STATE OF NEW HAMPSHIRE
SUPREME COURT

Case No. 2018-0092

PETITION OF KYLE GUILLEMETTE

APPELLANT'S BRIEF

Appeal by Rule 11 Petition for Original Jurisdiction
From the N.H. Department of Health and Human Services Administrative Appeals Unit

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QUESTIONS PRESENTED

I. Whether the Department of Health and Human Services erred as a matter of law when it ruled that the notice requirements and reasons for discontinuing state funded developmental services housed in RSA 171-A:8 and He-M 310.07 did not apply to direct service providers discontinuing services to an individual as the result of the erroneous application of a narrow and unrelated Department definition of the term "termination" that was written only to apply to an Area Agency's decision to reduce or eliminate services from a person's individual service agreement.

STATEMENT OF THE CASE

Appellant appeals the decision of the Administrative Appeals Unit ("AAU") of the New Hampshire Department of Health and Human Services (the "Department") upholding Monadnock Worksource ("Worksource") termination of services to the Appellant without compliance with the due process and legal basis requirements of RSA 171-A:8 and He-M 310.07. The law as written is clear that these provisions apply to Worksource as a service provider.

On April 24, 2017 Appellant filed an appeal with the Department seeking a fair hearing on Worksource's termination of services to Appellant without complying with the requirements of RSA 171-A:8 and He-M 310.07. Appendix (hereinafter "App.") 170. Simultaneously, the Appellant filed a complaint with the Office of Client and Legal Services ("OCLS") on the same basis.[1] The OCLS complaint investigator initially found in favor of the Appellant on this complaint. However, upon the request of Worksource, the administrator of the Bureau of Developmental Services ("BDS") reviewed and overturned the decision of the complaint

[1] N.H. Code Admin. R. He-M 202.03

investigator finding instead in favor of Worksource. On July 13, 2017, the Appellant appealed this decision to the AAU. App. 188.

A pre-hearing was held at the AAU on June 14, 2017 at which time the parties agreed that the matter could be decided by motion since the critical issue was whether Worksource, as a service provider, was required to comply with the requirements of RSA 171-A:8 and He-M 310.07. On August 1, 2017, Appellant filed a Motion for Summary Judgment. App. 193-206. with the AAU. On September 1, 2017, Worksource filed an Objection to Motion for Summary Judgment and Cross-Motion for Summary Judgment. App. 207-259. On October 17, 2017 the AAU consolidated the initial appeal and the second appeal filed by the Appellant regarding the BDS decision in the OCLS complaint.[2] On November 3, 2017 BDS filed a Motion for Summary Judgment. App 278-303. On November 15, 2017, Appellant filed an Objection to the Motion for Summary Judgment filed by BDS. App. 304-310.

On December 1, 2017, the AAU issued a ruling on Motions and Cross-Motions for Summary Judgment finding in favor of Worksource. Attached at p. 23. On December 28, 2017, the Appellant filed a Motion for Reconsideration and Rehearing App. 320-329. Appellant's Motion for Reconsideration and Rehearing was denied on January 22, 2017. Attached at p.32 The instant appeal followed.

STATEMENT OF FACTS

Appellant Kyle Guillemette is a young man with a developmental disability who is eligible to receive developmental services pursuant to NH RSA 171-A. Monadnock Developmental Services ("MDS") is the Area Agency which coordinates and develops the

[2] Due to an administrative oversight, the AAU was unaware of the second appeal filed by the Appellant until October 2017 at which point the two appeals were consolidated at a status conference. Both appeals are identical as to facts and issues.

individual service plan for the Appellant. MDS, in turn, sub-contracts with Worksource, a direct service provider, to implement the Appellant's individual service agreement by providing staff and daily supports for all of Mr. Guillemette's programming. Worksource has been Mr. Guillemette's direct service provider for the past five years.

On March 31, 2017, Worksource sent a letter to MDS stating that it would be terminating Mr. Guillemette's services within 30 days. At no time was written notice of this adverse action nor the basis for this action provided to Mr. Guillemette or his guardian.

Several days later, by happenstance, Mr. Guillemette's guardian learned of the adverse action to be taken by Worksource, and appealed the decision to the Administrative Appeals Unit ("AAU"). Mr. Guillemette's guardian also filed a separate complaint with the Office of Client and Legal Services ("OCLS"), a division of the Department responsible for investigating potential violations of client rights. The basis for the AAU appeal and OCLS complaint was Worksource's decision to terminate services without following the procedural safeguards for clients receiving developmental services pursuant to RSA 171-A and He-M 310. Specifically, Appellant alleged that Worksource, as the direct service provider, failed to provide thirty days' written notice of its adverse decision to stop providing services, and failed to include a statement containing the specific permissible legal grounds for the decision to terminate services.

Because so few underlying facts are in dispute, on May 31, 2017 the parties agreed to submit cross motions for summary judgment in order to determine whether the procedural protections and safeguards listed in RSA 171-A:8 and He-M 310 apply to both the Area Agency and the provider agency or apply to the Area Agency only. The AAU upheld the actions of Worksource finding that, as a direct service provider, Worksource did not have the ability to "terminate" Appellant's services.

SUMMARY OF THE ARGUMENT

Although He-M 310.07 is entitled "Termination of Services" and specifically states that "*Provider agencies* shall only terminate services to individuals in accordance with RSA 171-A:8" [3] , there is no specific definition of the word "terminate" provided in the regulations. In reaching her decision, the Presiding Officer relied on a definition of "termination" found in He-M 503, the regulation which "establishes standards and procedures for the determination of eligibility, the development of individual service agreements, and the provision and monitoring of services which maximize the ability and informed decision-making authority of persons with developmental disabilities and which promotes the individuals personal development, independence, and quality of list in a manner that is determined by the individual." N.H. Code Admin. R. He-M 503.01 et seq. The definition of "termination" found in He-M 503 used by the Presiding Officer specifically states that a "cessation of services" can only be affected by an Area Agency. As such, the Presiding Officer concluded that Worksource, the direct service provider, could not terminate the Appellant's services and, as such, need not provide any written notice or due process to the individuals it serves before stopping services.

However, in choosing the definition of "termination" found in He-M 503, the Presiding Officer conflated the idea that a direct service provider could discontinue a service while the person still retains eligibility for and the right to receive that specific service in his or her individual service plan with the termination of that plan only possible by the Area Agency. The

[3] He-M 310.07(b)(emphasis added).

Presiding Officer's decision was also based on the Department's interpretation of its own regulation which overturned the OCLS complaint investigators finding of a rights violation.[4]

The Presiding Officer's reliance on the He-M 503 definition of "termination" allowed her to decline to make a determination whether provider agencies like Worksource are bound by either RSA 171-A or He-M 310. App. 318. It also allowed her to avoid application of the specific wording of He-M 310.07 and RSA 171-A:8. As a result, the Presiding Officer's decision effectively renders null and void the specific mandates of both RSA 171-A:8 and He-M 310.07, thereby denying individuals receiving developmental services their right to due process when a direct service provider chooses to stop providing services.

ARGUMENT

I. NEW HAMPSHIRE STATUTORY AND REGULATORY LANGUAGE CREATES A COMPREHENSIVE FRAMEWORK FOR THE DEVELOPMENTAL SERVICE DELIVERY SYSTEM.

