

The only issue Recipient has preserved for review is whether the ALJ's factual findings are supported by substantial evidence.¹ Specifically, Recipient contends that the ALJ inappropriately confined his review of the record to Recipient's ISP in evaluating Recipient's request for increased waiver services through Pennsylvania's Consolidated Waiver program (Waiver),² disregarding the other evidence in the record. Moreover, Recipient points to several instances in the record, including his ISP,³ where there is an indicated need for increased services. For the reasons set forth below, we vacate the final order and remand this matter for a new adjudication.

BACKGROUND

The ALJ made the following findings of fact, which Recipient does not challenge on appeal. (ALJ Adjudication Findings of Fact (F.F.) 1-9.) Recipient is twenty-one years old and suffers from several debilitating medical conditions, including Juvenile Huntington's Disease (Huntington's). He resides in his parent's home. His mother is a registered nurse. At the time of his request for

¹ In his brief, Recipient also contends that the ALJ further erred as a matter of law by relying on a DPW bulletin as the legal basis for his decision. Because, however, Recipient failed to include this issue in his petition for review, we will not address it. *See* Pa. R.A.P. 1513(d); *Tyler v. Unemployment Comp. Bd. of Review*, 591 A.2d 1164, 1167-68 (Pa. Cmwlth. 1991).

² The federal government permits states to waive certain medical assistance program requirements governing institutional care to provide home and community-based services to specific groups of clients. Section 1915(c) of the Social Security Act, 42 U.S.C. § 1396n(c). Pursuant to this authority, Pennsylvania established the Waiver to provide services to individuals in need of such services in order to avoid institutionalization. *See* 42 C.F.R. §§ 441.300-.310. DPW, as the state Medicaid agency, is responsible for implementation of the Waiver. *Chambers ex rel. Chambers v. Dep't of Pub. Welfare*, 19 A.3d 1 (Pa. Cmwlth. 2011).

³ An ISP is a comprehensive document that identifies services and expected outcomes for an individual. *See* 55 Pa. Code § 2380.3.

increased services, Recipient was receiving ten weekly hours of level 3 Home and Community Habilitation services through the Waiver. Habilitation services consist of assisting recipients in acquiring, retaining, and improving skills to enable them to live independently in the home and community. Prior to his twenty-first birthday, Recipient qualified for and received Early Periodic Screening Diagnosis and Treatment (EPSDT) medical services and other support through his school. Upon turning twenty-one, however, he was no longer eligible for the EPSDT services. As a result, Recipient specifically requested increased services under the Waiver.

At issue in this appeal is Recipient's request for what is referred to as level 3 *enhanced* habilitation services.⁴ On December 8, 2010, the County notified Recipient of its decision to deny his request for level 3 enhanced habilitation services. On December 20, 2010, Recipient appealed that determination to DPW.

The appeal was assigned to the ALJ, who conducted evidentiary hearings on May 5 and May 18, 2011. During the hearings, the parties entered several exhibits into the record and presented testimony in support of their respective positions. Also, at the hearings, the parties stipulated to the following

⁴ Recipient receives 14 hours per week of level 3 services. (C.R., Item No. 2.) The difference between the level 3 services Recipient currently receives and the enhanced services he is requesting is the qualifications of the provider. Level 3 enhanced services must be provided by an individual with a four-year college degree or a licensed nurse. (C.R., Item No. 3, 2010 Service Definitions, at 8.)

Recipient also requested what are known as level 4 enhanced rehabilitation services. The ALJ affirmed the County's denial of this level of service. Recipient did not appeal that aspect of the ALJ's decision.

additional facts. (Notes of Testimony (N.T.), May 5, 2011, at 58.) Huntington’s is a devastating degenerative brain disorder with no known effective treatment or cure. In line with the expected progression of the disease, Recipient’s condition is getting worse every day. The Waiver is available as an alternative to institutionalization for those who wish to receive care and services in their home. Recipient requires one-to-one care, as evidenced by the fact that he receives level 3 services through the County under the Waiver.

In his adjudication, the ALJ summarized the respective evidence and arguments of both sides—the County and Recipient. (ALJ Adjudication at 5-17.) Further, under the heading “Applicable Law,” the ALJ quoted at length from the contents of two hearing exhibits offered by DPW. (*Id.* at 17-21.) The first is a Bulletin issued by the Office of Developmental Programs (ODP) within DPW, numbered 00-10-12 and issued July 20, 2010, and effective July 1, 2010 (Hr. Ex. C-3). The second is a document identified in the record as Service Definitions, effective July 1, 2010 (Hr. Ex. C-2).

The parties appear to agree that the determination of whether Recipient is entitled to the requested level 3 enhanced services turns on Recipient’s “assessed need.” In finding of fact number 10, which is disputed in this appeal, the ALJ found that “[t]here is no assessment in [Recipient’s] current [ISP] that calls for level 3 enhanced habilitation services.” (ALJ Adjudication F.F. 10.) The essence of the ALJ’s legal analysis of Recipient’s appeal on this issue is confined to one paragraph of the adjudication:

[Recipient] made a request for level three enhanced services based on his current health status. [Recipient] argued that his health is in decline. There is no dispute that [Recipient] may be experiencing a health decline. By nature, [Huntington’s] is a degenerative illness and habilitation will not prevent [Recipient’s]

declining health. Habilitation is in place for skill acquisition, retention, improvement, and maintenance of the daily skills. It is unfortunate that [Recipient's] health is in decline. However, the regulations found in MH/MR Bulletin only permits services to be rendered based on assessed needs. *[Recipient's] ISP does not indicate [Recipient's] need for enhanced services. Therefore, based on these findings, [Recipient's] appeal is denied.*

(ALJ Adjudication at 23 (emphasis added).) In essence, the ALJ concluded that Recipient is ineligible for enhanced services because his ISP does not indicate a need for such services.

