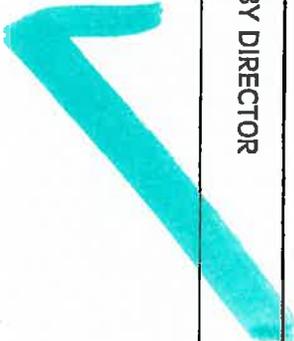


DEPARTMENT OF HEALTH AND HUMAN SERVICES
OFFICE OF DIRECTOR

ACTION REFERRAL

TO <i>Single fax</i>	DATE <i>1-5-11</i>
-------------------------	-----------------------

DIRECTOR'S USE ONLY	ACTION REQUESTED
1. LOG NUMBER <i>101291</i>	<input type="checkbox"/> Prepare reply for the Director's signature DATE DUE _____
2. DATE SIGNED BY DIRECTOR 	<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

December 30, 2010

FAX (803) 256-2213

VIA FAX

RECEIVED

JAN 05 2011

Jack W. Lawrence, Esq.
PO Box 5722
Spartanburg, South Carolina 29304

Dear Jack:

Department of Health & Human Services
OFFICE OF THE DIRECTOR

On December 6, 2010, I sent you a letter asking that the Charles Lea Center provide me with a draft of any residential plan that the agency is proposing. A copy of that letter is attached. I have not received any proposed plan from you. I was surprised by Marcia Melton-Jagger's letter stating that an "Annual Residential Plan" was "produced by the team here at the Charles Lea Center." Any such plan created would have been produced without input from the guardian and would be invalid. Ms. Melton-Jagger's letter stated that a plan meeting would be held at the Charles Lea Center on January 3, 2011. We provided a copy of Peter's Plan of Care to you. Peter's entire planning team and his treating physician approved that plan, but the Charles Lea Center chose not to participate in developing that plan of care.

If the proposed Charles Lea Center's residential plan meets Peter's medical needs, as determined by his physician and set forth in his plan of care, there should be no problem in the guardian agreeing to the residential plan. If the Charles Lea Center intends to propose a plan of care which does not meet those medical needs or if their plan does not comply with the federal magistrate's report, of course, we would have problems with that plan. Since federal regulations require that the plan be prepared with participation by the guardian, I would appreciate your sending the draft to me as soon as possible. Once we receive the proposed residential plan, we can then determine whether a meeting is necessary. Any meeting that is conducted without input from Peter's guardian would not result in a valid plan.

Mrs. Brown has asked that any communication related to Peter's plan of care come through my office. She will continue to communicate with staff on routine day-to-day matters.

I will address separately your demand that you be present at any meeting with Charles Lea Center consumers or employees. Your interpretation of the Rules of Conduct is not supported by the South Carolina Court Rules.

Best wishes for the new year.

Sincerely,



Patricia L. Harrison

cc:

Carolyn Brown
Sandra Ray, Esq.
Ken Anthony, Esq.
Jerry Bernard, CLC
Beverly Buscemi
Emma Forkner

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

TELEPHONE (803) 256-2017

December 6, 2010

FAX (803) 256-2213

Mr. Jack W. Lawrence
Lawrence Rudasill and Collins, PA
PO Box 5722
Spartanburg, SC 29304

RECEIVED

JAN 05 2011

Re: Peter Brown

Department of Health & Human Services
OFFICE OF THE DIRECTOR

Dear Jack:

