

EXHIBIT 3

***State of North Carolina
Office of Administrative Hearings
Certification***

I hereby certify the attached (37 sheets) to be a true copy of

The complete file as of June 26, 2008, in case 08 DHR 1010, "Selena Renee' McMillan parent of Eric Terence Cromatie, Petitioner v. Department of Medical Affairs, Department of Health and Human Services, Respondent".

The original of which is filed in this office in conformance with Chapter 150B of the General Statutes of the State of North Carolina.

In witness whereof, I authorize this certification and affix the official seal of the North Carolina Office of Administrative Hearings at Raleigh, This 26th day of June 2008.

Julian Mann, III

Chief Administrative Law Judge, Director

By: *Kim Hausen*

***Kim Hausen
Chief Hearings Clerk***

08 DHR 1010

Legal Aid of North Carolina, Inc.

Pembroke Office

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Dale G. Deese
Senior Managing Attorney

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June 20, 2008

Kim Hausen, Clerk
N.C. Office of Administrative Hearings
6714 Mail Service Center
Raleigh, NC 27699-6714

FILED
2008 JUN 23 P 1:12
OFFICE OF
ADMINISTRATIVE
HEARINGS

RE: 08 DHR 1010

Dear Ms. Hausen,

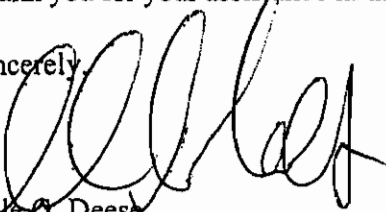
Enclosed please find the original and one copy of the Petitioner's Pre-Hearing Statement in the above captioned matters.

I have served Robert J. Blum, with the Attorney General's office.

Please file same and return file-stamped copies of same to me in the enclosed envelope.

Thank you for your assistance in these matters.

Sincerely,



Dale G. Deese
Senior Managing Attorney

/fy

Enclosures

6/27/08
mm


STATE OF NORTH CAROLINA **FILED**
COUNTY OF ROBESON JUN 23 11 12

IN THE OFFICE OF
ADMINISTRATIVE HEARINGS
08 DHR 1010

E.C. BY HIS PARENT, OFFICE OF)
SELENA RENEE MCMILLAN, ADMINISTRATIVE)
Petitioner, SPRINGS)
v.)
N.C. DEPARTMENT OF HEALTH AND)
HUMAN SERVICES,)
Respondent.)
)
)

PETITIONER'S
PRE-HEARING STATEMENT

NATURE OF THE PROCEEDINGS

I. Medical Assistance (Medicaid):

Petitioner E.C., a minor to be referred to by his initials or as Petitioner to protect his privacy, receives Medicaid benefits. Petitioner is entitled to receive medically appropriate mental health treatment under North Carolina's Medicaid program 42 U.S.C. §1396d (a) (13) & (r) (5). Petitioner requested Respondent to authorize under Medicaid medically necessary Community Support Services (CSS) for Petitioner's Autistic Disorder and Disruptive Behavior Disorder secondary to Autism. Respondent has failed to approve this request.

Federal law mandates that each state participating in the Medicaid program must designate a "single state agency" response for the program in that state. 42 U.S.C. §1396a (a) (5). The Respondent, the N.C. Department of Health and Human Services, operates as this state's single state agency. In many (including Robeson County), behavioral health service coverage under Medicaid is authorized by local area mental health centers.

a. Appeal Process:

The Division of Medical Assistance's rules concerning appeals by Medicaid recipients for the denial, termination, or reduction in services (10 N.C.A.C. Subch. 26I) are guided by the federal provision of 42 C.F.R. §431, Subpt. E (200 to 246). These federal regulations require that the state Medicaid agency provide prescribed notices (431.210-.234) and hearing (431.220-.246). These provisions interface with North Carolina's Administrative Procedures Act (N.C. Gen. Stat. Ch. 150B) to entitle Medicaid recipients to pursue their due process right through Article 3 of N.C. gen Stat. Ch. 150B in order to request review of the Respondent's failure to authorize requested Medicaid services.

b. EPSDT:

The federal Medicaid statute creates special rights for children on Medicaid to Early and Periodic Screening, Diagnostic, and Treatment Services (EPSDT). Participation in Medicaid requires state Medicaid agencies to “arrange for (directly or through referral to appropriate agencies, organizations, or individuals) corrective treatment” to Medicaid recipients under the age of twenty-one. 42 U.S.C. §1396a (a) (43). States are obligated to make available a variety of healthcare providers willing and qualified to provide treatment services to meet the needs of children who are eligible for Medicaid. 42 C.F.R. §441.61. States must “take advantage of all resources available” to achieve adequate provider participation in Medicaid services. CMS State Medicaid Manual §5220.

Respondent’s duty to provide corrective treatment includes all “necessary health care, diagnostic services, treatment, and other measures . . . to correct or ameliorate defects and physical and mental illnesses and conditions [.]” 42 U.S.C. § 396d (r) (5). The EPSDT provisions obligate the state Medicaid agency to provide all necessary treatment to children to ameliorate conditions discovered by screenings if such services are listed in 42 U.S.C. §1396d(a). *Pereira v. Kozlowski*, 996 F.2d 723 (4th Cir. 1993). Listed services include “any medical or remedial services (provided in a facility, a home, or other setting) recommend by a physician or other licensed practitioner of the a healing arts within the scope of their practice under State law, for the maximum reduction of physical or mental disability and restoration of any individual to the best possible functional level.” 42 U.S.C. §1396d (a) (13).

II. Comprehensive Treatment Services Program (CTSP):

Payment for Community Support Services for Medicaid recipients under the age of twenty-one is funded under the Comprehensive Treatment Services Program (CTSP). Session Law 2001-424, Section 21.60. CTSP provides appropriate medically necessary residential and nonresidential treatment services including placement for sexually aggressive youth and children with serious emotional disturbances. *Id* at §21.60 (a) (3) and (4). CTSP services are not an entitlement unless the child is Medicaid eligible. *Id* at §2160 (e).

III. Medical Necessity:

Under the Medicaid statute, the determination that a requested EPSDT treatment is necessary lies primarily with the child’s treating physician or other qualified treating professional. Sen. Ept. No. 404 89th Cong. 1st Sess., reprinted in 1965 U.S.C.C.A.N. 1943 (1986) (“The physician is to be the key figure in determining the utilization of health services. It is the physician who is to decide upon treatments.”) The state agency may review this determination; however, absent evidence the prescribed treatment is not medical in nature, or is unsafe or experimental, the agency should defer to the recommendation of the treating practitioner. See, e.g., *Jackson v. Millstone*, 369 Md. 575, 801 A.2d 1034 (2002). (holding that Maryland Medicaid regulation requiring that services be both “necessary” and “appropriate” conflicted with federal Medicaid law because the appropriateness is not required under EPSDT); *Georgia Dept. of Comm. Health v. Freels*, 576 S.E. 2d 2 (Ga. Ct. of App. 2002) (medically

necessity standard under EPSDT more expansive than for adults). See also, e.g., *Weaver v. Reagen*, 886 F.2d 194 (8th Cir. 1989) (holding that state must defer to treating physician); *Hillburn by Hillburn v. Maher*, 795 F.2d 252 (2d cir. 1986) (same).

