

**DEPARTMENT OF HEALTH AND HUMAN SERVICES
OFFICE OF DIRECTOR**

ACTION REFERRAL

TO <i>Single file</i>	DATE <i>12-20-07</i>
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DIRECTOR'S USE ONLY		ACTION REQUESTED	
1. LOC NUMBER 000298		<input type="checkbox"/> Prepare reply for the Director's signature DATE DUE _____	
2. DATE SIGNED BY DIRECTOR <i>cc: Myers</i>		<input checked="" type="checkbox"/> Prepare reply for appropriate signature DATE DUE <i>1-7-08</i> <input type="checkbox"/> FOIA DATE DUE _____ <input 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.			

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December 18, 2007

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VIA FAX

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

RE: Peter Brown

Dear Jack:

Log: Singleton
C: Myers
app str

RECEIVED
DEC 20 2007
Department of Health & Human Services
OFFICE OF THE DIRECTOR

We have received Peter's residential plan. We do not agree with this plan which was written by a Charles Lea Center employee, Keith Drummond, without input from Peter's service coordinator or his "circle of friends." The implementation of this plan violates every "person-centered" policy established by DDSN. It clearly violates the agency's policy which states that the plan of care will be determined independently from the provider of the service. We disagree with the plan for the following reasons:

1. This plan contains no input from Peter's team. The only signature on the plan is that of Keith Drummond, who has known Peter for less than a year, and does not have training or experience to contradict orders of Peter's treating medical professionals.
2. This plan ignores the orders of Peter's treating physicians which require:
Monitoring of meals three times daily
Administration of medications as ordered by his physician
Accountability checks every three hours except when working or sleeping
3. Mr. Drummond's attempt to change Peter's accountability to "1 time per day" on page two contradicts the orders of Peter's physician.

4. Mr. Drummond did not attend Peter's annual plan meeting and he is not qualified or authorized to determine Peter's "life goals." (Top of page 2 of "residential plan.") This Charles Lea Center employee has worked with Peter for less than a year. Peter's life goals, as have been appropriately established by his legal guardian and his treatment team, members of which have known Peter for decades. Peter's life goals include maintaining his employment and continuing community integration activities. These goals are dependent upon maintaining Peter's health and preventing regression in team, members of which have known Peter for decades. Peter's life goals include maintaining his employment and continuing community integration activities. These goals are dependent upon maintaining Peter's health and preventing regression in

skills. Peter's treatment team established "Therapeutic Goals and Objectives of Adult Companion Services" for the purpose of addressing these goals.

5. Mr. Drummond stated in the residential plan that Peter is connected to the community through activities "with his residents" and through participation in "activities sponsored by the Charles Lea Center." This response ignores the consistent determinations that Peter should be connected to the community through interaction with non-disabled peers, as well as participation in Charles Lea Center activities, as may be approved by his legal guardian.

6. In response to the question: "What is currently working well that needs to be continued or enhanced," Mr. Drummond answered this question without regard to the findings of Peter's treatment team. The team has consistently determined that what is working well and needs to be continued is the twelve hours of adult companion services which Peter has received for many years. (DDSN has changed the "label" on these services, sometimes calling them "enhanced services," "enhanced waiver services" or "intensive staffing.") The team also agreed that what is working well and needs to be continued are the services of Lennie Mullis, who provides counseling and/or behavior support services to Peter. The team also unanimously agreed that Peter's plan of care needs to be enhanced by the addition of a review of his diet and preparation of menus by a registered dietitian due to his diagnosis of diabetes and high cholesterol. (Current menus are many years old and were prepared before his diagnosis of diabetes and high cholesterol. Mr. Drummond failed to address these needs.

7. The next question: "What needs to change" is answered by Mr. Drummond by unilaterally, and without any input from Peter's medical professionals, legal guardian or treatment team. Mr. Drummond dictated that Peter's training objectives will change and he erroneously determined that Peter has met all objectives on his previous training objectives. This is one of the most striking examples of violation of the assurances DDSN gave parents that the plan would be developed independently from the provider when capitated funding was implemented.

8. Mr. Drummond is not qualified to determine that Peter's level of accountability during waking hours will be one time per day by phone or visually. This change directly contradicts the orders of Peter's physician.

9. Mr. Drummond is not qualified to determine that no supervision is required of Peter's dining. Peter's physician has ordered that his meals be monitored.

10. Mr. Drummond again states at the bottom, of page 2 that Peter can remain at home alone with "remote supervision" one time per day. This plan contradicts the orders of Peter's physician, as discussed above.