Thank you for your letter of November 30 responding to my letter to Jerry Bernard dated November 9. In that letter, we informed SCDHHS, SCDDSN and Mr. Bernard that we have chosen not to utilize targeted case management services until Jackie Walker is available to provide that service to Peter. Peter's written plan of care was developed by his planning team at his annual plan meeting. The Charles Lea Center chose not to participate in that meeting. That plan has now been reviewed and approved by his treating physician, a licensed psychologist, his psychological counselor, and his planning team; they have all determined that the services contained in his plan of care are appropriate and medically necessary. We have provided Peter's plan of care to DDSN, HHS and CMS. I am not aware of any federal or state regulation that requires a provider of services to participate in developing the plan of care required by Medicaid. I am assuming that the Charles Lea Center is billing Medicaid now pursuant to that plan of care. It is certainly in the Charles Lea Center's best economic interest for Peter to have this plan of care in place, as billing when there is no plan in place would violate the Medicaid Act. Any communications that would normally go through Jackie regarding Peter's plan of care or his services should come through my office until further notice. By copy of this letter, I am advising Mary Kaye Justis at CMS and Anton Gunn at USHHS of this change which has been necessitated by Jackie's unexpected and unexplained absence and asking them to copy me on any communications with the Charles Lea Center, SCDDSN or SCHHS related to Peter.

If you will provide us with a draft residential plan, I will review it and consult with Peter's guardian, physician and treatment team before implementation. Any subordinate plan to his annual plan must comply with that existing plan, which has been approved by his physician and his planning team. Also, I assume that you are aware by now that Judge Hendricks has recommended restoring Peter's 12 hours a week of companion services. Once Judge Childs issues her order, we will be working with the defendants' counsel to assure compliance with that federal order. If a meeting is necessary about any of these issues, I will be happy to schedule one in my office if you will provide me with dates and times convenient to you and any Charles Lea personnel who may wish to attend.

Peter's plan meeting occurred in his own living room, not in a facility owned by the Charles Lea Center. I have attended Peter's plan meetings in the past and likely will attend many

future meetings. I am also likely to visit Peter in his apartment in the future, as I frequently travel through Spartanburg, which is my home town.

I am not involved in any litigation to which the Charles Lea Center is a party. Frankly, I am surprised that the Charles Lea Center has the money to pay an attorney to attend meetings of clients where there is no litigation pending against the Center. Certainly, the Charles Lea Center is aware that claiming such legal fees as an operating expense for a waiver program would constitute a violation of Medicaid Act, so those legal fees would need to be paid with 100% local funds.

The Charles Lea Center is not a defendant in any case in which I am involved. The South Carolina Department of Health and Human Services is the only Respondent in the case involving Peter in the South Carolina Court of Appeals. As I expect you are aware, DDSN and the local boards have been careful to claim to have a wall of separation when there has been litigation in appellate courts involving DDSN and local boards. (*Madison v. Babcock and DDSN, Young v. DDSN and Fairfield/Newberry DSN Board*.) I find the Charles Lea Center's desire to jump into the litigation ring to be curious, given this history. Please advise that Court if you believe that the Charles Lea Center is a participating or a necessary party in that lawsuit. We will be asking for legal fees if we are successful in that suit and additional sources of payment of those expenses may be beneficial to Peter.

The lawsuit in the Greenville federal district court is an ADA and 1983 action in which we have named several state agencies and individual defendants. As you know, individual defendants may be held personally responsible for costs incurred by a plaintiff in a 1983 action. If you feel that the Charles Lea Center or Mr. Bernard or the Spartanburg DSN board or its Chairman are necessary parties in that federal lawsuit, please call me and we will talk about amending our complaint to add them as defendants as soon as possible.

I am not aware of any authority you or the Charles Lea Center has which would limit the rights of persons who receive services from the Charles Lea Center to speak with me or any other attorney. I have many clients in the Spartanburg area and my family has deep roots there. Some of my clients in Spartanburg receive services from the Charles Lea Center. If you have authority to support your claim that those persons need your permission to speak with me, please enlighten me, as I am not aware of any such law or regulation. I believe that anyone who receives services from a local DSN Board or a provider of Medicaid services has an unrestricted right to speak with any attorney, a right which could only be restricted by a court-appointed guardian or the appropriate court.

I look forward to hearing from you and hope that you will have a blessed holiday season.

Sincerely,

Patricia L. Harrison

cc:

Carolyn B. Brown

Kenneth Anthony, Esq.

Mary Kaye Justis

Anton Gunn

Mr. Jerry Barnard

Spartanburg DSN Board