IV. Community Support Services

Community Support Services are necessary to assist children ages 3 through 20 and their caregivers in achieving rehabilitative and recovery goals. The services are intended to meet the mental health or substance abuse need of children who have significant functional deficits or because of native environmental, medical, or biological factors are at risk of developing or increasing the magnitude of such functional deficits. CSS are available when there is an Axis I or II diagnosis and recipient of services is experiencing difficulties in one of the designated areas. One of the areas is that the recipient is presented with intense, verbal, and limited physical aggression due to symptoms associated with diagnosis and the aggression is sufficient to create functional problems in the home, community, school, job, etc. The interventions of CSS consist of preventive interventions designed for direct individual activities, assistance with skill enhancement or acquisition, support for ongoing treatment and function gains, development of the child's Personal Centered Plan(PCP), and one on one intervention with the Petitioner to develop interpersonal and community relational skills.- Enhanced Benefited Services for Mental Health and Substance Abuse, Clinical Coverage Policy, Original Effective date July 1, 1989, Revised Date February 1, 2008, Effective March 1, 2008.

ISSUES TO BE RESOLVED

1. Does Petitioner satisfy the requirements for Medicaid coverage of the requested services?
2. Does the agency's failure to approve the requested treatment for Petitioner contradict the weight of the evidence showing necessity for the treatment and fail to give proper weight to the opinions of the treating experts?
3. Does the agency's failure to authorize services under the Comprehensive Treatment Services Program (CTSP) violate Section 21.60 of Session Law 2001-424, and N.C. Gen. Stat. § 150B-18?
4. Are the Community Support Services the most efficacious services and care to maintain Petitioner's health in the best condition possible to compensate for his health problems, prevent them from worsening, and prevent the development of additional problems?

FACTS

Petitioner was born on September 23, 2003. Petitioner is an authorized recipient of Medicaid. Petitioner had normal developmental process until he was approximately two years of age. Petitioner reached out to be picked up, he would cry and become upset when left unattended

in his crib, attempted to join family members in group activities, seemed to be responsive to people when they talked to him or called his name, and followed directions.

At age two Petitioner stopped his development and regressed in development. That same year Petitioner was diagnosed with Autism. Petitioner has been seen and evaluated at Duke Medical Center by Dr. Gordon at the Autism Clinic. On December 12 and 13, 2007 Connie Pittman, Ed. S, NCSP, School Psychologist II with Public Schools of Robeson County Exceptional Children's Developmental performed a Psycho-education Evaluation on Petitioner. The scores from the evaluation showed that the Petitioner demonstrated a weakness in Coping Skills relative to Interpersonal Relationships and Play and Leisure Time. Other scores indicated Petitioner's perceptual-motor skills were delayed. The Petitioner's scores from the Autism assessment fell within the very likely range of probability of Autism. On February 26, 2008 Petitioner had a medical assessment with Randall L. Purdy, Jr., with Lumberton Children's Clinic in Lumberton, NC who reconfirmed that the Petitioner has autism and observed that he functions at a very developmentally delayed level.

The Petitioner does not talk except on a very rudimentary level. The Petitioner exhibits a lot of behavior problems that are typical autistic behaviors. He gets very angry and frustrated easily. He does not do well with change. Any change can be extremely hard on him and cause him to regress. Petitioner often uses gestures and unintelligible noises rather than words to express himself. When he is directed to something he often falls down and refuses to get up. The Petitioner avoids eye contacts and though he may acknowledge that he has heard someone call his name in his body movement, he seldom looks at the person speaking for any sustained amount of time. It takes Petitioner a great amount of time to respond to tasks.

The Petitioner has had numerous past psychiatric evaluations. He is currently seeing a behavior therapist, speech therapist, and occupational therapist. Since August 2007 Petitioner has been receiving Community Support Services (CSS). The CSS worker transports Petitioner to therapy sessions, to and from school, and sits with him in school. For the duration of this service, Petitioner's improvements have been dramatic and he now talks, interacts with others, and colors. Petitioner's psychiatrist has notice the positive effects of the CSS and agrees with Petitioner receiving the services. Petitioner's Personal Centered Plan (PCP) on August 29, 2007 noted that after a reduction of CSS Petitioner decompensated and the school asked that that he not return without one on one services due to his aggressive behaviors.

The Community Support Services (CSS) are intended to meet the mental health of the Petitioner's significant functional deficits as a result of his Autistic Disorder and Disruptive Behavior Disorder secondary to Autism. These conditions are Axis I diagnoses. The Petitioner presents intense, verbal, and physical aggressive behavior associated with his medical conditions. The one on one interventions provided by the CSS worker focuses on the accomplishment of Petitioner's goals in his Personal Centered Plan (PCP) and assists Petitioner with the development of his interpersonal and community skills.

One of the goals was for the Petitioner's PCP is to participate in activities in groups settings. To accomplish this goal the CSS worker instructed Petitioner on self control strategies to decrease impulsive outbursts, encouraged Petitioner to participate in group setting activities,

and follow directions given by authority figure. When Petitioner displayed disruptive behavior the worker re-directed Petitioner to an on task activity. The worker assisted Petitioner with establishing limits and boundaries. Another goal was for Petitioner to improve interpersonal relationships with others, which is a troubled area for Petitioner due to his lack of communicational skills. The CSS worker utilized several interventions to accomplish this goal. The CSS worker instructed Petitioner to communicate his needs by making requests and establishing eye contact with others. The worker encouraged Petitioner to communicate appropriately by utilizing socialization skills. The worker role-played interpersonal skills of showing respect to others, proper greetings, and other socialization skills. Other goals dealt with Petitioner verbalizing his emotions to others without becoming psychically and verbally aggressive. The CSS worker concentrated on teaching Petitioner verbalization skills and finding other alternatives to express his emotions without becoming physically and verbally aggressive.

The Petitioner has severe special needs due to his medical condition of Autism. The one on one interventions of CSS addresses the deficits caused by Petitioner's Autism and corrects or ameliorates them to allow the Petitioner to perform at his best possible functional level. Without CSS Petitioner is at risk for developing or increasing the magnitude of such deficits.

APPLICATION OF LAW TO FACTS

Petitioner is a Medicaid recipient under the age of twenty one. He has received screening services from several medical providers indentifying the existence of his Attention-Deficit/Hyperactivity Disorder (ADHD), Disruptive Behavior Disorder, Mixed Receptive and Expressive Language Disorder, Pervasive Developmental Disorder, Borderline Intellectual, and Developmentally Delayed. These are mental illnesses or conditions within the scope of 42 U.S.C. § 1396d(r). Petitioner's mental illness or condition identified through screening services requires health care, treatment, or rehabilitation services within the meaning of the 42 U.S.C. §1396d(r) and 42 U.S.C. §1396(a)(6) and (13). The Community Support Services requested in this appeal is a medical or remedial service recommend by a licensed practitioner within the meaning of 42 U.S.C. §1396(a)(13).

Respondent has a duty under 42 U.S.C. §1396a(a)(43) to arrange for corrective treatment of Petitioner's diagnosed medical conditions. Respondent has a duty under 42 U.S.C. §1396(d)(r)(5) and 42 U.S.C. § 396(a)(43) to arrange for the Community Support Services requested in this appeal if that treatment is necessary to correct or ameliorate Petitioner's ARWMDEC, whether or not the requested service is otherwise covered under the N.C. State Medicaid plan.

WITNESSES

1. Selena Renee McMillan, mother of Petitioner, will testify to the history, condition, and behavior of Petitioner and her efforts to access appropriate mental health treatment from the Respondent.

