STATE OF CONNECTICUT
DEPARTMENT OF SOCIAL SERVICES
OFFICE OF LEGAL COUNSEL, REGULATIONS, AND ADMINISTRATIVE HEARINGS
55 FARMINGTON AVE.
HARTFORD, CT 06105-3725

[redacted] 2018
Signature Confirmation

Client ID # [redacted]
Request # 115256

NOTICE OF DECISION

PARTY

[redacted]

PROCEDURAL BACKGROUND

On [redacted] 2018, the Department of Social Services (the "Department") sent [redacted] (the "Appellant") a Notice of Action ("NOA) granting her medical benefits under the Husky C Individual Receiving Home and Community Based Services Medicaid Program ("W01"), specifically, the Connecticut Home Care Program for Elders Medicaid Waiver ("CHCPE") effective [redacted] 2018 .

On [redacted] 2018, the Appellant requested an administrative hearing to contest the Department's decision to grant services under the CHCPE effective [redacted] 2018.

On [redacted] 2018, the Office of Legal Counsel, Regulations, and Administrative Hearings ("OLCRAH") issued a notice scheduling the administrative hearing for [redacted] 2018.

On [redacted] 2018, in accordance with sections 17b-60, 17b-61 and 4-176e to 4-189 inclusive, of the Connecticut General Statutes, OLCRAH held an administrative hearing.

The following individuals were present at the hearing:

[redacted] Appellant
[redacted] Witness for the Appellant

[redacted] Witness for the Appellant
[redacted] Witness for the Appellant
Pamela Adams, Department Representative
Jessica Conrod, Department Representative
Sinseara Mercado, Department Representative
Lisa Nyren, Fair Hearing Officer

STATEMENT OF THE ISSUE

The issue to be decided is whether the Department's decision to begin payment for home and community based services under the CHCPE effective [redacted] 2018 was correct.

FINDINGS OF FACT

1. Beginning [redacted] 2017, the Appellant received caregiver services twenty four hours per day in her home which she paid for from her private funds. (Appellant's Daughter Testimony)

2. On [redacted] 2017, the Community First Choice ("CFC") unit, a division of the Department, received a category 3 home care referral from the South West Area on Aging ("SWAA") requesting the completion of an assessment for services under the CHCPE. (Hearing Record)

3. The SWAA is the access agency which provides care manager services for recipients of CHCPE administered by the Department. (Department Representative's Testimony)

4. CFC unit is a division of the Department which administers the CHCPE for which community and home based services are authorized under the W01 program. (Department Representative's Testimony)

5. Recipients of the CHCPE must qualify for Medicaid under the W01 program meeting the asset and financial criteria under Medicaid. (Department Representative's Testimony)

6. The SWAA completed an assessment for home care services with the Appellant then notified the CFC unit on [redacted] 2017. (Hearing Summary)

7. On [redacted] 2017, the Appellant applied for the W01 Medicaid program. (Exhibit 3: Memos in Ascend, Exhibit 4: Email Community Options Unit, and Exhibit A: Hearing Request)

8. On [redacted] 2018, the Department determined the Appellant eligible for Medicaid under the W01 program effective [redacted] 2018 and notified the CFC unit. (Hearing Record)

9. On [redacted] 2018, the CFC unit determined the Appellant eligible for services under the CHCPE beginning [redacted] 2018. (Exhibit 1: Home and Community Based Services Waiver Referral to Regional Office)

10. On [redacted] 2018, the Department authorized the SWAA to begin home care services for the Appellant effective [redacted] 2018. (Exhibit 1: Home and Community Based Services Waiver Referral to Regional Office)

11. On [redacted] 2018, the Appellant signed the Individual Care Plan ("ICP"). (Appellant Daughter's Testimony and Department Representative's Testimony)

12. On [redacted] 2018, the Department issued a notice of action to the Appellant. The notice stated the Department approved Medicaid under the W01 effective [redacted] 2018. The notice stated, "You are on the Connecticut Home Care Program for Elders Medicaid Waiver." (Exhibit 8: Notice of Action)

13. The Appellant seeks payment for home care services under the CHCPE program effective [redacted] 2018. (Appellant Daughter Testimony)

CONCLUSIONS OF LAW

1. Connecticut General Statute ("C.G.S.") § 17b-2(6) provides that the Department of Social Services is designated as the state agency for the administration of the Medicaid program pursuant to Title XIX of the Social Security Act.