A. The Framework Distinguishes the Roles of an Area Agency and a Direct Service Provider.

The New Hampshire Legislature developed a framework which requires the State to provide developmental services to eligible New Hampshire residents through the enactment of RSA 171-A. N.H. Rev. Stat. Ann. §171-A:1 et. seq. These services are delivered in the community by Area Agencies which are charged with determining eligibility, determining service needs, securing state funding and overseeing the implementation of services. N.H. Rev. Stat. Ann. §171-A:2, I-a. These Area Agencies must execute the administrative service

[4] While it is unclear how much weight the Presiding Officer placed on the Department's interpretation of its own regulation, Appellant will address why the Department's interpretation, and the deference given to it was made erroneously.

obligations themselves but often subcontract with "direct service providers" to provide the direct services to the person. The implementing regulations which create the blueprint for the Area Agencies are housed in He-M 503. N.H. Code Admin. R. He-M 503.

The statutory and regulatory framework governing the provision of developmental services is comprehensive, and charges different types of private organizations and the state with specific obligations and responsibilities. Many of the administrative responsibilities must be provided by the Area Agencies and cannot be discharged or subcontracted away to a direct service provider. These exclusive administrative duties include identifying people with developmental disabilities, determining whether a person's disability is eligible to receive services, and creating an individual service plan ("ISP") for an eligible client. N.H. Code Admin. R. He-M 503.09; N.H. Code Admin. R. He-M 503.10. Another exclusive administrative duty for the Area Agencies is the ability to modify or terminate developmental services for a client. N.H. Code Admin. R. He-M 503.15(e).

The Legislature and the Department understood that Area Agencies would not be expected to provide all of the services themselves. To that end, Area Agencies, under the supervision of the Department, are authorized to sub-contract with other organizations for the provision of direct services. N.H. RSA 171-A:18, II. Both the statute and its implementing regulations identify which responsibilities and accompanying statutory obligations are not the exclusive domain of the Area Agencies. These obligations may be performed by an Area Agency or delegated to direct service providers. Once an Area Agency has identified a person's service needs in the service planning process, the Area Agency typically identifies a direct service provider to administer the services. Id.

The Legislature and Department created a framework that treat direct service providers as separate and distinct entities from the Area Agencies. Direct service providers are identified in the statute as "administrators." N.H. Rev. Stat. Ann. §171-A:2. An "administrator" is defined as "the superintendent or chief administrative officer of any facility, or of any program or service for the developmentally disabled conducted under the supervision of the commissioner or any employee he so designates as his deputy." N.H. Rev. Stat. Ann. §171-A:2, I. As an organization licensed by the State of New Hampshire to provide services, Worksource operates under the supervision of the Department. In this case, the Bureau of Developmental Services ("BDS") is responsible for the oversight and monitoring of those agencies that provide services in the developmental system. Worksource is listed as a certified provider agency on the DHHS Bureau of Developmental Services website under list of "provider agencies[5]. To become eligible to provide community participation services ("day services") and to receive Medicaid funding, Worksource was required to submit an application to and be certified by the NH Bureau of Health Facilities Administration (BHFA), which is part of DHHS. N.H. Admin R., He-M 507.01; N.H. Admin R., He-M 507.06(a). The process for certification instructs prospective providers to submit an application which includes "written administrative policies and procedures, which shall comply with He-M 507.08(b)." N.H. Admin R., He-M 507.06(d)(4). He-M 507.08(b) further requires provider agencies to have written policies and procedures including "a policy on individual rights in accordance with He-M 202 and He-M 310." N.H. Admin R., He-M 507.08(b)(4).

The Department's regulations governing the developmental service system also distinguish between Area Agencies and the sub-contracted direct service providers. Specifically,

[5]See: https://www.dhhs.nh.gov/dcbcs/bds/documents/provideragencies.pdf

the regulations identify direct service providers as "provider agencies," which operate under the supervision of both the Area Agency and the Department. N.H. Code Admin. R. Ann He-M 503.02(ac); N.H. Code Admin R. 310.02(v). A provider agency is defined as "an area agency or another entity under contract with an area agency to provide services". Id. Because Worksource operates under a contractual arrangement with an Area Agency (MDS), they are unquestionably a "provider agency" as defined in the developmental service regulations.[6] Thus, there is a clear legal distinction between an Area Agency and a provider agency.

B. The Presiding Officer Erred as a Matter of Law When She Ruled That a Direct Service Provider Could Not "Terminate" a Service as Contemplated in RSA 171-A:8 and He-M 310.07.

In conjunction with the legal distinction between an Area Agency and a provider agency, there is a distinction between when and upon what basis an Area Agency can terminate an individual's services and when a provider agency can "terminate" services. The presiding officer failed to recognize this distinction by conflating multiple and distinct uses of the word termination.[7] The plain language of the statute and the regulations, however, make this distinction clear.

Statutes and administrative rules are interpreted using the same principals of construction. Bach v. N.H. Dep't of Safety, 169 N.H. 87, 92 (2016). The first step in the analysis is to examine the language of the statute and "ascribe the plain and ordinary meaning of the words used, looking at the rule or statutory scheme as a whole, and not piecemeal." In re Parker, 158 N.H. 499, 502 (2009). This Court has explained that "when a statute's language is plain and unambiguous, we do not need to look further for legislative intent, and we will not consider what

[6] See App. 228 (contract between MDS and MWS)
[7] For clarity, this brief will describe termination under He-M 503 as either termination or cessation and refer to termination under 171-A:8 and He-M 310.07 as a discontinuation or discontinued service.

the legislature might have said or add language that the legislature did not see fit to include." N.H. Assoc. of Counties v. Comm'r Dep't of Health & Human Servs., 156 N.H. 10, 15 (2007). The goal is simply "to apply statutes in light of the legislature's intent in enacting them and in light of the policy sought to be advanced." Id. Where possible, courts will interpret a statute in its entirety, noting that "The legislature is not presumed to waste words or enact redundant provisions and whenever possible, every word of a statute should be given effect." Town of Amherst v. Gilroy, 157 N.H. 275, 279 (2008). This Court has also stated that it will "presume that the legislature does not enact unnecessary and duplicative provisions." State v. Gifford, 148 N.H. 215, 217, 808 A.2d 1 (2002).

The language contained in He-M 310.07 and RSA 171-A:8 make it clear that direct service providers may discontinue providing services to an individual so long as certain specific notice requirements are met. The words contained in those provisions are not ambiguous nor open to interpretation. Their plain meaning is clear.