2. Erica Striblin, Petitioner's Community Support Services case manager, will testify to Petitioner's behavior and need for specialized services.

3. Mark Oliver, Petitioner's Community Support Services worker, will testify about the Petitioner's behavior, the nature of services he/she provides to Petitioner, and Petitioner's need for these specialized services.

4. Randall L. Purdy, Jr., Petitioner's psychiatrist will testify as to the necessity of the requested treatment services for Petitioner.

5. Connie Pittman, Petitioner's school psychologist will testify as to the necessity of the requested treatment services for Petitioner.

6. Frankie Powell, Petitioner's teacher will testify as to the necessity of the requested services for Petitioner.

7. LaWanda Scott, Petitioner's teacher will testify as to the necessity of the requested services for the Petitioner.

8. Aggie Spaulding, Petitioner's teacher will testify as to the necessity of the requested services for Petitioner.

9. Mary Shultz, Director Shining Stars Pre-school, will testify to the necessity of the requested services for Petitioner.

10. Other witnesses may be identified prior to the hearing.

DISCOVERY

Discovery has been completed, expect for supplemental information due from Respondent prior to the hearing.

VENUE

The minor Petitioner resides in Robeson County along with many witnesses to be called by Petitioner, making Cumberland County the appropriate venue.

HEARING LENGTH

Counsel for Petitioner estimate the hearing for the to be one day.

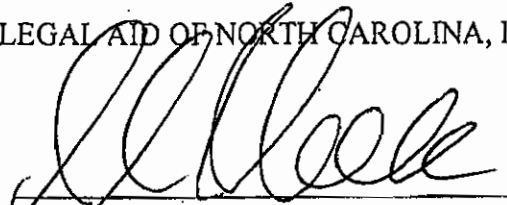
SPECIAL MATTERS

1. Federal regulations governing the process mandate a final agency action within ninety (90) days from the date of the request for hearing 42 C.F.R. §431.244(f). As such, this contested case is subject to OAH procedure requiring an expedited schedule for the hearing, recommended decision, and final agency decision. This schedule may be extended by consent of the parties or for other good cause.

2. A request will be made during a telephone pretrial conference to protect the identity of the minor Petitioner, by referring to him only by his initials in all documents available to the public.

This 20th day of June, 2008.

LEGAL AID OF NORTH CAROLINA, INC.

A handwritten signature in black ink, appearing to read "D. Deese", written over a horizontal line.

Dale G. Deese

Attorney for Petitioner

State Bar No. 16608

PO Box 939

Pembroke, North Carolina 28372

(910) 521-2831

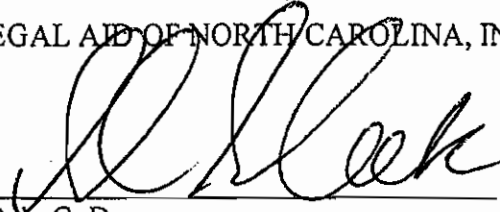
CERTIFICATE OF SERVICE

I hereby certify that I have this day served a copy of the attached PETITIONER'S PRE-HEAIRNG STATEMENT upon the attorney for the Respondent by depositing a copy in the United States Postal Service by first class mail with sufficient postage and mailed to:

Robert J. Blum
Associate Attorney General
N.C. Department of Justice
P.O. Box 629
Raleigh, NC 27602-0629

This 20th day of June, 2008.

LEGAL AID OF NORTH CAROLINA, INC.



Dale G. Deese
Attorney for Petitioner
State Bar No. 16608
PO Box 939
Pembroke, North Carolina 28372
(910) 521-2831

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Jun 19 9 00 AM 2008

STATE OF NORTH CAROLINA

IN THE OFFICE OF
ADMINISTRATIVE HEARINGS

COUNTY OF ROBESON

08 DHR 1010

Selena Renee' McMillan parent)
Eric Terence Cromatie)
Petitioner)

vs.)

Department of Medical Affairs)
DHHS)
Respondent)

**NOTICE OF RESCHEDULED
HEARING**

NOTICE IS HEREBY GIVEN that the hearing in this contested case, previously scheduled for June 9, 2008, is rescheduled as follows:

DATE: July 14, 2008

TIME: 9:00 am

PLACE: Old Cumberland County Courthouse
Room #3
130 Gillespie Street
Fayetteville, North Carolina

This the 19th day of June, 2008.



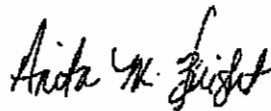
Joe L. Webster

A copy of the foregoing was mailed to:

Dale G. Deese
Legal Aid of North Carolina, Inc.
PO Box 939
Pembroke, NC 28372-0939
ATTORNEY FOR PETITIONER

Melissa D LaRose
Associate Attorney General
N.C. Department of Justice
PO Box 629
Raleigh, NC 27602-0629
ATTORNEY FOR RESPONDENT

This the 19th day of June, 2008.



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Fax: (919) 733-3407

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STATE OF NORTH CAROLINA

IN THE OFFICE OF
ADMINISTRATIVE HEARINGS


COUNTY OF ROBESON

08 DHR 1010

Selena Renee' McMillan parent)
Eric Terence Cromatie)
Petitioner)
) **ORDER EXTENDING TIME**
vs.)
)
Department of Medical Affairs)
DHHS)
Respondent)

This matter coming before the undersigned for consideration upon the Motion of Petitioner for an extension of time to file amended pleadings, Prehearing Statement and Discovery, and good cause having been shown, the requested extension is granted and both parties shall have until and including June 20, 2008 to file Amended Pleadings and the Prehearing Statement and until July 7, 2008 to complete discovery.

This the 17th day of June, 2008.



Joe L. Webster

A copy of the foregoing was mailed to:

Dale G. Deese
Legal Aid of North Carolina, Inc.
PO Box 939
Pembroke, NC 28372-0939
ATTORNEY FOR PETITIONER

Melissa D LaRose
Associate Attorney General
N.C. Department of Justice
PO Box 629
Raleigh, NC 27602-0629
ATTORNEY FOR RESPONDENT

This the 17th day of June, 2008.



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STATE OF NORTH CAROLINA

IN THE OFFICE OF
ADMINISTRATIVE HEARINGS

COUNTY OF ROBESON

08 DHR 1010


Selena Renee' McMillan parent)
Eric Terence Cromatie)
Petitioner)
))
vs.)
))
Department of Medical Affairs)
DHHS)
Respondent)

**ORDER CONTINUING
HEARING**

Due to the Petitioner requesting an extension to file the Prehearing Statement, the hearing in this contested case is hereby CONTINUED until the week beginning July 14, 2008. The presiding Judge will file a more definite notice of hearing.

IT IS SO ORDERED.

This the 10th day of June, 2008.



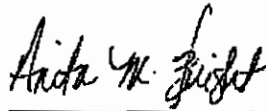
Joe L. Webster

A copy of the foregoing was mailed to:

Selena Renee' McMillan
2686 Broadridge Road
PO Box 1683
Lumberton, NC 28359
PETITIONER

Melissa D LaRose
Associate Attorney General
N.C. Department of Justice
PO Box 629
Raleigh, NC 27602-0629
ATTORNEY FOR RESPONDENT

This the 10th day of June, 2008.



