

Nikki R. Haley GOVERNOR
Christian L. Sours DIRECTOR
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November 20, 2015

RECEIVED

NOV 20 2015

S.C. Supreme Court

The Honorable Daniel E. Shearhouse
Clerk, South Carolina Supreme Court
1231 Gervais Street
Columbia, SC 29201

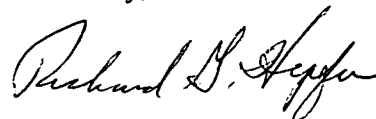
Re: Richard Stogsdill v. SCDHHS
Case No. 2014-002513

Dear Mr. Shearhouse:

At the oral arguments on Tuesday, November 17, 2015, Justice Hearn expressed a desire for documents regarding an evaluation of the Appellant's needs as ordered by the Court of Appeals Order. Enclosed, for filing, are six (6) copies of the documents requested.

A Proof of Service of this letter with the attachments on the other Parties is also enclosed. If there are questions or anything else is required, my direct is (803) 898-2791.

Sincerely,



Richard G. Hepfer
Of Counsel

Enclosure

cc: Patricia L. Harrison
Anna Maria Darwin
Sarah Garland St. Onge
Andrew J. Atkins
Kirby Mitchell
Stephen Suggs

Nikki Haley GOVERNOR
Christian L. Soura INTERIM DIRECTOR
P.O. Box 8206 > Columbia, SC 29202
www.scdhhs.gov

July 28, 2015

Ms. Patricia L. Harrison
611 Holly St.
Columbia, SC 29205

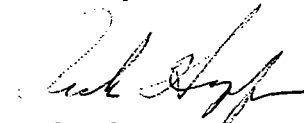
Re: Assessment of Richard Stogsdill

Dear Ms. Harrison:

Enclosed is the assessment that the agency was able to complete with respect to Mr. Stogsdill's needs.

Please contact me if there are any questions.

Sincerely,



Richard G. Hepfer
Deputy General Counsel

Enclosure

Stogsdill Assessment

Mr. Stogsdill is a Participant in the South Carolina Medicaid intellectually disabled/related disability (ID/RD) waiver which provides services in the community. Through a series of appeals, Mr. Stogsdill contested a reduction in his services brought about by limitations placed in the waiver on January 1, 2010. The Court of Appeals ordered that the Department assess Mr. Stogsdill's needs, notwithstanding the waiver limits, and the Department did not appeal that portion of the Order. By "assess Mr. Stogsdill's needs" the Department of Health and Human Services (DHHS) understood that the State's professional staff would review Mr. Stogsdill's file, interview and examine Mr. Stogsdill, and talk with his treating providers, family and support system. The assessment "team" consists of a medical doctor and a masters level social worker.

Initially, Mr. Stogsdill's representative set the condition of the attorneys being present at the visits. The Department's professionals believed that a private discussion and assessment one-on-one with Mr. Stogsdill and his providers and support system members would be necessary for an accurate assessment. Recently, Mr. Stogsdill's representative suggested depositions of the treating professionals instead of one-on-one interviews. The evaluation team elected to move forward and evaluate Mr. Stogsdill with the limited information available in the Department of Disabilities and Special Needs (DDSN) records. The DDSN operates this waiver for the DHHS. These records include the Service Coordinator's Assessment and notes and the Service Plan. Also available to the team were the transcripts of the two evidentiary hearings. The team did not have the benefit of the physician's notes, or discussions with the providers, the family or Mr. Stogsdill. Nor was the team given permission to visit the home and view the living conditions.

Based upon his Annual Assessment, Mr. Stogsdill is a 28 year old male with Cerebral Palsy. He is incontinent of bowel and bladder, cannot transfer without hands-on assistance and requires assistance with eating, dressing, and bathing. As far as the team can determine Mr. Stogsdill takes Baclofen as an antispasmodic and Luride, presumably to supplement his Fluoride intake. Obviously, the team would like to verify this drug regimen. From the service coordinator's notes and other documentation, Mr. Stogsdill may recently have experienced some unspecified kidney complaints and a lesion on his ankle. The team would like to review the most recent history and physical and current physician visit notes. Mr. Stogsdill lives in a two bedroom house adjacent to his mother's. The structure is wheelchair accessible and is fitted with one or more lifts. The team would like to be able to examine this structure and the general living situation.