The presiding officer's conclusion, however, that direct support providers have no requirement to provide notice and due process to the client before discontinuing services was a result of an erroneous understanding of the word "termination" as used in He-M 310. Although there is no specific definition contained in either RSA 171-A or He-M 310 for "termination", the plain meaning of the term is clear as are the specific limits on the reasons why a direct service provider may discontinue a provision of services and the specific notice requirements required as imposed by the Legislature. N.H. Rev. Stat. Ann. §171-A:8. When the Legislature discussed discontinuing direct services it used the word termination. Id. There is no evidence that the Legislature was referring to the narrow definition of termination found in He-M 503, which is referring to reducing or ending a person's state funded developmental services through the

modification or termination of the person's service agreement.[8] This much narrower use of the word termination has a highly regulated set of procedures developed by the Department and can only be carried out by an Area Agency. N.H. Code Admin. R. He-M 503.02(an). The Presiding officer erred when she applied this narrow regulatory definition of "termination" of developmental services found in He-M 503.02 and for using the termination provision of He-M 503.15 instead of the more general- and undefined- use of termination found in the enabling statute as well as the specific regulation at issue in this appeal. Unlike the narrow He-M 503 definition of termination, RSA 171-A:8 permits a direct service provider to discontinue providing a service. Moreover, a termination under RSA 171-A:8 does not affect a person's entitlement to the service(s) in his or her service agreement. N.H. Rev. Stat. Ann. §171-A:8, II.

C. Termination Under He-M 503 Occurs Through a modification or Termination of an Individual's Service Agreement and May Only Be Performed by the Director of an Area Agency.

The Legislature and the Department use the term "termination" in two distinct ways in the regulations that govern the state funded developmental service system. One type of termination is administrative and occurs when an Area Agency undertakes a review and determines that an individual is no longer entitled to a particular service or all services. N.H. Code Admin. R. He-M 503.15. When this occurs, a person's individual service agreement may be revised or terminated completely. N.H. Code Admin. R. He-M 503.15 (d). This type of administrative termination is defined by the Department and specifies that only the director of an Area Agency has the authority to make a final decision regarding the proposed changes or elimination to an ISA. N.H. Code Admin. R. He-M 503.02(an). The Presiding Officer applied this narrow definition of administrative termination when examining the underlying facts of the

[8] "Termination" under He-M 503 is defined as "the cessation of a service by an Area Agency director with or without the informed consent of the individual or his guardian or representative. N.H. Admin. R. He-M 503.02(an).

Appellant's case. Under this interpretation, it is impossible for a direct service provider like Worksource to ever terminate a client. It allows direct support providers like Worksource to discontinue providing services for a client at any time, for any reason, and without notice or recourse. The Presiding Officer felt that this outcome was permissible because as a sub-contractor of an area agency, a direct service provider does not have the authority to modify or terminate an individual service agreement. The Presiding Officer noted that "Despite the use of termination in [Worksource's] letter discontinuing services to appellant, it is that that action was not a termination within the meaning of the rule. First the action was not taken by an 'Area Agency director.' Second, and more importantly, there has been no cessation of services."[9] App. 9.

II. TERMINATION BY A DIRECT SERVICE PROVIDER IS EXPLICITLY ALLOWED BY STATUTORY AND REGULATORY LANGUAGE.

A. The Statute Governing Services for People with Developmental Disabilities Allows "Administrators" to Terminate Services.

When the Legislature enacted RSA 171-A:8, it deliberately created a system where a direct service provider, for limited reasons, could discontinue providing services for an individual client. In this situation, a client remains entitled to the services described in his or her

[9] When a provider agency discontinues providing services to an individual client, that client does, in fact, lose the services and workers unique to that provider. Appellant has been a client of Worksource for five years in large part due to the close relationships he has formed with Worksource staff and other individuals in his program. Additionally, the services provided by Worksource are close to his home, making the program convenient for both him and his guardian. When Worksource decided to discontinue services, Appellant, in fact, lost attributes of his program which enabled him to thrive. Not all provider agencies are created equal. Here, Appellant not only lost the staff he had become close with, but also his friends in the program. These are not insignificant factors in the quality of Appellant's life, which is why due process and notice requirements are essential protections for a client to appeal a provider's decision to discontinue services.

ISA, but would need to receive those services from a different direct service provider. N.H. Rev Stat. Ann. §171-A:8. The Legislature titled this section of the statute "Termination of Service." Id. However, statutory termination does not apply as narrowly as the Department's implementing regulations in He-M 503.15.

The distinction between a direct service provider discontinuation of services and an administrative termination by an Area Agency is supported by statutory law. The statutory section titled "Termination of Service" discusses different responsibilities for both Area Agencies as well as administrators. N.H. Rev Stat. Ann. §171-A:8. With respect to this provision, both "Area Agency" and "administrator" are legislatively defined within the statute. N.H. Rev Stat. Ann. §171-A:2 This distinction clarifies than an administrator can be a representative of an Area Agency, but can also be any service provider that works under the supervision of the Department. Id. The statute allows for an administrator to "terminate" or discontinue services for an individual client. N.H. Rev Stat. Ann. §171-A:8, I. This ability to discontinue services can only occur for one of three reasons. Id. An "administrator may terminate service to a client at any time that such termination is deemed in the best interest of a client, when the client can function independently without such service or when the client has received optimal benefit from such service." Id. Thus, as an administrator, Worksource is limited in its authority to discontinue its provision of direct services to an individual client provided that it complies with the procedural safeguards in RSA 171-A:8 including important notice obligations. N.H. Rev. Stat. Ann. §171-A:8, III.

The Legislature intended for the termination provision in RSA 171-A to be understood as a means for direct service providers to discontinue services. The plain language of the statute demonstrates why the ability to discontinue services is not limited to Area Agencies. Section II

of RSA 171-A:8 provides that "in every instance of termination, the administrator shall refer the client to the Area Agency which, in turn, shall recommend an appropriate service, or be responsible for contracting the client at regular intervals after termination for as long as deemed necessary." N.H. Rev Stat. Ann. §171-A:8, II. This section illustrates how the legislature viewed the word "termination" by a direct service provider to be distinct from a termination of a client's eligibility or individual service agreement.[10] If the Legislature intended to limit the word "termination" to instances where developmental services stopped completely, the second clause would be unnecessary. That is, if a person's developmental services were completely terminated by an Area Agency, the Area Agency would have no further responsibility to recommend alternative services. Instead, the statute requires that when an administrator discontinues services to an individual, the Area Agency remains obligated to make sure that a person's individual service agreement is fulfilled by finding alternative appropriate services. Id.

The only logical reading of RSA 171-A:8 is that the term "administrator" includes provider agencies (as is defined) as it would allow for direct service providers to discontinue services in certain circumstances by mandate that the Area Agency and recipients be alerted of the changes and impending need for services from a new service provider. A more limited reading would effectively redefine the statutory definitions of administrator and provider agency so narrowly that the entirety of RSA 171-A:8 would apply only to Area Agencies. If this were the intent, the Legislature would have simply used the term Area Agency, as it is also a statutorily defined term. N.H. Rev Stat. Ann. §171-A:2, I-b.

[10] Individual service agreements may only be created or modified by the Area Agency. Direct service providers are responsible for providing the programming found in a client's individual service agreement.

Further, the developmental services statute also allows a direct service provider to "recommend termination of service *or* may refer the client to a more appropriate service pursuant to NH RSA 171-A:8." N.H. Rev Stat. Ann. §171-A:11 [emphasis added]. This provision demonstrates that the Legislature intentionally distinguished between a termination or cessation by an Area Agency and a discontinuation of services pursuant to RSA 171-A:8. While a direct service provider may recommend complete termination of a developmental service for a client, the Area Agency is still the only entity empowered by the Department to make such a change.