Office of Administrative Hearings
6714 Mail Service Center
Raleigh, NC 27699-6714
(919) 733-2698
Fax: (919) 733-3407

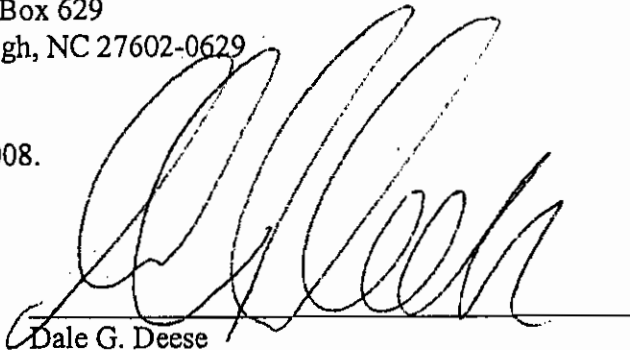
Dale G. Deese
Attorney for Petitioner
N. C. State Bar No. 16608
P.O. Box 939
Pembroke, N.C. 28372
(910) 521 2831

CERTIFICATE OF SERVICE

I hereby certify that I have on this day served a true copy of the forgoing NOTICE OF APPEARANCE and MOTION FOR EXTENSION OF TIME upon the respondent's attorney by first class mail, postage prepaid, addressed to:

Mr. Robert Blum
Assistant Attorney General
N.C. Department of Justice
P.O. Box 629
Raleigh, NC 27602-0629

This the 6th day of June, 2008.

A handwritten signature in black ink, appearing to read 'D. Deese', is written over a horizontal line. The signature is stylized and cursive.

Dale G. Deese
Attorney for Petitioner
LEGAL AID OF NORTH CAROLINA
P.O. Box 939
Pembroke, NC 28372
(704) 971-2593

STATE OF NORTH CAROLINA
COUNTY OF ROBESON

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IN THE OFFICE OF
ADMINISTRATIVE HEARINGS
08 DHR 1010

2008 MAY 16 P 2:22

Selena Renee' McMillan, Parent
Eric Terence Cromatie,
Petitioner,

OFFICE OF
ADMINISTRATIVE
HEARINGS

MOTION FOR
EXTENSION OF TIME

v.

Department of Medical Affairs,
DHHS,
Respondent.

Comes now Petitioner in the above-referenced matter and says:

1. Petitioner's Prehearing Statement is due on May 14, 2008.
2. Petitioner needs time to secure an attorney to represent her in this matter.
3. Petitioner seeks an extension of time of 30 days in which to file her Prehearing Statement.

This the 14th day of May, 2008.



Selena Renee' McMillan, Petitioner
P. O. Box 1683
Lumberton NC 28358
Phone: 910-738-6733

JLW

STATE OF NORTH CAROLINA
COUNTY OF ROBESON

IN THE OFFICE OF
ADMINISTRATIVE HEARINGS
08 DHR 1010

Selena Renee' McMillan, Parent
Eric Terence Cromatie,
Petitioner,

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MOTION FOR
EXTENSION OF TIME


v.

Department of Medical Affairs,
DHHS,
Respondent.

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1. Petitioner's Prehearing Statement is due on May 14, 2008.
2. Petitioner needs time to secure an attorney to represent her in this matter.
3. Petitioner seeks an extension of time of 30 days in which to file her Prehearing Statement.

This the 14th day of May, 2008.



Selena Renee' McMillan, Petitioner
P. O. Box 1663
Lumberton NC 28358
Phone: 910-738-6733

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STATE OF NORTH CAROLINA

IN THE OFFICE OF
ADMINISTRATIVE HEARINGS

COUNTY OF ROBESON

08 DHR 1010

Selena Renee' McMillan parent)
Eric Terence Cromatie)
Petitioner)

vs.)

Department of Medical Affairs)
DHHS)
Respondent)

**ORDER EXTENDING TIME
TO FILE PREHEARING
STATEMENTS**

Upon consideration of the Petitioner's request for an extension of time to file the Prehearing Statement, it is ordered that both parties shall have until June 14, 2008 to file the Prehearing Statement in the above captioned case.

This the 15th day of May, 2008.



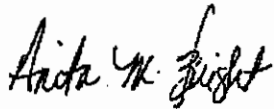
Joe L. Webster

A copy of the foregoing was mailed to:

Selena Renee' McMillan
2686 Broadridge Road
PO Box 1683
Lumberton, NC 28359
PETITIONER

Robert J. Blum
Special Deputy Attorney General
NC Department of Justice
9001 Mail Service Center
Raleigh, NC 27699-9001
ATTORNEY FOR RESPONDENT

This the 15th day of May, 2008.



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STATE OF NORTH CAROLINA

IN THE OFFICE OF
ADMINISTRATIVE HEARINGS

COUNTY OF ROBESON

08 DHR 1010

Selena Renee' McMillan parent)
Eric Terence Cromatie)
Petitioner)
))
vs.)
))
Department of Medical Affairs)
DHHS)
Respondent)

NOTICE OF HEARING

NOTICE IS HEREBY GIVEN that the above-captioned case will be brought on for hearing before the undersigned administrative law judge as follows:

DATE: Monday, June 9, 2008

TIME: 1:30 pm

PLACE: Old Cumberland County Courthouse
Room #3
130 Gillespie Steet
Fayetteville, North Carolina

1. This hearing will be conducted in accordance with G.S. Chapter 150B and the Rules of Contested Case Hearings in the Office of Administrative Hearings, copies of which may be obtained at cost from Molly Masich, Director of APA Services or by accessing the OAH Web page at <http://www.oah.state.nc.us/hearings/#Chapter3>.
2. Unless otherwise determined by the administrative law judge, the hearing will proceed in the following sequence:
 - a. Call of the case
 - b. Motions and other preliminary matters
 - c. Stipulations, agreements, or consent orders entered into the record
 - d. Opening statements
 - e. Presentation of evidence; cross-examination
 - f. Final arguments
3. All parties are hereby notified to bring to the hearing all documents, records, and witnesses needed to present the party's case.

NOTE: IF SPECIAL EQUIPMENT IS REQUIRED FOR THE PRESENTATION OF EVIDENCE, THE PARTIES ARE RESPONSIBLE FOR MAKING ARRANGEMENTS FOR THE EQUIPMENT.

4. Subpoenas may be available to the parties pursuant to 26 NCAC 3 .0113 to compel the attendance of witnesses or for the production of documents.
5. A party may represent himself or be represented by an attorney. A party who is represented by an attorney must file a Notice of Representation within 10 days of service of this Notice containing the name, address, and telephone number of the attorney, unless the attorney has already corresponded with this Office concerning this case.


TAKE NOTICE THAT A FAILURE TO APPEAR AT THE HEARING MAY RESULT IN:

1. A finding that the allegations of or the issues set out in this Notice may be taken as true or deemed proved without further evidence;
2. Dismissal of the case or allowance of the motion or petition;
3. Suppression of a claim or defense; or
4. Exclusion of evidence.

NOTICE OF CANCELLATION OF HEARING

THE PARTIES MUST NOTIFY THE OFFICE OF ADMINISTRATIVE HEARINGS AT LEAST 24 HOURS PRIOR TO THE CANCELLATION OF THE CONTESTED CASE HEARING. FAILURE TO GIVE TIMELY NOTICE OF CANCELLATION MAY RESULT IN A CHARGE TO THE PARTIES FOR THE COST OF THE COURT REPORTER OR HEARING ASSISTANT. SEE 26 NCAC 3 .0123(f).

This the 13th day of May, 2008.