Mr. Stogsdill receives routine and emergency care through the regular Medicaid Program. This care can include physician visits, emergency room coverage, home health services, and durable medical equipment (DME). As to DME, it is believed that there are one or more lifts in the home to assist in transfer, and the team had hoped to be able to examine the lifts and the way they were set up in the home to see if modifications, upgrading or additional equipment could make it easier to manage Mr. Stogsdill's care. The team was not permitted access to the home.

Waiver participants are entitled to preventive adult dental services, which are not available under the regular Medicaid Program. There are no notations regarding insufficiencies with this benefit, but the team was unable to verify this by interviews with the family and the providers. The team was also unable to determine whether adult vision services were being accessed or were needed in greater or lesser amounts than were being provided.

Incontinence and catheter supplies are provided to waiver participants under the regular Medicaid Program and under the waiver. On the limited information available, the team could not determine that there were any problems or insufficiencies with these services.

Registered nursing (RN) services are provided to Mr. Stogsdill for fourteen (14) hours per week. It is believed that those services are set up on the weekends only. Nursing services, generally consist of RN services and LPN (licensed practical nurse) services. The services of an LPN costs about three fourths of that of an RN, thus, the normal waiver limits are fifty-six (56) units of LPN services per week or forty-two (42) units of RN services per week. The team had hoped to be able to determine whether the nursing coverage should be increased or could be more judiciously apportioned between RN and LPN personnel to maximize the coverage for the family. This would ideally involve interviews with the family and the physician providers to determine any discernable pattern in the "events" alluded to in Dr. Munn's affidavit and form an opinion as to the amount of services and the level of nursing judgment required for managing the "events." We understand, of course, that nursing services are very important to families because the nurse can administer medications and perform nursing care which the personal care aides cannot. Normally, family members can be responsible for administering medications and performing some care, but the presence of a nurse relieves the family member from having to be there when medications are passed or when "events" occur. Without discussions between the Department's physician and Mr. Stogsdill's attending physician, the Department has no way to make an independent determination regarding the nursing coverage required.

Mr. Stogsdill receives six (6) hours per week of personal care 1 services. These consist of general housekeeping duties. The team would like to speak with the service coordinator and the family to understand how these services are being used and how they fit into the overall Care Plan.

Personal Care 2 services are provided to Mr. Stogsdill in an amount of fifty-five (55) hours per week. However, two (2) personal care aides provide the 55 hours at the same time. Therefore, the actual coverage is 27.5 hours. It is unusual for two (2) PC2 staff to be provided at the same time, but the stated justification in this case has been fear of falling while experiencing muscle spasms during transfer. The team would like to observe the protocol used to transfer Mr. Stogsdill. It is possible that updated equipment, training in body mechanics or additional antispasmodic medications could improve the situation. In any case, the team cannot make an informed determination without the ability to personally investigate this need by talking with Mr. Stogsdill's physician, service coordinator and other providers.

Respite services are provided to Mr. Stogsdill in an amount of 240 units per month or about 56 hours per week. Respite is essentially supervision, but the respite provider can perform the duties of a personal care aide. The service is designed to give a rest to the primary caregiver, in this case the mother. The 240 hours can be used in the individual's home or in some group settings. The team would like to be able to interview the mother to determine how this service can be used to its best advantage for the family.

Mr. Stogsdill receives fifteen (15) hours of adult companion services per week. Adult companions assist with activities of daily living and instrumental activities of daily living. However, their main function is to provide a means by which the participant can access community activities when that access is directly related to the individual's care. The team needs to discuss the use of adult attendant care with the

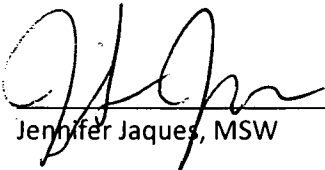
service coordinator and the physician to see what therapeutic role this service is playing in preventing institutionalization.