DISCUSSION

As noted above, on appeal,⁵ Recipient only argues that substantial evidence does not support the ALJ's factual findings. Specifically, Recipient contends that finding of fact number 10 is unsupported by substantial evidence because the record, including the ISP, *does indicate* a need for enhanced services. Recipient cites to the language of the ISP itself and the medical and testimonial evidence to demonstrate that he requires enhanced services.

With respect to the actual language of the ISP, Recipient refers our attention to the following passages of the ISP:

[Recipient's] diet and blood sugars require close monitoring, and he is on multiple scheduled medications, as well as medication administration as needed for agitation. [He] requires someone *qualified* to assess the need for medication [and] administer it if needed.

....

⁵ This Court's review of a final order of the Bureau is limited to considering whether substantial evidence supports necessary factual findings, whether the adjudicator erred as a matter of law, and whether any constitutional rights were violated. 2 Pa. C.S. § 704.

[Recipient's] diet and blood glucose needs to be closely monitored. His diabetes has caused fluctuating blood sugars. They need to be checked at unscheduled times when he presents with symptoms of hyperglycemia or hypoglycemia. The clinical judgment of a *skilled nurse* would be required to identify these other times when he may be symptomatic with problems of low or high blood sugar. A *skilled nurse's* clinical judgment would be necessary at those times to provide medical intervention and to decide what the appropriate intervention would be: ranging from the provision of carbs to the administration of glucagon. The *nurse's* judgment is also important because [Recipient], due to his mental retardation, is unable to report and describe symptoms of hypoglycemia. A *skilled nurse* would be able to pick up on these subtle cues and intervene to prevent a complication such as a seizure or syncopal episode.

....

[Recipient] needs a *registered nurse* to ensure that his health and safety needs are being met.

....

It was recommended by [Recipient's] physicians that a *registered nurse* should ensure [Recipient] is safe while bathing, ambulating, monitored in case of choking, for evaluating [Recipient's] need for medication for behaviors, constipation and low blood sugars, checking blood sugar level daily and providing medical and professional expertise.

(C.R., Item No. 3, 2010-2011 ISP at 11, 29, 38, 40, 53 (emphasis added).)

As much as we would like to give some finality to Recipient in this important matter, we are unable to rule on the merits of Recipient's appeal, because the ALJ failed to issue an adjudication that met the requirements of

Section 507 of the Administrative Agency Law (Law), 2 Pa. C.S. § 507.⁶ Section 507 requires adjudications to contain findings of fact that are “sufficiently specific to enable [a reviewing] court . . . to pass upon questions of law.” *Henderson v. Office of Budget*, 537 A.2d 85, 86 (Pa. Cmwlth. 1988). Here, the ALJ’s adjudication provides no clear analysis of the law and facts at hand and does not permit the Court to engage in meaningful appellate review. *See Port Auth. of Allegheny Cnty. v. Workmen’s Comp. Appeal Bd. (Hamilton)*, 505 A.2d 1372, 1374-75 (Pa. Cmwlth. 1986).

As to the paucity of factual and legal analysis in the ALJ’s adjudication, we note that the ALJ appears to have largely based his adjudication on a negative finding that “Recipient’s ISP does *not* indicate [his] need for enhanced services.” Unfortunately, this finding of fact is nothing more than a conclusory statement, because the ALJ failed to share with us his logic for making that finding or make other findings to support it. Additionally, the ALJ did not make sufficient factual findings. Indeed, given the voluminous record, the ALJ should have provided detailed findings of fact relating to Recipient’s need, or a lack thereof, for enhanced services. It appears, however, that the ALJ, in issuing his findings of fact, not only confined himself to the ISP, but also may have been under the mistaken belief that he was limited to determining whether the types of needs identified in the ISP generally could be met by a non-skilled provider. To the contrary, the purpose of the hearing was to determine, after consideration of the

⁶ Section 507 of the Law provides that “[a]ll adjudications of a Commonwealth agency shall be in writing, shall contain findings and the reasons for the adjudication, and shall be served upon all parties or their counsel personally, or by mail.”

entire record, whether the Recipient's needs, *given the specific challenges facing Recipient*, could be met by a non-skilled provider or whether they required a nurse or a degreed person.

We note that throughout the hearing, the County only provided general, non-medical testimony regarding the types of services that are *generally* provided by unskilled staff—*i.e.*, *generally* administering medication and checking blood sugar levels. But it did not provide testimony as to whether those services, when provided by unskilled staff, met Recipient's specific assessed needs, particularly given his complex medical conditions. In contrast, Recipient provided lay and expert medical testimony, indicating Recipient's need for a nurse. (N.T., May 5, 2011, at 63-65, 78 and N.T., May 18, 2011, at 17-18, 28.)

Besides a lack of factual analysis, the County, DPW, and the ALJ also failed to identify the relevant statutes, regulations, or other legal authority that pertain to a recipient's assessed needs for purposes of qualifying for enhanced services.

CONCLUSION

Accordingly, because the ALJ failed to conform the adjudication to the requirements of Section 507 of the Law, we are unable to engage in meaningful appellate review. We must vacate the ALJ's order and remand this matter with instruction that the ALJ issue new findings of fact and conclusions of law. In so doing, the ALJ shall consider the *entire* record in this matter (*i.e.*, the ISP and the testimonial and medical evidence presented) and issue specific findings that

address whether trained, unskilled staff could provide appropriate services to *Recipient* in light of his complex medical conditions and attendant assessed needs.⁷

P. KEVIN BROBSON, Judge

⁷ In so doing, the ALJ shall also identify with specificity the statutes, regulations, or other relevant authority upon which the ALJ relies in reaching his decision.