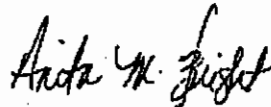
Joe L. Webster

A copy of the foregoing was mailed to:

Selena Renee' McMillan
2686 Broadridge Road
PO Box 1683
Lumberton, NC 28359
PETITIONER

Robert J. Blum
Special Deputy Attorney General
NC Department of Justice
9001 Mail Service Center
Raleigh, NC 27699-9001
ATTORNEY FOR RESPONDENT

This the 13th day of May, 2008.



Office of Administrative Hearings
6714 Mail Service Center
Raleigh, NC 27699-6714
(919) 733-2698
Fax: (919) 733-3407

STATE OF NORTH CAROLINA
COUNTY OF ROBESON
2008 MAY -9 P 4:13

IN THE OFFICE OF
ADMINISTRATIVE HEARINGS
08 DHR 1010

OFFICE OF
ADMINISTRATIVE
HEARINGS

Selena Renee' McMillan parent)
Eric Terence Cromatie)
)
Petitioner,)
)
v.)
)
Dept. of Medical Affairs)
DHHS)
)
Respondent.)

**RESPONDENT'S
PREHEARING STATEMENT AND
TRANSMISSION OF DOCUMENT
CONSTITUTING AGENCY
ACTION**

COMES NOW the North Carolina Department of Health and Human Services, Division of Medical Assistance, ("Department"), by and through its attorneys, Roy A. Cooper, III, Attorney General for the State of North Carolina, and Melissa D. LaRose, Associate Attorney General, and files its Prehearing Statement in the above-captioned contested case pursuant to 26 NCAC 03.0104.

PREHEARING STATEMENT

The Respondent reserves the right to supplement, modify, or otherwise amend its Prehearing Statement as this matter progresses.

I. THE ISSUES TO BE RESOLVED

The issue to be resolved is whether the Respondent improperly reduced Petitioner's Community Support Services (CSS).

II. A BRIEF STATEMENT OF THE FACTS AND REASONS SUPPORTING RESPONDENT'S POSITION ON EACH MATTER IN DISPUTE

Respondent's contractor, Value Options, Inc. (VO), reduced CSS for Petitioner based on the finding that 1092 units/week of CSS was not the most efficacious therapeutic service for the patient's symptoms, and not supported by best practice guidelines. VO made this decision pursuant its authority as an "independent Medicaid consultant" as referenced in 10A NCAC 22O .0301 which states that "[a]ll medical services performed must be medically necessary and may not be experimental in nature. Medical necessity is determined by generally accepted North Carolina community practice standards as verified by independent Medicaid consultants." As an independent Medicaid consultant, VO reviewed the available information and determined that CSS did not meet medical necessity criteria for Petitioner.

The statutes, rules, and legal precedents involved include the following: Social Security Act, Title XIX; 42 U.S.C. §§ 1396a-1396v; 42 C.F.R. § 430 – 456; N.C. Gen. Stat. § 108A-25(b) and §108A-54; N.C. Gen. Stat. Ch. 150B-22 et seq.; 10A NCAC 22A .0101; 10A NCAC 22O .0301; N.C. State Plan for Medical Assistance; and NC Medicaid manuals, which can be found at <http://www.dhhs.state.nc.us/dma/plan/sp.pdf>.

III. LIST OF PROPOSED WITNESSES

- Carolyn Wiser or Patricia Kirk or Simone Chessa, NCDHHS, Division of Medical Assistance, Clinical Policies and Programs Section, Behavioral Health.
- Dr. Ranota Hall or Dr. Stephen Lucente or Dr. Moya Henry or Dr. Tiffany Watts-English, Value Options, Inc.
- All witnesses identified by Petitioner.

Respondent reserves the right to list other witnesses as they may be identified during the course of preparing this matter for hearing.

IV. DISCOVERY

Respondent does not expect to pursue discovery at this time but reserves the right to supplement or amend this response.

V. LOCATION OF THE HEARING

Respondent is agreeable to the hearing being held in Fayetteville, North Carolina.

VI. ESTIMATED LENGTH OF THE HEARING

Respondent estimates it will take approximately two to four hours to present its evidence in this case.

VII. DATE OF READINESS FOR THE HEARING

Respondent anticipates being ready for hearing on the week of June 9, 2008, as scheduled by Judge Webster.

VIII. TRANSMISSION OF DOCUMENT CONSTITUING AGENCY ACTION

Exhibit A, attached and incorporated herein, is the document constituting agency action.

Respectfully submitted, this the 9 day of May, 2008.

ROY A. COOPER III
Attorney General

Melissa D. LaRose
Melissa D. LaRose
Associate Attorney General
N. C. Dept. of Justice
P.O. Box 629
Raleigh, N.C. 27602
Telephone: (919) 733-7831, ext. 280
State Bar No. 34789

CERTIFICATE OF SERVICE

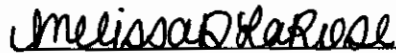
I hereby certify that on this 9 day of May, 2008, a copy of the foregoing

RESPONDENT'S PREHEARING STATEMENT AND TRANSMISSION OF

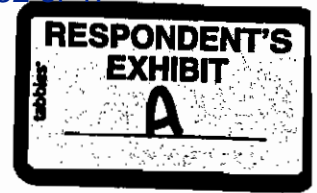
DOCUMENT CONSTITUTING AGENCY ACTION was served by first class mail, postage

prepaid, upon:

Selena Renee McMillan
2686 Broadridge Road
PO Box 1683
Lumberton, NC 28359
PETITIONER



Melissa D. LaRose
Associate Attorney General



March 7, 2008

Eric Cromartie
1316 Furman Drive
Lumberton, NC 28358

MID #: 947522904N

Re:
Direct Care Behavioral Services
3601 East Elizabethtown Road
Lumberton, NC 28358

Dear Parent/Guardian/Authorized Representative:

ValueOptions®, Inc. is the mental health utilization review contractor for the North Carolina Department of Health and Human Services (NC DHHS), the state agency which administers the NC Medicaid program. We received a prior authorization request for 1092 Units of Community Support services for the period March 19, 2008 through June 17, 2008 from your mental health provider. Following a review of the documentation submitted by your provider, we have determined that NC Medicaid is reducing Community Support services that you are currently receiving as follows:

NC Medicaid will no longer pay for your 1092 Units of Community Support services as of March 19, 2008. However, Medicaid will pay for 180 Units of Community Support services beginning March 19, 2008 through June 17, 2008, at which time your request for services will be subject to further review.

*Please refer to <http://www.ncdhhs.gov/dma/fee/mhfee.htm> for an explanation of units for this service.

This letter explains why this decision was made and tells you how to appeal if you disagree with this decision. You may be eligible for other services paid for by NC Medicaid; you should check with your provider to determine if there are other mental health services that are more appropriate for you. Based on the documentation we received, more appropriate alternative services are:

- Psychological Evaluation
- Parent skill development
- Family therapy
- Individual therapy
- Link with natural supports

The reason ValueOptions®, Inc. decided to reduce Community Support services is because:



The documentation that was submitted showed that the North Carolina Medicaid medical necessity continued stay criteria standard was not met. Alternate services are found to be equally or more effective. These alternate services would serve to correct, improve, maintain and prevent from worsening the condition.

Per the criteria for the requested service:

- The Person Centered Plan did not show the following:
 - Goal and interventions justified the requested service.