2. State Statute provides that the Commissioner of Social Services shall administer the Connecticut home-care program for the elderly state-wide in order to prevent the institutionalization of elderly persons (1) who are recipients of medical assistance, (2) who are eligible for such assistance, (3) who would be eligible for medical assistance if residing in a nursing facility, or (4) who meet the criteria for the state-funded portion of the program under subsection (i) of this section. For purposes of this section, a long-term care facility is a facility that has been federally certified as a skilled nursing facility or intermediate care facility. The commissioner shall make any revisions in the state Medicaid plan required by Title XIX of the

Social Security Act prior to implementing the program. The program shall be structured so that the net cost to the state for long-term facility care in combination with the services under the program shall not exceed the net cost the state would have incurred without the program. The commissioner shall investigate the possibility of receiving federal funds for the program and shall apply for any necessary federal waivers. A recipient of services under the program, and the estate and legally liable relatives of the recipient, shall be responsible for reimbursement to the state for such services to the same extent required of a recipient of assistance under the state supplement program, medical assistance program, temporary family assistance program or supplemental nutrition assistance program. Only a United States citizen or a noncitizen who meets the citizenship requirements for eligibility under the Medicaid program shall be eligible for home-care services under this section, except a qualified alien, as defined in Section 431 of Public Law 104-193, admitted into the United States on or after August 22, 1996, or other lawfully residing immigrant alien determined eligible for services under this section prior to July 1, 1997, shall remain eligible for such services. Qualified aliens or other lawfully residing immigrant aliens not determined eligible prior to July 1, 1997, shall be eligible for services under this section subsequent to six months from establishing residency. Notwithstanding the provisions of this subsection, any qualified alien or other lawfully residing immigrant alien or alien who formerly held the status of permanently residing under color of law who is a victim of domestic violence or who has intellectual disability shall be eligible for assistance pursuant to this section. Qualified aliens, as defined in Section 431 of Public Law 104-193, or other lawfully residing immigrant aliens or aliens who formerly held the status of permanently residing under color of law shall be eligible for services under this section provided other conditions of eligibility are met. [C.G.S. 17b-342(a)]

3. Uniform Policy Manual ("UPM") § 2540.92(A) provides that this group includes individual who:

    1. Would be eligible for MAABD if residing in a long term care facility (LTCF); and
    2. Qualify to receive home and community-based services under a waiver approved by the Centers for Medicare and Medicaid Services; and
    3. Would, without such services, require care in an LTCF.

4. Regulations of Connecticut State Agencies ("Conn. Agency Regs.") § 17b-342-1(a) provides that the Commissioner of Social Services shall administer the Connecticut home-care program for the elderly state-wide in order to prevent the institutionalization of elderly persons (1) who are recipients of medical assistance, (2) who are eligible for such assistance, (3) who would be eligible for medical assistance if residing in a nursing facility, or (4) who meet the criteria for the state-funded portion of the

program under subsection (i) of this section. For purposes of this section, a long-term care facility is a facility that has been federally certified as a skilled nursing facility or intermediate care facility. The commissioner shall make any revisions in the state Medicaid plan required by Title XIX of the Social Security Act prior to implementing the program. The program shall be structured so that the net cost to the state for long-term facility care in combination with the services under the program shall not exceed the net cost the state would have incurred without the program. The commissioner shall investigate the possibility of receiving federal funds for the program and shall apply for any necessary federal waivers. A recipient of services under the program, and the estate and legally liable relatives of the recipient, shall be responsible for reimbursement to the state for such services to the same extent required of a recipient of assistance under the state supplement program, medical assistance program, temporary family assistance program or supplemental nutrition assistance program. Only a United States citizen or a noncitizen who meets the citizenship requirements for eligibility under the Medicaid program shall be eligible for home-care services under this section, except a qualified alien, as defined in Section 431 of Public Law 104-193, admitted into the United States on or after August 22, 1996, or other lawfully residing immigrant alien determined eligible for services under this section prior to July 1, 1997, shall remain eligible for such services. Qualified aliens or other lawfully residing immigrant aliens not determined eligible prior to July 1, 1997, shall be eligible for services under this section subsequent to six months from establishing residency. Notwithstanding the provisions of this subsection, any qualified alien or other lawfully residing immigrant alien or alien who formerly held the status of permanently residing under color of law who is a victim of domestic violence or who has intellectual disability shall be eligible for assistance pursuant to this section. Qualified aliens, as defined in Section 431 of Public Law 104-193, or other lawfully residing immigrant aliens or aliens who formerly held the status of permanently residing under color of law shall be eligible for services under this section provided other conditions of eligibility are met.

5. Regulation provides that persons seeking home care services may initiate a screening for program participation by submitting a Home Care Request Form or by calling the department. Individuals or client representatives are responsible for assuring that all information necessary for determining eligibility including, but not be limited to, completing and submitting a program financial application and providing any required verifications, is submitted on their behalf to the department. Authorization for home care services shall not be granted, nor a plan of care implemented, until complete information has been provided and a financial and functional eligibility determination has been issued by the department. Failure to provide required information and non-cooperation with any of the program

requirements shall be grounds for denial or discontinuance from the Connecticut Home Care Program. [Conn. Agency Regs. § 17b-342-1(g)]

6. Regulation defines "home care services" as any combination of community based services and home health services as defined in sections 17b-342-1(b)(9) and (21) of the Regulations of the State Agencies which enable elders to live in noninstitutional settings. Such services may be provided to elders living in private homes, congregate housing, assisted living demonstration project facilities, housing and urban development facilities, private facilities and homes for the aged and other community living situations as long as the services needed are not considered a regular component of the services of the community living situation. [Conn. Agency Regs. § 17b-342-1(b)(20)]