B. The Distinction Between Direct Service Provider Discontinuation of Services and That of Removing a Service from a Service Agreement is Supported by Regulatory Law.

When the developmental service system was created, the Legislature authorized the Department to develop rules around the eligibility and provision of developmental services. N.H. Rev. Stat. Ann §171-A:3. As part of its delegated authority, the Department was charged with developing rules to protect "the rights, dignity, autonomy and integrity of clients, including specific procedures to protect the rights established in this chapter." N.H. Rev Stat. Ann. §171-A:14, V. In addition to rules guaranteeing client service rights found in He-M 503.07 ("Service Guarantees"), the Department also enacted Rule He-M 310 "Rights of Persons Received Developmental Services or Acquired Brain Disorder Services in the Community." N.H. Code Admin. R. He-M 503.07; N.H. Code Admin. R. He-M 310.[11] The purpose of He-M 310 is to "define the rights of... persons who have been found eligible for services under He-M 503.03 or He-M 522.03 and who are being served in the community." N.H. Code Admin. R. He-M 310.01.

[11] While the developmental service system is regulated in He-M 500, He-M 300 contains important parallel rights sections for people with developmental disabilities and people receiving community or institutional mental health services. N.H. Code Admin. R He-M 309; N.H. Code Admin. R He-M 310; N.H. Code Admin. R He-M 311.

The administrative rules guaranteeing client rights in He-M 310 further demonstrate that the Department and the Legislature understood that direct service providers should be allowed to discontinue services but may only do so if proper procedure is followed. The He-M 310 administrative rules contain a section entitled "Termination of Services." N.H. Code Admin. R. He-M 310.07. Like its enabling statute, "terminate" is not defined in the section of the rules, however, the section specifically references the similarly titled RSA 171-A:8. Id. Further, He-M 310.07 contains parallel limitations on the reasons a direct service provider may discontinue services and the accompanying notice obligations. Id. N.H. Rev. Stat. Ann. §171-A:8.

Under He-M 310, direct service providers are explicitly permitted to discontinue service for individuals receiving developmental services so long as they comply with RSA 171-A:8. N.H. Code Admin. R. He-M 310.07(b). Similar to the statute, the rule contains notice and due process requirements when a decision is made to discontinue services. N.H. Code Admin. R. He-M 310.07(c)-(d). That He-M 310.07 specifically authorizes a direct service provider to discontinue services demonstrates that the Department understood there would be occasions where a direct service provider may need to discontinue a service that remains required in an individual's service agreement.

In contrast to the Department's use of "termination" in the direct support provider provisions of He-M 310.07, the Department defines termination and uses it differently and exclusively for Area Agencies in He-M 503, a section of rules which comprehensively regulates services eligibility and development of individual service agreements. This comparison provides further evidence that the Department and the Legislature envisioned two distinct types of "termination" as found in the termination provisions of He-M 503, He-M 310.07, and RSA 171-A:8. All three provisions contain the word "termination" but the mechanism of who may

terminate, how termination is triggered, and effect of termination are very different. Under He-M 503, only an Area Agency, individual, guardian, or representative may trigger termination. N.H. Code Admin. R. He-M 503.15. Because an Area Agency is the only entity with authority to determine eligibility and draft a service plan, limiting the authority to terminate under He-M 503 makes sense because that type of termination may result in an individual no longer being eligible to receive any services from the developmental system.

C. The Different Standards for "Terminating" a Client's Services Demonstrate that the Legislature Envisioned a System That Would Allow a Direct Service Provider to Discontinue Services.

The Legislature and Department intended to create different standards for justifying termination in He-M 503 and the discontinuation of services under RSA 171-A:8 and He-M 310.[12] In He-M 503, a service can only be terminated by an Area Agency director for two reasons: (1) if the client can function without the service; or (2) if the service(s) are no longer necessary because they have been replaced by different supports or services. N.H. Code Admin. R. He-M 503.15(b). The statutory provision, on the other hand, differs by allowing three justifications for discontinuing services: (1) if it is in the best interest of the client; (2) the client can function independently; or (3) the client has received the maximum benefit of the service. N.H. Rev. Stat Ann. §171-A:8, I. Gaining functional independence overlaps in both RSA 171-A and He-M 503. However, RSA 171-A contains a "best interest" standard that does not exist in He-M 503. This best interest standard allows a direct service provider to discontinue the provision of services if providing such service is not in the best interest of the individual.

[12] The standard for terminating services under He-M 310 is the same as RSA 171-A:8. As discussed supra, when a direct service provider terminates a service under He-M 310, it must be done in accordance with RSA 171-A:8. N.H. Code Admin. R. He-M 310.07(b).

Importantly, these discontinued services are still viewed as necessary and remain included in the client's individual service agreement.

Allowing a direct service provider to "terminate" services so long as it is in the "best interest" of a client shows that the Legislature and the Department intended for the developmental service system to allow a provider to discontinue their obligation to provide services so long as there is justification to do so and notice is provided. By including the best interest standard in the RSA, the Legislature struck a balance between the rights of the individual and the reality that sometimes a direct service provider is no longer in a position to provide the agreed upon services. Having made this decision, however, the Legislature also saw fit to require direct service providers to provide the individual client with notice and due process, a critical cornerstone of the developmental service system. N.H. Code Admin. R. He-M 310.07 (c)-(d).

III. THE PRESIDING OFFICER'S DECISION THAT A DIRECT SERVICE PROVIDER LACKS THE ABILITY TO TERMINATE SERVICES CONFLICTS WITH THE PLAIN LANGUAGE OF THE STATUTE AND REGULATIONS AND IS CONTRARY TO THE INTENT OF THE DEVELOPMENTAL SERVICES SYSTEM

The Presiding Officer's ruling that a direct service provider cannot terminate a service leads to the untenable result that RSA 171-A:8 does not apply to direct service providers and renders the requirements of He-M 310.07 null and void. This interpretation of RSA 171-A:8 is in conflict with easily discernable legislative intent. The Presiding Officer reached this erroneous conclusion after using a narrow definition of termination.

Importing and using the definition of termination from He-M 503.02 leads to one of two outcomes, each of which is contrary to law. First, as just discussed, RSA 171-A:8 would be applied to Area Agencies and would not apply to other "administrators" of developmental

services, such as direct service providers. Second, if the definition were applied, it would grant a direct service provider authority to modify or end an individual's service agreement by "terminating" services as defined in He-M 503.02(an). Neither of these outcomes fits a basic reading of the statutory and regulatory law or legislative or departmental intent. Rather, interpreting the plain meaning of "termination" to be a discontinuation of a service rather than an amendment of an individual service agreement leads to a common sense outcome and is consistent with the legislative intent that allows a direct service provider to discontinue a service without disrupting a person's eligibility for services that were agreed upon in a highly regulated process with the Area Agency. It also permits a logical and consistent reading of the statute and regulation as a whole.