This decision is based on the authority granted to NC DHHS and its contractors by the Code of Federal Regulations, Chapter 42 Part 431, Subpart E, N.C.G.S. §108A-25(b) and §108A-54, as well as the law and policy set forth in 10A NCAC 22O.0301, and NC Medicaid manuals, which can be found at <http://www.dhhs.state.nc.us/dma/prov.htm>.

YOU HAVE THE RIGHT TO APPEAL THIS DECISION.

You have the choice of two ways to appeal this decision:

1. You can ask for an **INFORMAL APPEAL** with the Department of Health and Human Services (DHHS). **YOU HAVE 11 DAYS FROM THE DATE OF THIS NOTICE TO ASK FOR THIS APPEAL.**

OR

2. You can file a **FORMAL APPEAL** with the Office of Administrative Hearings. **YOU HAVE 60 DAYS FROM THE DATE OF THIS NOTICE TO FILE THIS APPEAL.**

USTED DEBE RESPONDER A ESTA NOTIFICACION ENTRE LOS SIGUIENTES 11 DIAS. LLAME AL 1-800-662-7030 PARA OBTENER UNA COPIA EN ESPANOL. DIGA AL OPERADOR QUE LA NOTIFICACION SE LLAMA DMA 2002 (NOTIFICACION DE UN CAMBIO DE SERVICIOS).

HOW TO ASK FOR AN INFORMAL APPEAL:

- To ask for an informal appeal, complete and return the enclosed informal appeal form. You can fax the form or mail it. See the instructions on the form.
- **DHHS must receive this form no later than 11 days from the date of this notice. Do not send this form to ValueOptions®, Inc.**
- In an informal appeal, you can have a hearing in person (in Raleigh, NC) or by telephone.
- Informal appeals are decided by a hearing officer at DHHS.
- You may speak for yourself or through an attorney, relative, or other spokesperson.
- You can ask witnesses such as your doctor to be part of the hearing or to write a letter.
- You will get a written decision from the hearing officer.
- If you still disagree with the hearing officer's decision, you can ask for a formal appeal. You will get written instructions with the informal decision on how to do that.
- If you appeal, and remain otherwise Medicaid eligible for the service, Medicaid will continue to pay for the services you now receive until the hearing officer makes a decision on your appeal.



OR

HOW TO FILE A FORMAL APPEAL:

- Formal appeals are before a judge from the Office of Administrative Hearings.
- To file a formal appeal, you must send in a contested case petition form. You can get that form from the Department of Health and Human Services Hearing Office at (919) 647-8200 or 1-800-662-7030. Or you can call the Office of Administrative Hearings at 919-733-2698. You must mail the contested case petition form to both the Office of Administrative Hearings, 6714 Mail Service Center, Raleigh, NC 27699-6714 AND Legal Counsel, NC Department of Health and Human Services, Mail Service Center 2001, Raleigh, NC 27699-2001. **Do NOT send this form to ValueOptions®, Inc.**
- **The contested case form must be filed with the Office of Administrative Hearings no later than 60 days from the date of this notice.**
- An administrative law judge will make a decision in your case. The agency then reviews that decision. Further appeal to court is allowed after the agency decision.
- You may represent yourself in this process, or you may hire a lawyer.
- If you appeal and remain otherwise Medicaid eligible for the service, **Medicaid will continue to pay for the services you now receive until the final agency decision, unless you give up that right. If you lose your formal appeal, you may be required to pay for the services that continue because of the appeal.**
- If you ask for an informal appeal, you can still ask for a formal appeal after your informal appeal is over. You will have 60 days after the informal decision to ask for a formal appeal.

To learn more about the informal appeal process, call the DHHS Hearing Office at (919) 647-8200. To learn more about the formal appeal process, call the Office of Administrative Hearings at (919) 733-2698. To learn more about the reasons Medicaid will no longer pay for the above service, call the number below. You may also call the toll free **CARE-LINE, Information and Referral Services, at 1-800-662-7030.**

Free legal aid may be available to assist with your appeal. Contact your nearest Legal Aid/Legal Services office. You can call 1-877-694-2464 to find out their telephone number.

Sincerely,

Medical Affairs Department (td)
ValueOptions®, Inc.
(888)-510-1150

Enclosure: Informal Appeal Request Form, DMA 2003

cc: Direct Care Behavioral Services
3601 East Elizabethtown Road
Lumberton, NC 28358

cc: State of North Carolina
Division of Medical Assistance

Apr 29 9 45 AM 2008

STATE OF NORTH CAROLINA
COUNTY OF ROBESON

IN THE OFFICE OF
ADMINISTRATIVE HEARINGS
08 DHR 1010

Selena Renee' McMillan parent)
Eric Terence Cromatic)
Petitioner,)
v.)
Department of Medical Affairs)
DHHS)
Respondent.)

**NOTICE OF CONTESTED CASE
AND ASSIGNMENT
G.S. 150B-23, 33(b)(4)**

NOTICE IS HEREBY GIVEN that a petition for a contested case hearing pursuant to G.S. 150B-23(a) was filed in and accepted by the Office of Administrative Hearings on April 18, 2008. In accordance with G.S. 150B-23(a) and 26 NCAC 3 .0103, Joe L. Webster, Administrative Law Judge, has been assigned to preside in this case. The administrative law judge may be contacted by mail at 6714 Mail Service Center, Raleigh, N.C. 27699-6714, or by telephone at (919) 733-2698.

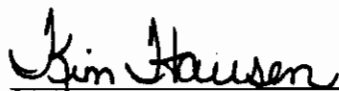
The Respondent shall submit, within 30 days , a copy of the document constituting agency action, which caused the filing of the Petition.

A copy of any document or other pleading filed with the Office of Administrative Hearings must also be sent to the other party at the time of filing. If a party changes his or her mailing address, or if the address is incorrect, the Office of Administrative Hearings must be notified of the new or corrected address.

NOTE: You may receive an Order for Prehearing Statements to which you must respond within 15 days.

This the 29th day of April, 2008.

Julian Mann, III
Chief Administrative Law Judge



Kim Hausen
Chief Hearings Clerk
Office of Administrative Hearings
6714 Mail Service Center
Raleigh NC 27699-6714
919/733-0926

On this date mailed to:

Selena Renee' McMillan
2686 Broadridge Road
PO Box 1683
Lumberton, NC 28359
PETITIONER

Robert J. Blum
Special Deputy Attorney General
NC Department of Justice
9001 Mail Service Center
Raleigh, NC 27699-9001
ATTORNEY FOR RESPONDENT

FILED
OFFICE OF
ADMINISTRATIVE HEARINGS

Apr 29 9 45 AM 2008

STATE OF NORTH CAROLINA

IN THE OFFICE OF
ADMINISTRATIVE HEARINGS

COUNTY OF ROBESON

08 DHR 1010

Selena Renee' McMillan parent)
Eric Terence Cromatie)
Petitioner,)
v.)
Department of Medical Affairs)
DHHS)
Respondent.)


SCHEDULING ORDER

The undersigned has established the following Scheduling Order. This Scheduling Order may be later amended in the discretion of the Administrative Law Judge, based upon information provided in the parties' Prehearing Statements. The parties will be notified of any changes by way of an Amended Scheduling Order.

1. The hearing for this contested case will be in Fayetteville, North Carolina, for the week beginning June 09, 2008. At least 15 days prior to the hearing the Administrative Law Judge will mail to the parties a more specific notice of the date, time and location of the hearing.
2. Discovery shall be completed on or before May 26, 2008.

IT IS SO ORDERED.

This the 29th day of April, 2008.



