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Title of Document: Appeal and Reconsideration of Decisions

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Applicability: All DDSN Divisions; DDSN Regional Centers; DSN Boards and Contract Service Providers

INTRODUCTION:

This directive establishes policies and procedures for appeal of decisions concerning eligibility for and services solely funded by the South Carolina Department of Disabilities and Special Needs (DDSN), Disabilities and Special Needs Boards, and Contracted Providers. Authority for this procedure is set forth in S.C. Code Ann. § 44-26-80 (2018) relating to the rights of individuals receiving services from DDSN. Additionally, this directive establishes the procedure for the reconsideration of decisions made by DDSN and/or its network of providers that affect the receipt of Medicaid services by Medicaid participants.

POLICY:

It is the policy of DDSN that each applicant or service recipient has the right to appeal or request reconsideration of decisions made by DDSN, DSN Boards, or Contracted Service Providers. DDSN DSN Boards, and Contracted Service Providers shall ensure that all concerns of applicants and service recipients are handled appropriately and in a timely manner.

DDSN utilizes funding appropriated by the South Carolina General Assembly to support those eligible for the agency's services. For some DDSN services, the funding appropriated by the South Carolina General Assembly is the only source of funding. However, in order to maximize the appropriated funding, DDSN also partners with the South Carolina Department of Health and Human Services (SCDHHS) to utilize Medicaid as a source of funding for services. Therefore, DDSN has final authority over some decisions, but when Medicaid funding is used or affected, SCDHHS, the Medicaid Agency, has final authority over the decision.

DDSN has the final authority over decisions that are solely funded by DDSN (*i.e., not funded by Medicaid*) and those solely within its established authority. In the context of this document those decisions will be referred to as "**DDSN Decisions.**" When an applicant or service recipient disagrees with a decision that was made by or on behalf of DDSN, the applicant or service recipient can appeal the decision to DDSN. Appeals of DDSN decisions that fall within DDSN's purview to hear are those decisions related to eligibility for DDSN services and decisions about services that are solely funded by DDSN. **DDSN decisions** that may be appealed include, but may not be limited to:

- Eligibility for DDSN services
- Determination of Critical Needs or Placement on Residential Waiting list for people not enrolled in the Intellectual Disability/Related Disability (ID/RD) or the Head and Spinal Cord Injury (HASCI) Waiver
- Individual and Family Support and State Funded Respite
- State Funded Case Management
- State Funded Follow Along
- State Funded Community Supports
- Calculation of Room and Board

SCDHHS, the Medicaid Agency, has final authority over decisions made regarding programs and services funded by Medicaid. In the context of this document, these decisions will be referred to as "**SCDHHS decisions.**" While the final authority for Medicaid decisions rests with SCDHHS, because DDSN operates Medicaid Home and Community Based Services (HCBS) Waivers on behalf of the SCDHHS and is a provider of Medicaid-funded services, SCDHHS allows DDSN to reconsider decisions made by DDSN or its network of providers before providing a Fair Hearing to a Medicaid participant. The reconsideration by DDSN is allowed to ensure that established Medicaid policy and procedures were followed and appropriately applied when the decision was made.

SCDHHS decisions that may be reconsidered by DDSN include, but may not be limited to:

- Denial of Intermediate Care Facility for Individuals with Intellectual Disabilities (ICF/IID) Level of Care
- Denial of Nursing Facility (NF) Level of Care when reevaluated
- Other:
 - Denial of Placement on an HCBS Waiver waiting list
 - Denial of ID/RD Waiver Reserved Capacity
 - Denial of HASCI Waiver Reserved Capacity
 - Denial of Community Supports (CS) Waiver Reserved Capacity

- Denial, suspension, reduction or termination of a HCBS Waiver funded service
- Denial, suspension, reduction or termination of a Medicaid State Plan service authorized by a Waiver Case Manager
- Denial of the choice of HCBS Waiver service provider

DEFINITIONS:

Applicant:

- a. One who has contacted DDSN (via the toll free telephone number) to seek a determination of eligibility for DDSN services or by proxy, contact was made by the applicant's legal guardian.
- b. One who has contacted DDSN or a DDSN qualified Case Management provider to seek enrollment or one for whom enrollment is sought by a legal guardian in one of the Home and Community Based Services Waivers operated by DDSN.
- c. One who has contacted their Case Management provider or DDSN to seek a determination of ICF/IID Level of Care or one for whom a determination is sought by a legal guardian.

Service Recipient:

- a. One who has been determined by DDSN to meet the criteria for eligibility for DDSN services, or his/her legal guardian.
- b. One who is enrolled in a Home and Community Based Services Waiver operated by DDSN or by proxy, his/her legal guardian.

Representative:

- a. One, who with the consent of an individual who is not adjudicated incompetent, assists the applicant or service recipient.
- b. One, who with the consent of an individual's legal guardian, assists the applicant or service recipient.

Appeal:

A procedure by which a party dissatisfied with a decision, determination or ruling may refer the matter to a higher authority for review. In the context of this document, an appeal is a request by a DDSN applicant or service recipient to reverse a decision regarding DDSN eligibility or a service or program solely funded by DDSN.

Reconsideration:

A review of a decision to ensure the decision comports with applicable Medicaid policy or procedures. In the context of this document, a reconsideration is a review by DDSN of a decision made by DDSN or its network of service providers to ensure that applicable Medicaid

policy and/or procedures were appropriately applied when making the decision. If dissatisfied with the outcome of the reconsideration, the Medicaid participant may request a Fair Hearing from the Division of Appeals and Hearings at SCDHHS.