A. The Presiding Officer Erred by Giving Too Much Deference to an Incorrect Interpretation by the Department.

In reaching her decision, the Presiding Officer improperly relied on a decision issued by the Department concerning an appeal filed by Appellant to the Office of Client and Legal Services (OCLS). The Department determined, without analysis, explanation or reference to any statutory or regulatory provision, that a direct service provider does not have the right to terminate the services of a client. In reaching this decision, the Department makes no mention of the definition of "termination" in He-M 503, does not specifically address the application of the specific language contained in RSA 171-A:8 or He-M 310 nor provide any reasoning or justification of its decision.

While some deference is given to an agency's interpretation of its own regulations or statute, that deference is not total. Appeal of Michele, 168 N.H. 98, 101 (2015). This Court is the final arbiter of the legislature's intent as expressed in the words of the statute considered as a whole. Appeal of Town of Seabrook, 163 N.H. 635, 644 (2012). Interpretations of an Agency's

own regulations are examined "to determine if [the decision] is consistent with the language or the regulation and with the purpose which the regulation is intended to serve." Appeal of Old Dutch Mustard Co., 166 N.H. 501, 506 (2014). Here, the Bureau of Developmental Services Director ("the BDS Director") overturned the decision of the complaint investigator. The Director's decision did not provide a basis for the decision other than to simply overturn the initial OCLS finding. The Presiding Officer noted in her ruling that it is unknown whether the BDS Director's decision overturned the finding because of her belief that the RSA 171-A:8 and He-M 310.07 provisions did not apply to Worksource, or whether those provisions were not triggered because there was no termination of services. In either case, the Presiding Officer erred by accepting the BDS Director's interpretation at face value without considering the plain language and intent of the statute and regulations actually at issue in this appeal.

B. The Unsupported Decision by the Department is Inconsistent with the Language, Purpose and Intent of The Statute and Regulations Governing the Developmental System.

As Appellant has argued, a plain reading of the statute and governing regulations demonstrates that the Department's decision and the Presiding officer's reliance on that decision were improper. Courts first interpret legislative intent "from the statute as written will not consider what the legislature might have said or add language that the legislature did not see fit to include." Appeal of Local Gov't Ctr., 165 N.H. 790, 804 (2014). The statute permits "administrators" to terminate services for an individual. N.H. Rev. Stat. Ann. 171-A:8. If the Legislature intended to limit the ability to terminate services to only Area Agencies, the language of the statute would reflect that intent. Numerous sections throughout RSA 171-A restrict responsibilities to the Area Agencies, but discontinuing services contains no such limitation. Similarly, the Department did not limit the ability to discontinue services under He-M 310 to

only Area Agencies, as they chose to in He-M 503. Instead, the He-M 310 regulations explicitly permits a provider agency (direct service provider) to terminate services of a client. N.H. Admin. R. He-M 310.07. These decisions to empower direct service providers to discontinue services were made deliberately, are in accordance with the overall purpose and intent of the developmental service system, and strike a balance between the rights of individuals and the practical realities faced by direct service providers.

Even if the plain meaning of the statute and regulations concerning the ability to discontinue services were ambiguous, the Department failed to consider the overall purpose and intent of the developmental service statute and regulations. The developmental service system was created to deliver community based programming in a manner that reflects the desire of people with developmental disabilities to live their own lives and maximize their independence. N.H. Rev. Stat. Ann §171-A:1. The Legislature intended the system to be based on the participation of individuals and their families to choose appropriate services "recognizing that they are best able to determine their own needs." NH RSA 171-A:1, I. The Department's decision allows a direct service provider to discontinue services for any reason that they see fit and leaves clients without the ability to challenge that decision.

The purpose of the developmental service system emphasizes the importance of self-determination and independent decision making regarding the services that he or she receives. By limiting the ability of a service recipient to receive notice and provide an opportunity to challenge decisions about services and providers made on his or her behalf, the Presiding Officer and the Department undermine the very regulations that were drafted to preserve client rights.

CONCLUSION

For all the reasons discussed above, the Final Decision of the Presiding Officer should be reversed, with findings that Appellant was entitled to notice and the specific legal justification from the provider agency, Worksource, prior to his services being stopped.

REQUEST FOR ORAL ARGUMENT

Counsel for Appellant requests fifteen minutes for Oral Argument. Attorney James Ziegra will argue before the Court.

I hereby certify that the Final Decision and Ruling and Motion to Reconsider are appended to the brief.

Respectfully submitted this 31st day of July, 2018.

Kyle Guillemette
By and through his attorneys,

James Ziegra, Esq., NH Bar No. 20689
Disability Rights Center-NH
64 N. Main St. – Suite 2
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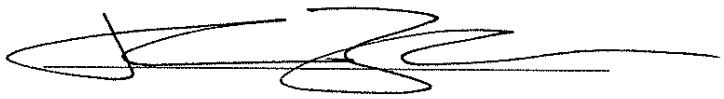
(603) 228-0432

CERTIFICATION OF SERVICE

I hereby certify that two copies of the above-described APPELLANT'S BRIEF was mailed, postage prepaid to: N.H. Dept. of Health and Human Services, AAU, 105 Pleasant St., Room 121C, Concord, NH 03301-3857; to Karyn Forbes, Esq. 107 Storrs St., Concord, NH 03301; to John MacIntosh, Esq. 24 Montgomery St., Concord NH 03301; and to the Attorney General's Office, 33 Capitol St., Concord, NH 03301.

Date: July 31, 2018



James Ziegra, Esq.

STATE OF NEW HAMPSHIRE

DEPARTMENT OF HEALTH AND HUMAN SERVICES

ADMINISTRATIVE APPEALS UNIT

APPEAL OF KYLE GUILLEMETTE c/o Cindy Robertson, Esq. Disability Rights Center 64 North Main Street, Suite 2 Concord, New Hampshire 03301	Docket Nos. 2017-465, 871 RULING ON MOTIONS AND CROSS-MOTIONS FOR SUMMARY JUDGMENT

I. BACKGROUND AND JURISDICTIONAL STATEMENT

The procedural history of these cases is somewhat convoluted, but a complete understanding of that history is necessary to appreciate the present procedural posture of the cases. On March 31, 2017, Monadnock Worksource (Worksource) sent a written notice to Monadnock Developmental Services (MDS) advising them that they planned to terminate services to Kyle Guillemette (Appellant) effective May 1, 2017. On April 12, 2017, Appellant's mother and guardian, wrote to Worksource requesting that they reconsider their decision. Worksource responded by letter dated April 18, 2017, declining to reconsider the earlier decision.

By letter dated April 24, 2017, the Disability Rights Center (DRC), then initiated a "complaint" on behalf of Appellant alleging that Appellant's services had been improperly terminated by Worksource, a provider agency for MDS. DRC alleged a number of procedural shortcomings in both of the letters regarding provision of services to Appellant, and in addition argued that there was no legitimate and legally permissible reason to terminate services. Pursuant to Administrative Rule He-M 310.07(e), DRC requested that services remain in place pending the outcome of the complaint investigation.