7. Regulation provides for (C) Category Type 3: This category applies to elders who, but for the provision of home care services, would require nursing facility care funded by Medicaid. This category type is available to elders who meet the financial and functional eligibility criteria for Medicaid under the federal waiver as defined in the department's Uniform Policy Manual section 2540.92. [Conn. Agency Regs. § 17b-342-1(c)(4)(C)]

8. Regulation provides for the Connecticut Home Care Program, all home care services shall be included as part of a written plan of care developed initially and updated regularly by the access agency, the assisted living service agency, department staff or department designee. The plan of care shall specify the start date of services, services to be provided, category type of services, frequency, cost, funding source and the providers of all home care services. The type and frequency of services contained in the plan of care shall be based upon the documented needs found in the assessment of the elderly person's needs and shall be reimbursed by the department only when it is determined that each service is needed in order to avoid institutional placement. For any services where the client would be at risk if the schedule of the service varied, a back-up plan shall be identified in the total plan of care. Services not included as part of the approved plan of care or not covered by sections 17b-342-1 to 17b-342-5, inclusive, of the Regulations of Connecticut State Agencies are not eligible for reimbursement from the Connecticut Home Care Program. [Conn. Agency Regs. § 17b-342-1(d)(7)]

9. Regulation defines "plan of care" as a written individualized plan of home care services which specifies the type and frequency of all services and funding sources required to maintain the individual in the community, the names of the services providers and the cost of services, regardless of whether or not there is an actual charge for the service. The plan of care

shall include any in-kind services and any services paid for by the client or the client's representative. [Conn. Agency Regs. § 17b-342-1(b)(26)

10. Regulation provides that the client's individual plan of care must be signed by the client or the client's representative and the access agency staff, assistance living agency staff, department staff or department designee. [Conn. Agency Regs. § 17b-342-1(d)(8)]

11. Regulation provides that if the department determines that a plan of care is feasible and cost-effective under the program, the elderly person may remain in the community with assistance provided under the Connecticut Home Care Program. If home care is desired, the plan of care shall be authorized by the department. [Conn. Agency Regs. § 17b-342-1(d)(6)]

12. Regulation provides that all home care services provided to individual under the Connecticut Home Care Program shall be authorized in accordance with procedures established by the department prior to the delivery of the services. [Conn. Agency Regs. § 17b-342-3(a)(1)]

13. UPM § 8040.10(F)(2) provides that the beginning date of assistance is the later of the following dates: the earliest date that the plan of care can be implemented after all eligibility requirements are met.

14. The Department correctly authorized home care services under the CHCPE effective [redacted] 2018 upon the approval of Medicaid under the W01 and the completion of an ICP signed by the Appellant.

15. Regulation provides that reimbursement is not available from the department for any services provided prior to the assessment or the determination of program eligibility or not documented in an approved plan of care. [Conn. Agency Regs. § 17b-342-3(a)(7)]

16. Regulation provides that reimbursement is not available for services arranged by program clients or representatives, access agencies, assisted living service agencies or service providers without prior approval by the department or department designee. [Conn. Agency Regs. § 17b-342-3(a)(11)]

17. The Department correctly determined home care services provided prior to the [redacted] 2018 authorization date for services under the CHCPE will not be paid for by the Department.

DECISION

The Appellant's appeal is DENIED.

Lisa A. Nyren
Fair Hearing Officer

CC: Pamela J. Adams, Community First Choice
Jessica Conrod, Community Options
[redacted]

RIGHT TO REQUEST RECONSIDERATION

The appellant has the right to file a written reconsideration request within **15** days of the mailing date of the decision on the grounds there was an error of fact or law, new evidence has been discovered or other good cause exists. If the request for reconsideration is granted, the appellant will be notified within 25 days of the request date. No response within 25 days means that the request for reconsideration has been denied. The right to request a reconsideration is based on §4-181a (a) of the Connecticut General Statutes.

Reconsideration requests should include specific grounds for the request: for example, indicate what error of fact or law, what new evidence, or what other good cause exists.

Reconsideration requests should be sent to: Department of Social Services, Director, Office of Administrative Hearings and Appeals, 55 Farmington Avenue Hartford, CT 06105.

RIGHT TO APPEAL

The appellant has the right to appeal this decision to Superior Court within 45 days of the mailing of this decision, or 45 days after the agency denies a petition for reconsideration of this decision, provided that the petition for reconsideration was filed timely with the Department. The right to appeal is based on §4-183 of the Connecticut General Statutes. To appeal, a petition must be filed at Superior Court. A copy of the petition must be served upon the Office of the Attorney General, 55 Elm Street, Hartford, CT 06106 or the Commissioner of the Department of Social Services, 55 Farmington Avenue Hartford, CT 06105. A copy of the petition must also be served on all parties to the hearing.

The 45 day appeal period may be extended in certain instances if there is good cause. The extension request must be filed with the Commissioner of the Department of Social Services in writing no later than 90 days from the mailing of the decision. Good cause circumstances are evaluated by the Commissioner or the Commissioner's designee in accordance with §17b-61 of the Connecticut General Statutes. The Agency's decision to grant an extension is final and is not subject to review or appeal.

The appeal should be filed with the clerk of the Superior Court in the Judicial District of New Britain or the Judicial District in which the appellant resides.