Joe J. Webster
Administrative Law Judge

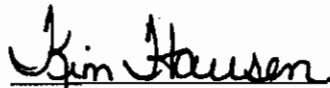
On this date mailed to:

Selena Renee' McMillan
2686 Broadridge Road
PO Box 1683
Lumberton, NC 28359
PETITIONER

Robert J. Blum
Special Deputy Attorney General
NC Department of Justice
9001 Mail Service Center
Raleigh, NC 27699-9001
ATTORNEY FOR RESPONDENT

This the 29th day of April, 2008.

Kim Hausen
Chief Hearings Clerk



Office of Administrative Hearings
6714 Mail Service Center
Raleigh NC 27699-6714
919/733-0926

OFFICE OF
ADMINISTRATIVE HEARINGS

Apr 29 9 45 AM 2008

STATE OF NORTH CAROLINA

IN THE OFFICE OF
ADMINISTRATIVE HEARINGS

COUNTY OF ROBESON

08 DHR 1010

Selena Renee' McMillan parent)
Eric Terence Cromatie)
Petitioner,)
v.)
Department of Medical Affairs)
DHHS)
Respondent.)

**ORDER FOR PREHEARING
STATEMENTS**

In order to permit the prompt preparation of this case for hearing,

IT IS HEREBY ORDERED, pursuant to 26 NCAC 03 .0104, that each party file with the Office of Administrative Hearings and serve upon the other parties a Prehearing Statement containing your present position with regard to the following:

1. The issues to be resolved, and the statutes, rules, and legal precedent involved;
2. A brief statement of the facts and reasons supporting the party's position on each issue in dispute;
3. A list of proposed witnesses;
4. Whether you wish to pursue discovery. If so, the length of time required if different from the time set in the Scheduling Order;
5. Requested location of hearing; if different from the location set in the Scheduling Order;
6. Estimated length of hearing;
7. If you do not have an attorney, your home and business addresses and telephone numbers;
8. The date by which you will be ready to have a hearing in this case if different from the date set in the Scheduling Order;
9. Other special considerations.

This Prehearing Statement must be filed and served within 15 days of the date of this ORDER.

This the 29th day of April, 2008.



Joe J. Webster
Administrative Law Judge

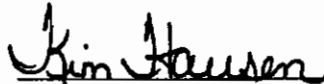
On this date mailed to:

Selena Renee' McMillan
2686 Broadridge Road
PO Box 1683
Lumberton, NC 28359
PETITIONER

Robert J. Blum
Special Deputy Attorney General
NC Department of Justice
9001 Mail Service Center
Raleigh, NC 27699-9001
ATTORNEY FOR RESPONDENT

This the 29th day of April, 2008.

Kim Hausen
Chief Hearings Clerk



Office of Administrative Hearings
6714 Mail Service Center
Raleigh NC 27699-6714
919/733-0926

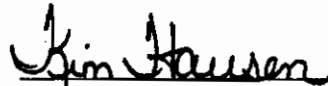
On this date mailed to:

Selena Renee' McMillan
2686 Broadridge Road
PO Box 1683
Lumberton, NC 28359
PETITIONER

Robert J. Blum
Special Deputy Attorney General
NC Department of Justice
9001 Mail Service Center
Raleigh, NC 27699-9001
ATTORNEY FOR RESPONDENT

This the 29th day of April, 2008.

Kim Hausen
Chief Hearings Clerk



Office of Administrative Hearings
6714 Mail Service Center
Raleigh NC 27699-6714
919/733-0926

8-2008(FRI) 10:51

(FAX)910 738 1817

P. 002/003

PLEASE PRINT CLEARLY OR TYPE

STATE OF NORTH CAROLINA

COUNTY OF (1) ROBESON

IN THE OFFICE OF
ADMINISTRATIVE HEARINGS
OB DHR 1010

(2) Selena Renee McMillan (parent))

Eric Terence Chromatic III)
(your name) PETITIONER,)

PETITION
FOR A
CONTESTED CASE HEARING

(3) Department of Medical Affairs)
DHHS)
RESPONDENT.)

(The State agency or board about which you are complaining))

I hereby ask for a contested case hearing as provided for by North Carolina General Statute § 150B-23 because the Respondent has:

(Briefly state facts showing how you believe you have been harmed by the State agency or board.)

" See attached documentation "

(If more space is needed, attach additional pages.)

(4) Because of these facts, the State agency or board has: (check at least one from each column)

deprived me of property;
 ordered me to pay a fine or civil penalty; or
 otherwise substantially prejudiced my rights;

AND

exceeded its authority or jurisdiction;
 acted erroneously;
 failed to use proper procedure;
 acted arbitrarily or capriciously; or
 failed to act as required by law or rule.

(5) Date: 4/18/08

(6) Your phone number: (910) 738-6733

(7) Print your full address: 2666 Broadridge Rd. Ligon, N.C. 28359 / P.O. Box 1683 Ligon, N.C. 28359
(street address/p.o. box) (city) (state) (zip)

(8) Print your name: Selena Renee McMillan for Eric Terence Chromatic III

(9) Your signature: Selena Renee McMillan

You must mail or deliver a COPY of this Petition to the State agency or board named on line (3) of this form. You should contact the agency or board to determine the name of the person to be served.

CERTIFICATE OF SERVICE

I certify that this Petition has been served on the State agency or board named below by depositing a copy of it with the United States Postal Service with sufficient postage affixed OR by delivering it to the named agency or board:

(10) Legal Counsel
(name of person served)

(11) DHHS / Department of Medical Affairs
(State agency or board listed on line 3)

(12) 2000 Mail Service Center Raleigh, N.C. 276099
(street address/p.o. box) (city) (state) (zip code)

(13) This on 18 day of April, 2008.

(14) Selena Renee McMillan
(your signature)

When you have completed this form, you MUST mail or deliver the ORIGINAL AND ONE COPY to the Office of Administrative Hearings, 6714 Mail Service Center, Raleigh, NC 27699-6714.

April 18, 2008

Office of Administrative Hearings
6714 Mail Service Center
Raleigh, NC 27699-6714

RE: Eric Cromatie, DOB: 9/23/03, Med. # [REDACTED]-2904-N

To Whom It May Concern,

My child Eric Cromatie has been receiving community support services from DirecCare Behavioral Services since Aug. 2007. Over this period of time he has made great progression in achieving his goals as outlined in his person centered plan. However, with his most recent authorization, he was reduced to 180 units. As a result, I contacted Value Options to request a letter documenting his change so that my child could qualify for maintenance of service. When I spoke with a representative from Value option on 3/11/08, I was informed that a letter had been mailed to my address. However, I had not received anything at that time. I requested that an additional letter be sent to complete an informal appeal. My provider at that time sent a copy of an informal appeal to DHHS hearing office on 3/18/08. My agency was informed that since it was did not have the Value Options logo, it would not be accepted. I made contact with Tara Larson, supervisor of customer service in regards to obtaining an informal appeal form on the week of 3/24/08. I received no response. I, along with my agency continued to make contact with Value Options and was informed that an additional informal appeals letter had already been sent to my address. Then on April 8th Ms. Jane Harris informed me that she made contact with Ms. Larson in regards to me not receiving an informal appeal letter. I was instructed that it was documented in their system that DirecCare spoke with a Value Options representative and should have received the appeal by this time. On 4/8/08, I was then informed that an additional letter would be sent again per Ms. Larson and would follow up with me as a result of the response. I received the appeals letter on 4/14/08 and 4/15/08. Ms. Harris informed me on 4/17/08 that she sent the informal appeal through certified letter but it she did not receive verification that I received the letter. As a result, the time frame had expired for an informal appeal. I feel that Value Options did not provide me nor my provider with the informal appeals information in a timely manner, thereby preventing Eric Cromatie from qualifying for the maintenance of service. My agency and myself have completed and provided necessary documentation to support Eric's ongoing need for Community Support services. It my request to appeal the decision made in the reduction of his hours and for your agency to review his information so that services may be rendered for community support services. If you have questions, you may contact me at 910 738-6733 or my provider at 910-738-1818.