Subsequently, on April 27, 2017, Counsel for the Office of Client and Legal Services (OCLS) emailed Appellant's attorney seeking clarification of her intentions. OCLS advised Appellant's attorney that while Administrative Rule He-M 310.07(e) authorized services to continue while an administrative appeal was pending, it appeared that the request was for a

new complaint investigation.[1] As such there was no provision for the continuation of services during a pending complaint investigation.[2]

By email, dated April 27, 2017, DRC responded indicating that the April 24, 2017 letter was intended to be both an administrative appeal and a request for a complaint investigation. Counsel reiterated that it was imperative that services remain in place "while an investigation and/or appeal process moves forward."[3] The request was then forwarded by OCLS to the Administrative Appeals Unit (AAU) and assigned docket number 2017-465. It does not appear that the emails were part of the initial appeal request.

A Pre-Hearing Conference was held on June 14, 2017, at the Hugh Gallen State Office Complex, Main Building, 105 Pleasant Street, Concord, New Hampshire. After the Pre-Hearing Conference a Scheduling Order was issued memorializing the agreed upon dates for filing responsive pleadings. On June 29, 2017, an Assented to Motion to Extend Deadlines for Filing Motions was received by the AAU. On the same date a Ruling was issued granting the requested extension and scheduling a follow-up status conference on October 17, 2017.

On July 31, 2017, the AAU received a second appeal regarding the final written decision of the Bureau of Developmental Services (BDS) bureau administrator regarding the complaint filed against Worksource dated April 24, 2017, regarding Worksource's termination of Appellant's services without proper notice and/or a legal basis. The June 29, 2017 decision overturned the May 27, 2017 Complaint Investigation Report which found that Worksource had improperly terminated Appellant's services. Unfortunately the request was not initially docketed as a separate appeal, but was instead filed with the existing appeal, docket number 2017-465.[4]

When the filing deadlines for the pending motions arrived and I reviewed the pleadings I also discovered the second appeal. Because BDS issued the decision and they

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[1] On February 10, 2017, a Complaint Investigation Report had issued in response to a complaint filed by Appellant's Service Coordinator. It alleged that the day staff at Worksource had failed to provide lunch to Appellant on November 28, 2016. The report found the complaint of neglect to be unfounded, however a failure to provide quality services was determined to be founded.

[2] Appellant's Reply to Appellee's Objection to Motion for Summary Judgment and Cross-Motion for Summary Judgment, Attachment A

[3] DHHS Exhibit 1

[4] Subsequently this appeal was assigned docket number 2017-871.

were not a party to any of the prior proceedings, it was impossible to move forward on the pending motions. On September 15, 2017, the previously issued order granting the parties' request to extend the deadlines for filing motions was amended to reflect that the Bureau of Developmental Services was now a party. Copies of all prior filings were mailed to counsel and BDS was directed to appear at the previously scheduled status conference on October 17, 2017.

The status conference convened as scheduled on October 17, 2017, with all parties present. All parties agreed to consolidate the two appeals for hearing and set deadlines for BDS to respond to previously filed motions and for the other parties to respond to BDS' submission, if any. A Pre-Hearing Order was issued on October 18, 2017, which memorialized the agreements reached at the conference and set a date for the hearing on the merits. The parties requested that I decide the pending motions as promptly as possible given that they might be outcome determinative and a date for the hearing had already been selected.

On November 3, 2017, counsel for BDS filed a Motion for Summary Judgment and Memorandum of Law in support of the Motion. On November 15, 2017, Appellant filed an Objection to the Department's Motion for Summary Judgment. No other filings were received prior to the deadline. The Motions became ready for decision on November 20, 2017.

II. DISCUSSION

Presently pending are Appellant's Motion for Summary Judgment and Appellee Worksource's Objection to Motion for Summary Judgment and Cross-Motion for Summary Judgment. MDS has indicated that it joins with Worksource in their filing of the Memorandum of Law in Support of Appellee's Objection to Motion for Summary Judgment and Cross-Motion for Summary Judgment. BDS has also filed a separate Motion for Summary Judgment and Memorandum of Law. For the most part the facts of this case are not disputed.

Appellant receives developmental disability services funded by the developmental disability Medicaid waiver program. MDS is the area agency which coordinates and develops the individual service plan for Appellant. Worksource is a provider/vendor agency for MDS.

Appellant lives with his mother and receives 35 hours per week of community participation services through Worksource.[5] Worksource began providing day services to Appellant on August 29, 2012.[6]

Worksource is a New Hampshire non-profit corporation, founded in 1971, to provide opportunities, supports, and services to people with intellectual and developmental disabilities. The services include residential, community participation, habilitation, vocational training, employment, recreation, and transportation.[7] Worksource is not an area agency within the meaning of RSA 171-A:2, I-b. Worksource's relationship with the New Hampshire region V area agency, MDS, is governed by the Master Agreement for Services.[8]

On March 31, 2017, Worksource sent a letter to MDS, pursuant to the Master Agreement for Services, indicating that it was terminating services to Appellant effective May 1, 2017. The letter indicated that the Board of Directors and administration of Worksource felt that this was in the best interests of both Appellant and Worksource.[9]

Appellant's guardian was informed of Worksource's decision on April 3, 2017. On April 12, 2017, Appellant's guardian wrote a letter to Worksource acknowledging outstanding issues, especially with respect to communication, but asking that the decision to end services be reconsidered.[10]

By letter dated April 18, 2017, Worksource expressed surprise to read of the benefits the guardian had felt that Appellant had gained from his services at Worksource. The Director went on to indicate that the guardian's statements at the Individual Service Agreement Meeting "clearly spoke to your extraordinarily profound level of distrust regarding the quality of services to you [sic] son, and your deep dissatisfaction with his care. Your area agency client services coordinator states that you 'complain a lot' to her about our services."[11]

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[5] Affidavit of Janis King In Support of Appellee's Objection to Motion for Summary Judgment and Cross-Motion for Summary Judgment (Affidavit), Exhibit D
[6] Affidavit, paragraph 6
[7] Affidavit, paragraph 4.
[8] Affidavit paragraph 5, Exhibit A
[9] Affidavit, Exhibit B
[10] Affidavit Exhibit D
[11] Appeal Transmittal, received April 27, 2017

Thereafter, following some discussion between Worksource and Appellant's guardian, the DRC filed a complaint with OCLS alleging that Appellant's services had been improperly terminated by Worksource. The DRC attorney requested that Appellant's services remain in place pending the investigation of the complaint.[12]

The complaint was assigned to Michael Fitts for investigation. A Complaint Investigation Report was issued on May 27, 2017. Based on the information from personal interviews and documentation, the complaint investigator determined that as a provider agency of MDS, Worksource was required to follow Administrative Rule He-M 310.07 to terminate services, and did not. The complaint was found to be substantiated for failure to provide quality services. The investigator went on to say that while the timing of the March 31, 2017 letter may make it appear it was sent out in retaliation for a February 10, 2017 Complaint Investigation Report; given the admittedly difficult relationship between Appellant's guardian and Worksource, this could not be definitively determined and that allegation was found to be unsubstantiated.[13]

Upon receipt of the May 2017 complaint Investigation Report, Worksource declined to accept the determination and requested that the matter be referred to the bureau administrator for further review. As support for its position Workforce indicated that they did not terminate Appellant's services. Rather, they argued, MDS was the area agency responsible for providing his services and they would continue to do so. Worksource argued that it acted within the terms of its contract by providing notice to MDS that it was no longer willing to provide services to Appellant. Worksource noted the presence of other agencies in the immediate area providing similar services of comparable quality "so there is no chance that [Appellant] would be unable to continue to receive services, with the ongoing financial and case management support from the state system, from another provider agency."[14]

On June 29, 2017, Worksource was notified that the Bureau Administrator had overturned the finding in the report that Appellant's rights under Administrative Rule He-M

[12] Affidavit, Exhibit C
[13] Affidavit, Exhibit D
[14] Affidavit, Exhibit E

310.07 (c) and (d)(4) had been violated by Worksource. The Director agreed that Worksource complied with the terms of their contract with MDS as it pertained to their decision to cease providing some of Appellant's services. MDS was noted to still be responsible for ensuring that Appellant received all necessary services. The Director added that although she was overturning the finding, she was recommending that Worksource develop a policy for notifying guardians when they decide to end their contract with an area agency.[15] On July 26, 2017, OCLS received Appellant's appeal of the final written decision of the bureau administrator.