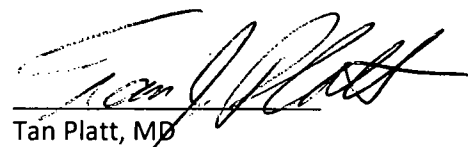
Mr. Stogsdill is receiving two (2) hours of psychological services per week "to improve his emotional/mental health." The team is without any additional information as to specific problems and goals, and would like to discuss Mr. Stogsdill's presenting problems with the psychological services provider.

The therapies, occupational, physical and speech, are included in Mr. Stogsdill's Plan of Care. However, it is unclear whether or not he is accessing those services. The services are no longer available under the waiver, but they may be provided to waiver participants under the regular Medicaid Program. The team would like to discuss the need for these services with the attending physician and make sure with the service coordinator that the family knows how to access these services through the Medicaid State Plan.

In the plan of care, the service coordinator is responsible for providing information about adult education and community activities. A member of the team would like to discuss any progress on these goals and how they coordinate with the activities of the companion services provider.

Of the 168 hours in Mr. Stogsdill's week, 118.5 hours are covered by one or more paid caregivers. Based on the limited information available it is unclear whether Mr. Stogsdill's needs are being met at this time with the services provided. The team has insufficient information to determine whether an increase or decrease in services is warranted.


Jennifer Jaques, MSW


Tan Platt, MD

July 28, 2015
Columbia, SC

Patricia Logan Harrison
Attorney at Law
611 Holly Street
Columbia, South Carolina 29205

June 25, 2015

via fax, mail and email

RECEIVED

JUN 29 2015

SCDHHS
Office of General Counsel

Richard Hepfer, Esq.
S.C. Department of Health and Human Services
1801 Main Street
Columbia, South Carolina 29205

RE: Richard Stogsdill

Dear Rick:


On September 10, 2015, the South Carolina Court of Appeals remanded Richard's case "for consideration of the appropriate services to be provided without the restrictions of the 2010 Waiver." More than nine months has passed and no such evaluation has taken place. Richard is still not receiving the services ordered by his physician more than six years ago.

We have provided Richard's service coordinator with all requested records. We have provided you with another sworn statement from Richard's physician. We have agreed to both sides taking depositions, if you feel that you do not have sufficient information to access Richard's needs. We are again requesting the services ordered by Richard's physician.

We are requesting a meeting with Director Soura and Pete Ligett on or before July 2, 2015. If we receive confirmation from you by June 29, 2015 DHHS would like to resolve this without the necessity of further legal action to enforce the order of the Court of Appeals.

Thank you for your prompt attention to this request.

Sincerely,



Patricia Logan Harrison

cc: Nancy Stogsdill

Rick Hepfer

From: plh.cola@gmail.com
Sent: Monday, June 15, 2015 11:47 AM
To: Rick Hepfer; Patricia L Harrison
Subject: Richard Stogsdill

Importance: High

Rick, did you receive my email and Dr. Munn's affidavit? I have reviewed your letter of May 20, 2015, but have not heard more from you or Damon. Who is the doctor who wants to talk with Dr. Munn? Her partner has left the practice and Dr. Munn's time is very limited now. When you provide the name and contact information, I'll see if we cannot arrange for Dr. Munn to talk with him/her.

Who is the service coordinator who wants to talk with Ms Crosby? Please provide the contact information.

Rick, it appears to me that DDSN, in violation of the Court of Appeals' order, is continuing to apply the caps to Richard. The DDSN manual capped the combination of nursing and PCA at 10 hours a day. Dr. Munn ordered 56 hours a week of nursing, but only 14 were authorized.

Was that decision not to comply with Dr. Munn's orders made by RN Koon? Has Dr. Burton reviewed this case? Please provide all records in the possession of DDSN, DHHS and/or Kershaw DSN Board related to the reassessment and the nursing review (pursuant to HIPAA).