11. Under Section V: Rights, the plan does not clearly state that Carolyn Brown has been appointed as Peter's legal guardian by the Spartanburg County Probate Court. As his

legal guardian, under South Carolina law, Mrs. Brown has all of the powers which the parent of a minor child has. Pursuant to the South Carolina Probate Code, her consent must be obtained for all activities which do not have prior authorization from Mrs. Brown. Mrs. Brown has provided home and cell telephone numbers where she can be reached 24/7. In the event that Mrs. Brown cannot be reached in a timely fashion, the Charles Lea Center has contact information for Peter's brother, Charles Brown and Mrs. Brown's attorney. The plan also ignores the binding agreements between Mrs. Brown and the Charles Lea Center regarding the management of Peter's money as well as the agency's commitment in that agreement to continue Peter's participation in community activities.

12. The residential plan does not describe Peter's diabetic diet on page four. It incorrectly identifies his dietitian as Dr. Reel. Marylyn Whorton is Peter's registered dietitian. Peter's team determined that his diet should be reviewed and new menus should be prepared due to changes in Peter's medical condition. We provided Mr. Drummond with the statement of Registered Dietitian Whorton, who recommended a regular exercise regimen, training in general nutrition and specific training related to his diabetes and high cholesterol and discussed the importance of maintaining his weight. His dietitian recommended continuation of Peter's companion services to review his diet plan and inventory and to prepare his shopping list. She recommended training to read labels to in order to educate Peter about nutrition, diabetes and cholesterol. None of these recommendations have been addressed in the "residential plan."

13. The training objective established by Mr. Drummond, i.e. to read labels to see if foods are microwaveable, not only ignores the need for nutritional training specifically related to Peter's medical condition, Peter already purchases foods which are microwaveable. All foods in his pantry and refrigerator on the date Mr. Drummond wrote his "residential plan" were microwaveable. Even if this were to be an appropriate objective for someone like Peter, he already met it when the "objective" was put into his plan.

14. Mr. Drummond's training objective which requires Peter to fill out the date and amount and sign checks is likewise inappropriate. It ignores the Probate Court order appointing Mrs. Brown as well as Dr. Reel's order for Peter's funds to be managed by Mrs. Brown. This is a health issue because of Peter's history of spending his money on items which are contradicted due to his condition of diabetes. Mrs. Brown has established a procedure through which Peter uses a swipe card to make purchases and she carefully monitors his purchases. The Charles Lea Center has no authority over the way in which Mrs. Brown manages Peter's money. This objective needs to be removed.

15. The residential plan does not address Peter's dental needs or his doctor's orders for periodic testing for glaucoma due to his diabetic condition.

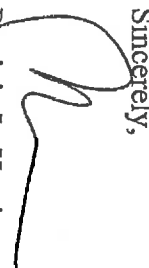
16. Peter's residential plan should note that Peter's physicians have determined that his seizures have historically been triggered by stress and sleep deprivation. While we are fortunate that Peter has been seizure free for a long time, it is important to warn staff in

his residential plan of these "triggers." The last seizure Peter experienced occurred after a major dental procedure. It is important that Peter be monitored closely after any dental procedure. Recent history at the Charles Lea Center has shown the consequences of failing to provide such supervision after major dental work.

17. In regards to Mr. Drummond's statement about Peter's Adult Companion Services, these are services which are included in the MR/RD Medicaid waiver and are included in the services offered by Charles Lea Center. As you know, we have requested Adult Companion Services to be included in Peter's plan. Of course, we disagree about whether DDSN's unpromulgated policy contained in a manual can prohibit Peter from receiving Adult Companion Services. South Carolina case law and a recent remand of this same issue says that the agency cannot create binding law through internal policies which are not approved by the South Carolina General Assembly. That is an issue currently before the Administrative Law Court. It is our position that these services are a continuation of the same services which have been provided for more than ten years. Over the course of time, DDSN has applied various "labels" to the services: "enhanced waiver services," "enhanced staff services" and "intensive staff." Not only do we disagree with the agency's argument that these services are "duplicative" of residential habilitation services, we have notified DDSN and Charles Lea Center that it is our position that DDSN is required to provide these services due to the promise to "grandfather" all services being received in July 1998. Thirdly, even if the services were not a separate service to which Peter is legally entitled to receive as "Adult Companion Services," the twelve hours a week, regardless of what you call them, have been determined by Peter's physician and his Registered Dietitian to be medically necessary. DDSN and Charles Lea Center would still be required to provide these services to prevent regression and to allow Peter to function with maximum independence. In sort, for all of these reasons, the twelve hours of services must be included in Peter's residential plan.

Pursuant to HIPAA, this letter should be attached to the residential plan, along with the Therapeutic Goals and Objectives for Adult Companion Services which were provided to Mr. Drummond. We are requesting that the Charles Lea Center train Peter's companion on these goals and objectives.

Sincerely,



Patricia L. Harrison

cc: Carolyn Brown
Jackie Walker
Gloria Prevost