PROCEDURES FOR APPEAL OF DDSN DECISIONS:

A. Eligibility for DDSN Services

Step 1: Appeal in Writing:

When an appeal is desired by the applicant, a signed and dated written appeal of the denial must be made within 30 calendar days of the date of the eligibility decision. The appeal must state the reason(s) the denial was in error, and include any additional supporting information. The appeal must be made in writing to the State Director and sent by letter to the South Carolina Department of Disabilities and Special Needs-Appeals, 3440 Harden Street Extension, Columbia, South Carolina 29203 or by email to appeals@ddsn.sc.gov. Reasonable accommodations to assist with communication will be provided upon request. (See Attachment C: PROCESS FOR APPEAL OF DDSN DECISIONS)

Step 2: Review of Decision:

Upon receipt of the written appeal, all information shall be reviewed by the State Director using the eligibility criteria as set forth in the Department's regulation addressing "Eligibility." If the State Director determines new evaluation data is needed, no decision shall be made until this new evaluation data is received.

The applicant shall be notified in writing that the new evaluation is needed within 30 calendar days of receipt of the written appeal.

Step 3: Decision Rendered:

A written decision shall be provided to the applicant within 30 calendar days of receipt of the written appeal or receipt of the new evaluation data. In accordance with S.C. Code Ann. § 44-20 430 (2018), the decision of the State Director is final.

B. Services Solely Funded By DDSN or Issues Solely Within The Established Authority of DDSN

Step 1: Appeal in Writing:

When an appeal is desired by the person eligible for services from the Department, a signed and dated written appeal of a decision to deny, suspend, reduce or terminate a service solely funded by the Department shall be made within 30 calendar days of the notification of the decision. The appeal shall state the reason(s) the denial/suspension/reduction/termination was in error including any additional supporting information. The appeal shall be made by letter: South Carolina Department of Disabilities and Special Needs-Appeals, 3440 Harden Street Extension, Columbia, South Carolina 29203 or email: appeals@ddsn.sc.gov sent to the State Director of the

Department. Reasonable accommodations to assist with communication will be provided upon request. (See Attachment C: PROCESS FOR APPEAL OF DDSN DECISIONS)

Step 2: Review of Decision:

Upon receipt of the appeal, all available information shall be reviewed by the State Director.

Step 3: Decision Rendered:

A written decision shall be provided to the person eligible for services within 30 calendar days of receipt of the written appeal. The decision of the State Director shall be final.

RECONSIDERATION OF SCDHHS DECISIONS:

A. ICF/IID Level of Care

An adverse decision regarding an initial determination or an annual re-determination of ICF/IID Level of Care made by or upheld by the DDSN Eligibility Division may be reconsidered if relevant information not previously considered is available. Requests for reconsideration must be made in writing by the applicant/representative within 30 calendar days of the adverse decision. Written requests for reconsideration may be sent to the State Director of DDSN by email to appeals@ddsn.sc.gov or by mail to 3440 Harden Street Extension, Columbia, SC 29203. (See Attachment A: PROCESS FOR RECONSIDERATION OF SCDHHS DECISIONS)

If after reconsideration, including consideration of new information, the determination remains unchanged, the applicant may appeal to DHHS-Division of Appeals and Hearings. (See Attachment B: SCDHHS MEDICAID FAIR HEARING PROCESS)

NOTE: For those applying for Medicaid through the Tax Equity and Fiscal Responsibility Act (TEFRA), appeals of adverse ICF/IID Level of Care decisions must be made directly to DHHS-Division of Appeals and Hearings. DDSN cannot reconsider these decisions.

B. Nursing Facility Level of Care Re-Evaluations

An adverse decision regarding an annual re-evaluation of a Nursing Facility Level of Care by a Waiver Case Manager will automatically be reviewed by staff of DDSN's Head and Spinal Cord Injury (HASCI) Division prior to the expiration of the current Level of Care determination. A written request to DDSN for reconsideration is not required.

If the adverse decision is upheld by HASCI Division staff, an appeal may be made by the waiver participant to DHHS-Division of Appeals and Hearings. (See Attachment B: SCDHHS MEDICAID FAIR HEARING PROCESS)

C. Other SCDHHS Decisions

Written requests for reconsideration may be sent to the State Director of DDSN by email to appeals@ddsn.sc.gov or by mail to 3440 Harden Street Extension, Columbia, SC 29203. A formal request must be made in writing within 30 calendar days of receipt of notification of the adverse decision. A copy of the written notification of the adverse decision must be submitted along with the basis of the complaint and the relief sought. The request must be dated and signed by the Medicaid participant/representative. Reasonable accommodations to assist with communication will be provided upon request. (See Attachment A: PROCESS FOR RECONSIDERATION OF SCDHHS DECISIONS)

If, after reconsideration, the decision is upheld, a Fair Hearing may be requested by the Medicaid participant to SCDHHS-Division of Appeals and Hearings. (See Attachment B: SCDHHS MEDICAID FAIR HEARING PROCESS)



Barry D. Malphrus
Vice Chairman



Gary C. Lemel
Chairman

To access the following attachments, please see the agency website page “Attachments to Directives” under this directive number at <https://ddsn.sc.gov/providers/ddsn-directives-standards-and-manuals/current-directives>

Attachment A: PROCESS FOR RECONSIDERATION OF SCDHHS DECISIONS

Attachment B: SCDHHS MEDICAID FAIR HEARING PROCESS

Attachment C: PROCESS FOR APPEAL OF DDSN DECISIONS

Related Policies: 535-08-DD: Concerns of People Receiving Services: Reporting and Resolution

700-02-DD: Compliance with Title VI of the Civil Rights Act of 1964, Americans with Disabilities Act of 1990, Age Discrimination Act of 1975 and Section 504 of the Rehabilitation Act of 1973 and Establishment of a Complaint Process