Appellant filed the pending appeals based on Worksource's "decision to terminate services on the grounds that it failed to follow the procedural safeguards for clients receiving developmental services pursuant to RSA 171-A and He-M 310."[16] Given my resolution of the issue of "termination" it is not necessary to reach the issue of whether Worksource is bound by RSA 171-A and Administrative Rule He-M 310.[17]

Appellant begins by making the following arguments, none of which I disagree with. RSA 541-A delegates to the department of Health and Human Services (DHHS) the authority to create administrative rules and regulations which guide the implementation of services to the developmentally disabled. A "critical cornerstone"[18] of the system is the protection of individual rights, and in furtherance of this goal DHHS has promulgated specific rules to protect the rights of individuals with developmental disabilities being served by the state. Appellant then goes on to identify Administrative Rule He-M 202- Rights Protection Procedures for Developmental Services and Administrative Rule He-M 310- Rights of Persons Receiving Developmental Services or Acquired Brain Disorder Services in the

[15] Affidavit, Exhibit F

[16] Appellant's Memorandum Of Law In Support of Appellant's Motion for Summary Judgment (Appellant's Memorandum of Law), page 2

[17] Likewise Worksource's arguments regarding jurisdiction of the AAU to hear the appeal because no Department of Health and Human Services' (DHHS) decision was ever issued and the authority of DHHS to promulgate rules that regulate how and when a provider agency ends services to an individual who is receiving services through an area agency, and the related corollary that adopting Appellant's interpretation of the statute and rules would lead to an absurd result; are all rendered moot by either subsequent filings or the ruling on the pending motions.

[18] Appellant's Memorandum of Law, page 3

Community as being integral to these protections. Also undisputed is Appellant's distinction between area agencies such as MDS and provider agencies such as Worksource.

The remainder of Appellant's argument is less straightforward. Appellant argues that, as a provider agency Workforce is governed by both RSA 171-A and Administrative Rule He-M 310. Counsel begins by noting that the Administrative Rules guarantee that an individual has a right to services that are "provided in accordance with the licensing requirements and rules adopted by the Department in He-M 200-1300."[19] She goes on to observe that services are defined by the Rule to include "evaluation, training, counseling, therapy, habilitation, service coordination, or other type of assistance provided by a provider agency."[20] From this she concludes that because Worksource provides "services" for Appellant, the Rules provide a clear obligation to provide those services in accordance with all of the Chapter He-M Rules, including He-M 310.

Appellant argues that the separate definitions of "area agency" and "provider agency" are significant; because the terms are used differently throughout the Rule is clear evidence that DHHS intended some duties to apply to provider agencies and some responsibilities to be limited to just area agencies. She concludes that if DHHS intended Administrative Rule He-M 310.06 and He-M 310.07 to only apply to area agencies it could have explicitly done so. Since it did not it is evidence of DHHS' conscious decision to expand the responsibility of protecting client's rights to provider agencies as well as area agencies.

What this argument seems to fail to take into account is that the very agency which promulgated the rules at issue and is charged with administering the delivery of services to the developmentally disabled community, is disputing her interpretation.[21] BDS' final written decision overturns the finding in the May 27, 2017 Complaint Investigation Report that Appellant's service rights under Administrative Rule He-M 310.07 (c) and (d)(4) were violated. Granted it is not clear whether the final written decision is saying that the above

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[19] Appellant's Memorandum of Law, page 3 (Citations omitted)
[20] Administrative Rule He-M 310.02(x)
[21] While not absolute, deference must be given to an agency's interpretation of its regulations. Petition of Parker, 158 N.H. 499, 502, 969 A.2d 322, 325 (2009). In this instance the Department's interpretation appears to be consistent with the language of the rule and the purpose it is intended to serve.

provisions do not apply to Worksource or that they were not triggered because there was no termination of services.

However, even if I accept Appellant's argument that as a provider agency Worksource was bound by the requirements set forth in Administrative Rule He-M 310.07, the rules do not apply unless there has first been a termination. I find that there was not a termination on these facts.

This case turns on the meaning of the word termination. None of the parties have offered a definition of the word termination beyond that contained in the dictionary. However, Part He-M 503 Eligibility and the Process of Providing Services, specifically Administrative Rule He-M 503.02 (an) defines it as follows: " 'Termination' means the cessation of a service by an area agency director with or without the informed consent of the individual or his or her guardian or representative."

Despite use of the word termination in their letter discontinuing services to Appellant, it is clear that that action was not a termination within the meaning of the rule.[22] First, the action was not taken by an "area agency director."[23] Second, and more importantly, there has been no cessation of services. Appellant's right to receive services is guaranteed by statute.[24] MDS, as the area agency, is responsible for ensuring that Appellant continues to receive all appropriate services.[25] That continues to be the case even after Worksource ended their relationship with Appellant. Worksource complied with the terms of their contract with MDS in discontinuing services to Appellant.[26] As noted by the Bureau Director in her decision overturning the complaint investigation report "MDS is still responsible for ensuring that all of the necessary services for [Appellant] are provided and his services have not been terminated."[27]

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[22] Affidavit, Exhibit B
[23] See Appellant's argument regarding the distinction between area agencies and provider agencies and divining the intent of the Department by the term used in drafting the rule at pp. 3-4 of Appellant's Motion for Summary Judgment.
[24] RSA 171-A:12, 13
[25] RSA 171-A:1, I, I-b
[26] Affidavit Exhibit A
[27] Affidavit, Exhibit F

The services aren't ending in this case, only the entity providing the services will change.[28] I see nothing in the rule which requires that services be provided by a particular agency, only that the individual continue to receive the necessary services.

III. DECISION

Appellee's Cross-Motion for Summary Judgment and BDS' Motion for Summary Judgment are Granted. The hearing presently scheduled for December 14, 2017, is accordingly cancelled.

SO ORDERED.

December 1, 2017

Deborah B. Dupuis, Presiding Officer

cc: File
Melissa Nemeth, Esq.
Karyn Forbes, Esq.
John McIntosh, Esq.