Respectfully,

Ms. Selena R. McMillan
mother

FAX TRANSMITTAL COVER SHEET



Community Support Department
3555-C N. Roberts Ave
Lumberton, NC 28358
TELEPHONE: After Hours Crisis Line (910) 474-8095
Office: (910) 738-1818
FAX: (910) 738-1817

Date: 4-18-08

Pages (including cover sheet): 3

Send to: Office of Administrative Hearing

Fax #: 919-733-3478

Description/Remarks: Forward appeal, petition for case hearing for Eric Cromatic

From: Eric Cromatic, Release ^{ES 04/15/08} Attorney McMillan

If there are any problems with this transmission, please call the phone number above.
The documents accompanying this transmission contain confidential health information that is legally privileged. This information is intended only for the use of the individual or entity named above. The authorized recipient of this information is prohibited from disclosing this information to any other party unless required to do so by law or regulation and is required to destroy the information after its stated need is fulfilled.
If you are not the intended recipient you are hereby notified that any disclosure, copying, distribution, or action taken in reliance on the contents of these documents is strictly prohibited. If you have received this information in error, immediately notify the sender and arrange for destruction of these documents. **THANK YOU!!!**

1
to that

TRANSMISSION VERIFICATION REPORT

TIME : 04/18/2008 13:47
NAME : OAH
FAX : 919-733-3462
TEL : 919-733-2698
SER.# : BROM6J591775

DATE, TIME : 04/18 13:46
FAX NO./NAME : 919107381817
DURATION : 00:00:40
PAGE(S) : 02
RESULT : OK
MODE : FINE PC-FAX
ECM

04/18/2008 12:46

919-733-3462

Reception

PAGE 1/2

COVER PAGE

Date: 04/18/2008 12:46

NO. OF PAGE: 2 (include this page)

To:

From: Name: Reception
TEL & FAX: (TEL) 919-733-2698
(FAX) 919-733-3462
Company: Office of Administrative Hearings
Address: 424 N. Blount St.
Raleigh, NC

Comment:

PLEASE PRINT CLEARLY OR TYPE

STATE OF NORTH CAROLINA

COUNTY OF (1) Robeson

IN THE OFFICE OF ADMINISTRATIVE HEARINGS

08DHR 101D

(2) Selena Renee McMillan (parent)
Eric Terence Cromartie III
(your name) PETITIONER,

FILED
APR 25 P 2:19

OFFICE OF
ADMINISTRATIVE HEARINGS
PETITION
FOR A
CONTESTED CASE HEARING

v.
(3) Department of Medical Affairs
DHHS
RESPONDENT.
(The State agency or board about which you are complaining)

I hereby ask for a contested case hearing as provided for by North Carolina General Statute § 150B-23 because the Respondent has:
(Briefly state facts showing how you believe you have been harmed by the State agency or board.)

"See attached documentation"

(If more space is needed, attach additional pages.)

(4) Because of these facts, the State agency or board has: (check at least one from each column)
 deprived me of property; exceeded its authority or jurisdiction;
 ordered me to pay a fine or civil penalty; or acted erroneously;
 otherwise substantially prejudiced my rights; **AND** failed to use proper procedure;
 acted arbitrarily or capriciously; or
 failed to act as required by law or rule.

(5) Date: 4/18/08 (6) Your phone number: (910) 738-6733
(7) Print your full address: 26810 Broadridge Rd. L'ton, N.C. 28359 / P.O. Box 1683 L'ton, N.C. 28359
(street address/p.o. box) (city) (state) (zip)
(8) Print your name: Selena Renee McMillan for Eric Terence Cromartie III
(9) Your signature: Selena Renee McMillan

You must mail or deliver a COPY of this Petition to the State agency or board named on line (3) of this form. You should contact the agency or board to determine the name of the person to be served.

CERTIFICATE OF SERVICE

I certify that this Petition has been served on the State agency or board named below by depositing a copy of it with the United States Postal Service with sufficient postage affixed OR by delivering it to the named agency or board:

(10) Legal Counsel (name of person served) (11) DHHS / Department of Medical Affairs (State agency or board listed on line 3)
(12) 2600 Mail Service Center Raleigh, N.C. 27609 (city) (state) (zip code)
(street address/p.o. box)

(13) This the 18 day of April, 2008.

(14) Selena Renee McMillan (your signature)

When you have completed this form, you MUST mail or deliver the ORIGINAL AND ONE COPY to the Office of Administrative Hearings, 6714 Mail Service Center, Raleigh, NC 27699-6714.

April 18, 2008

Office of Administrative Hearings
6714 Mail Service Center
Raleigh, NC 27699-6714

RE: Eric Cromatie, DOB: 9/23/03, Med. # 947-52-2904-N

To Whom It May Concern,

My child Eric Cromatie has been receiving community support services from DirecCare Behavioral Services since Aug. 2007. Over this period of time he has made great progression in achieving his goals as outlined in his person centered plan. However, with his most recent authorization, he was reduced to 180 units. As a result, I contacted Value Options to request a letter documenting his change so that my child could qualify for maintenance of service. When I spoke with a representative from Value option on 3/11/08, I was informed that a letter had been mailed to my address. However, I had not received anything at that time. I requested that an additional letter be sent to complete an informal appeal. My provider at that time sent a copy of an informal appeal to DHHS hearing office on 3/18/08. My agency was informed that since it was did not have the Value Options logo, it would not be accepted. I made contact with Tara Larson, supervisor of customer service in regards to obtaining an informal appeal form on the week of 3/24/08. I received no response. I, along with my agency continued to make contact with Value Options and was informed that an additional informal appeals letter had already been sent to my address. Then on April 8th Ms. Jane Harris informed me that she made contact with Ms. Larson in regards to me not receiving an informal appeal letter. I was instructed that it was documented in their system that DirecCare spoke with a Value Options representative and should have received the appeal by this time. On 4/8/08, I was then informed that an additional letter would be sent again per Ms. Larson and would follow up with me as a result of the response. I received the appeals letter on 4/14/08 and 4/15/08. Ms. Harris informed me on 4/17/08 that she sent the informal appeal through certified letter but it she did not receive verification that I received the letter. As a result, the time frame had expired for an informal appeal. I feel that Value Options did not provide me nor my provider with the informal appeals information in a timely manner, thereby preventing Eric Cromatie from qualifying for the maintenance of service. My agency and myself have completed and provided necessary documentation to support Eric's ongoing need for Community Support services. It my request to appeal the decision made in the reduction of his hours and for your agency to review his information so that services may be rendered for community support services. If you have questions, you may contact me at 910 738-6733 or may provider at 910-738-1818.

Respectfully,

Ms. Selena R. McMillan
mother

A handwritten signature in cursive script that reads "Selena R. McMillan". The signature is written in dark ink and is positioned below the typed name and title.