONLY</b>		<b>ACTION REQUESTED</b>	
1. LOG NUMBER	101558	<input type="checkbox"/> Prepare reply for the Director's signature	DATE DUE _____
2. DATE SIGNED BY DIRECTOR	<i>cc: Singleton, Waldrop</i> <i>Should be Mr. Manning will be scheduled. See attached e-mail.</i>	<input type="checkbox"/> Prepare reply for appropriate signature	DATE DUE _____
		<input type="checkbox"/> FOIA	DATE DUE _____
		<input checked="" type="checkbox"/> Necessary Action	

APPROVALS (Only when prepared for director's signature)	APPROVE	* DISAPPROVE (Note reason for disapproval and return to preparer.)	COMMENT
1.			
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 8, 2011  
via fax and mail

**RECEIVED**

JUN 10 2011

Department of Health & Human Services  
OFFICE OF THE DIRECTOR

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

Re: Michael Leaphart

Dear Mr. French:

We are appealing the proposed termination of adult day health care services for Michael Leaphart, who has attended Hope Bridge for fifteen years. Michael never received written notice of the intent to reduce or eliminate Medicaid services. 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 Michael's fair hearing.

1. Notice of termination or reduction of services complying with 42 U.S.C. § 1396a(a)(3) and its implementing regulations and due process requirements of the United States Constitution has never been provided to Michael.
2. Adult day health care services are medically necessary for Michael in order to prevent regression and to allow him to function with the most independence possible and to protect his health and welfare.
3. Adult Day Health Care services have been ordered by Michael'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 Michael's counsel and to Michael.
4. SCDHHS and SCDDSN have failed to provide Michael with speech and language services, physical therapy, occupational therapy, adult companion services and with an appropriate communications device or to notify him of all feasible alternatives under the MR/RD Medicaid waiver.
5. SCDHHS failed to notify Michael of other reductions in Medicaid services and to

notify him of increases in co-pays or to give him an opportunity to appeal these reductions and increased co-pays. Because Michael never received notice of these reductions or the increase in co-pays, it is requested that services affected by any reduction or elimination of covered services be continued during this appeal and that co-pays already charged should be refunded.

6. SCDHHS has violated the Supremacy Clause of the United States Constitution and the following provisions of the Medicaid Act: reasonable promptness (42 U.S.C. § 1396a(a)(8)); 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 and that residential habilitation services be provided immediately by Michael's chosen provider, UCP. We are also requesting that Michael's counsel be contacted immediately to make arrangements for a speech and language evaluation and to provide an appropriate assistive communications device. We are asking that any co-pays improperly collected due to failure to provide written notice of this change in Medicaid policy be immediately returned to Michael.

By copy of this letter to SCDHHS and RichLex we are withdrawing any consent previously given to share any information about Michael 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 Michael's mental or physical condition and copies of the evidence used to determine that these services are not medically necessary. Copies may be provided electronically to [plh.colata@att.net](mailto:plh.colata@att.net) under the heading of "Michael Leaphart Medical Records" or paper copies may be sent to me at the address on the letterhead of this correspondence. We are 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 and respectfully request that no ex parte communications take place during this appeal.

Cordially,



Patricia L. Harrison

cc: Michael Leaphart  
Mary Leimer  
Beverly Buscemi  
Anthony Keck  
Barbara Wright  
John Gragnani

\*\*\*\*\*  
\*\*\* TY REPORT \*\*\*  
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TRANSMISSION OK

TX/RX NO	1453	2558206
CONNECTION TEL		
SUBADDRESS		
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ST. TIME	06/07 12:22	
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PGS. SENT	3	
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: Michael Leaphart  
 Sender: Patricia L. Harrison

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

TO: \_\_\_\_\_

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

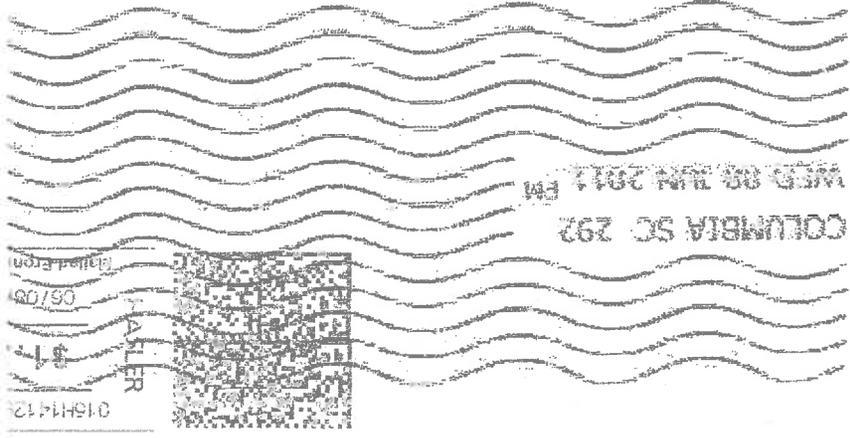
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PATRICIA L. HARRISON  
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Department of Health & Human Services  
 OFFICE OF THE DIRECTOR

JUN 10 2011

**RECEIVED**



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

July 18, 2011

FIRST CLASS MAIL

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

RE: Appeal request on behalf of Michael Leaphart

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 8, 2011 on behalf of Michael Leaphart. 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. Leaphart 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 that you be contacted immediately in order for additional SCDHHS and SCDDSN sponsored evaluations and services to be provided to Mr. Leaphart, this is a request that will have to be made to appropriate SCDHHS and SCDDSN staff. You have also asked that any co-payments improperly collected due to SCDHHS' and/or SCDDSN's failure to provide written notice of the changes in co-payments be immediately returned to Mr. Leaphart, this request will also have to be made to the appropriate SCDHHS and SCDDSN staff. You have also requested copies of certain records that pertain to Mr. Leaphart 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 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