[28] Affidavit, Exhibit F

STATE OF NEW HAMPSHIRE

DEPARTMENT OF HEALTH AND HUMAN SERVICES

ADMINISTRATIVE APPEALS UNIT

APPEAL OF KYLE GUILLEMETTE c/o Cindy Robertson, Esq. Disability Rights Center 64 North Main Street, Suite 2 Concord, New Hampshire 03301	Docket Nos. 2017-465, 871 **RULING ON MOTION FOR RECONSIDERATION**

I. BACKGROUND AND JURISDICTIONAL STATEMENT

By letter dated April 24, 2017, the Disability Rights Center (DRC) initiated a request for a complaint investigation regarding a "termination" of services to Kyle Guillemette (Appellant). By email dated April 27, 2017, DRC indicated that the earlier request was intended to be both a request for an administrative hearing and a request for a complaint investigation. The Administrative Appeals Unit (AAU) received the requests on April 27, 2017, and scheduled a pre-hearing conference June 14, 2017. After the conference a Scheduling Order issued setting deadlines for filing and responding to motions.

Several extensions were requested and ultimately a follow-up conference was scheduled for October 17, 2017. In the interim a second appeal request, arising out of the same set of facts, was received from Appellant on July 31, 2017. The appeal request was inadvertently misfiled with the original appeal request and was not discovered until shortly before the October follow-up conference. Because the Bureau of Developmental Services (BDS) was not a party to the original conference it was not possible to move forward as anticipated on the pending motions.

A status conference was convened on October 17, 2017. At the conference Karyn Forbes, Esq., represented Monadnock Worksource (MWS); Melissa Nemeth, Esq., represented BDS; John MacIntosh, Esq., represented Monadnock Developmental Services (MDS); Cindy Robertson, Esq., represented Appellant; and the undersigned presided. All parties agreed to consolidate the two appeals for hearing. On November 3, 2017, the newly joined party, BDS, filed a Motion for Summary Judgment and Memorandum of Law in support of the motion. On November 15, 2017, Appellant filed an Objection to the

Department's Motion for Summary Judgment. No other filings were received prior to the filing deadline and the matter became ready for decision on November 20, 2017. On December 1, 2017, an order issued granting MWS' Cross-Motion for Summary Judgment and BDS' Motion for Summary Judgment. The previously scheduled hearing was cancelled.

The pending Motion for Reconsideration was received from Appellant on December 28, 2017. MWS' response was received on January 10, 2018. No further filings having been received in the timeframe provided by the rules, the motion is now ready for decision.

Motions for reconsideration are analyzed using the criteria set forth in Department Rule He-C 204.05, which provides as follows:

> Standard for Granting Motion for Reconsideration. A motion for reconsideration shall be granted only if:
> (a) Evidence is presented with the motion for reconsideration which was not available at the time of the hearing and which the presiding officer determines would change the decision rendered under He-C 203.22 or He-C 208.03;
> (b) The party making the motion for reconsideration demonstrates that the presiding officer was in error concerning the interpretation or application of applicable state statute or administrative rule or federal statute or regulation; or
> (c) The party making the motion for reconsideration demonstrates that the decision made under He-C 203.22 or He-C 208.03 is contrary to controlling law.

II. DISCUSSION

For the sake of brevity the Ruling on Motions and Cross-Motions for Summary Judgment (Ruling) in this case, dated December 1, 2017, is hereby incorporated by reference. Facts will be repeated here only as needed for clarity. In general I agree with the points raised in Appellee's objection to the motion for reconsideration. The following additional comments are made for the purpose of emphasis and clarity.

Appellant has argued that it was improper to use the definition of termination found in Administrative Rule He-M 503.01 (an) and not consider the mandates of He-M 310 and RSA 171-A.[1] First, I do not see anything inconsistent with the "mandates" of the above provisions

[1] Appellant's Memorandum of Law in Support of Motion for Reconsideration and Rehearing (Memorandum) p.2

and the definition of termination contained in Administrative Rule He-M 503.01. In support of his position Appellant argues that Administrative Rule He-M 310 is geared toward client rights, while Administrative Rule He-M 503 is directed toward eligibility and the process of providing services. Assuming arguendo that this is correct, how does this advance Appellant's cause? The issue in this case is whether there was a "termination" of services to Appellant, or to put it another way "the provision and monitoring of services which maximize the ability and informed decision making authority of persons with developmental disabilities ..."[2] On these facts it seems only common sense to refer to the rule that relates to provision of services to determine the meaning of the word "termination" of those services.

Appellant also argues that in relying on the definition of "termination" found in the rule I have rejected the ordinary meaning of the word termination; and in so doing rendered the relevant statutory provisions found in RSA 171-A and Administrative Rule He-M 310 null and void.[3] I disagree. When, as in this case, there is a specific definition for the contested word, that definition should be used in preference to the more generic dictionary definition.[4] But the result would not be different if I relied only on the plain meaning of the word. On these facts there is no contradiction between the definition of "termination" found in the rule and that found in the dictionary.

It is a well-established principle of statutory construction that "all words used should be given their ordinary meaning unless a different meaning is indicated from the context used."[5] "Terminate" is commonly understood to mean to come to an end in time or to bring to an end.[6] This is entirely consistent with the conclusion that there was no termination in this case as the services will continue to be received, albeit from a different provider.

Appellant also argues that by relying on the definition of termination found in Administrative Rule He-M 503.01 that that necessarily results in a nullification of Administrative Rule He-M 310.07 and makes the mandate of Administrative Rule He-M 310 meaningless. That is not so. It is not impossible to harmonize Administrative Rule He-M

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[2] Administrative Rule He-M 503.01
[3] Memorandum p. 2
[4] The same principles of construction are used in interpreting administrative rules as are used for statutes. Vector Marketing Corp. v. New Hampshire Dept. of Revenue Administration, 156 N.H. 781, 783, 942 A.2d 1261 (2008)
[5] Londonderry v. Faucher, 112 N.H. 454, 457, 299 A.2d 581, 583 (1972)
[6] Merriam Webster's Collegiate Dictionary (10th Edition 1997)

503.01 and He-M 310.07. The former provision is the trigger which defines what a termination is while the latter sets out the basis for termination of services and the protections that must be provided in the case of a termination.

Appellant also argues that it was improper to rely on the Department of Health and Human Services interpretation of its own regulation. However, this does not appear to be a second and distinct basis for reconsideration as the argument seems then to merely restate the initial argument that the decision by BDS nullified Administrative Rule He-M 310 and RSA 171-A:8. In addition, review of footnote 21 in the Ruling does acknowledge that the deference given to an agency's interpretation of its regulations is not absolute, but that in this instance the interpretation does appear to be consistent with the language of the rule and the purpose it is intended to serve.

Finally, Appellant argues that a "forced and involuntary change in providers"[7] is tantamount to a cessation of services due to the personal relationship he has developed over time with that provider. While this may well be how Appellant feels about this decision, that does not necessarily equate a change in provider agencies with the cessation of services altogether.

The Appellant has failed to demonstrate that the presiding officer was in error concerning the interpretation of the applicable state statute, or administrative rule or federal statute, or regulation, or that the final decision is contrary to controlling law. Therefore, the Motion for Reconsideration is denied.

SO ORDERED.

January 22, 2018

Deborah B. Dupuis, Presiding Officer

C c: File
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[7] Memorandum, p. 6