We are requesting, again, that the 56 hours of nursing Dr. Munn ordered be authorized immediately.

I have not heard from you regarding our request to depose the persons involved from your end on the "reassessment."

Thanks.

Trisha

Rick Hepfer

From: plh.cola@gmail.com
Sent: Sunday, June 14, 2015 8:33 PM
To: Rick Hepfer
Subject: Fw: Stogsdill.MunnMDAffdvt.pdf
Attachments: Stogsdill.MunnMDAffdvt.pdf

Importance: High

Rick, attached is an affidavit of Richard Stogsdill's treating physician. I met with her a few weeks ago and she provided the information in the affidavit. When Dr. Munn returned the signed affidavit, she brought to my attention that there is some redundancy in what I had taken down from our meeting. She said that the information is correct, I just included it several times when I prepared the affidavit. I've hoped these last couple of weeks to get over to Camden to get affidavit signed again. As you are aware, I've had a bunch of deadlines and I did not want to take longer to get this to you, as Dr. Munn has confirmed that what is in the affidavit accurately states her assessment of Richard's condition.

We are again asking that you provide the hours ordered by Dr. Munn, in addition to those previously ordered by Dr. Joseph.

Even with the 14 hours of nursing now being provided, Richard's mother is unable to keep up the pace of providing care for him the other 5 nights a week, while maintaining employment.

If we need to discuss, I should be in this week. Also, we are requesting, pursuant to HIPAA, all records related to the determination that only 14 of the hours ordered by Dr. Munn would be provided. Please provide all records of DHHS, DDSN, Kershaw DSN Board, including emails related to our request for nursing services.

Thanks.

Trisha

From: Law Office of Patricia L Harrison
Sent: Friday, June 12, 2015 2:44 PM
To: plh.cola@gmail.com ; plh.cola@att.net
Subject: Stogsdill.MunnMDAffdvt.pdf

May 20, 2015

Ms. Patricia L. Harrison
611 Holly St.
Columbia, SC 29205

Re: Richard Stogsdill

Dear Ms. Harrison:

We would like to complete a more comprehensive review Mr. Stogsdill's service package and need for services, irrespective of the Waiver limitations. We have arranged for one of the Department's physicians to participate. Our physician would like to speak with Dr. Joseph and Dr. Munn regarding Mr. Stogsdill's medical needs. Additionally, we have arranged for a DDSN service coordinator from another area to participate in the evaluation. The service coordinator would like to speak with Mr. Stogsdill's service coordinator and also with Ms. Stogsdill, for the purpose of evaluating Mr. Stogsdill's psycho-social situation.

Please let us know what authorizations, if any, you believe necessary for us to move forward with this evaluation. Please contact me if you have any questions. My direct is (803) 898-2791.

Sincerely,

Richard G. Hepfer
Of General

STATE OF SOUTH CAROLINA

In the Supreme Court

APPEAL FROM THE SOUTH CAROLINA COURT OF APPEALS

RECEIVED

Case No. 2014-002513

NOV 20 2015

S.C. Supreme Court

Richard Stogsdill,

Appellant,

v.

South Carolina Department of Health and
Human Services,

Respondent

CERTIFICATE OF SERVICE

I hereby certify that I am a Paralegal for the Respondent in the above-captioned matter and that on this 20th day of November, 2015, in Columbia, South Carolina, I served a copy of the forgoing letter, with attachments regarding the evaluation of Mr. Stogsdill's needs, on the following persons by depositing the same in the United States Mail, postage paid, and addressed as follows:

Patricia L. Harrison
611 Holly Street
Columbia, SC 29205

Anna Maria Darwin
Protection and Advocacy for
People with Disabilities
545 N. Pleasantburg Drive, Suite 106
Greenville, SC 29607

Sarah Garland St. Onge
Protection and Advocacy for
People with Disabilities
3710 Lnadmark Drive, Suite 208
Columbia, SC 29204

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Academy of Elder Law Attorneys
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Kirby Mitchell
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Stephen Suggs
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Linda Hillian

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