

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

██████████, 2020  
Signature Confirmation

████████████████████  
Request # 161829

**NOTICE OF DECISION**

**PARTY**

████████████████████  
████████████████████

**PROCEDURAL BACKGROUND**

On ██████████ 2020, the Department of Social Services (the "Department") issued a Notice of Action ("NOA") to ██████████ (the "Appellant") denying her Medicaid benefits under the HUSKY C-Aged, Blind and Disabled program for Home And Community Based Services ("W01") because she does not meet the program requirements.

On ██████████, 2020, the Department issued another NOA to the Appellant denying the W01 because she does not meet the program requirements.

On ██████████ 2020, the Appellant requested an administrative hearing to contest the denial of Medicaid benefits.

On ██████████, 2020, the Office of Legal Counsel, Regulations, and Administrative Hearings ("OLCRAH") issued a notice scheduling the administrative hearing for ██████████  
██████████ 2020.

On ██████████ 2020, in accordance with sections 17b-60, 17-61 and 4-176e to 4-189 inclusive, of the Connecticut General Statutes, OLCRAH held an administrative hearing. The following individuals participated in the hearing:

████████████████████, Appellant  
Jerry DeJesus, Department's Representative  
Carla Hardy, Hearing Officer

Due to the COVID-19 Pandemic, the hearing was held as a telephonic hearing.

### **STATEMENT OF THE ISSUE**

The issue is whether the Department was correct when it denied the Appellant's application for Medicaid benefits under the W01 program because she did not meet the program requirements.

### **FINDINGS OF FACT**

1. The Appellant is [REDACTED] years old (DOB [REDACTED]/61). (Appellant's Testimony)
2. The Appellant is wheelchair bound. She is not independent with all activities of daily living ("ADL's"). She requires a caregiver to bathe and dress her. (Appellant's Testimony)
3. The Appellant receives Social Security Disability ("SSD") benefits. Her SSD benefit was reduced from \$1,050.00 to \$950.00 effective [REDACTED] 2020. (Appellant's Testimony)
4. The Appellant's nephew helps her out of the bed on a daily basis. She currently has 2 caregivers that provide her with 40 to 44 hours weekly in homecare services. (Appellant's Testimony)
5. On [REDACTED] 2020, the Department received an application from the Appellant for Medicaid benefits under the W01 program. (Exhibit 2: Case Notes; Hearing Summary)
6. On [REDACTED] 2020, the Department sent emails to the waiver program correspondents to determine if the Appellant was on the waitlist for any of the waiver programs. The Appellant was not known to any of the waiver programs. (Exhibit 2: Case Notes; Department's Testimony)
7. The Connecticut Home Care Program for Elders ("CHCPE") is the only waiver program without a waitlist or cap. (Hearing Record)
8. On [REDACTED] 2020, the Department determined that the Appellant was not on the waitlist of any waiver program and that she was not 65 years or older, therefore she is not eligible for benefits under the Medicaid W01 program because she did not meet the program requirements. (Exhibit 1: NOA [REDACTED] 20; Hearing Record)

9. On [REDACTED], 2020, the Department sent the Appellant an NOA denying benefits under the W01 program because she did not meet the program requirements. Exhibit 4: NOA, [REDACTED]/20)
10. On [REDACTED] 2020, the Appellant was approved for medical assistance under the Medicaid HUSKY D Low Income Adult program. (Exhibit 4: NOA, [REDACTED]/20; Hearing Record)
11. The issuance of this decision is timely under Connecticut General Statutes 17b-61(a), which requires that a decision be issued within 90 days of the request for an administrative hearing. The Appellant requested an administrative hearing on [REDACTED] 2020. Therefore, this decision is due not later than [REDACTED] 2020.

### CONCLUSIONS OF LAW

1. Section 17b-260 of the Connecticut General Statutes provides for the administration of the Medicaid program pursuant to Title XIX of the Social Security Act.
2. "The department's uniform policy manual is the equivalent of a state regulation and, as such, carries the force of law." *Bucchere v. Rowe*, 43 Conn. Supp. 175, 178 (1994) (citing Conn. Gen. Stat. § 17b-10; *Richard v. Commissioner of Income Maintenance*, 214 Conn. 601, 573 A.2d 712 (1990)).
3. Uniform Policy Manual ("UPM") section 2540.92(A) provides that individuals receiving home and community based services coverage group are those 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. UPM § 2540.92(B) provides that individuals qualify for Medicaid as categorically needy for as long as they meet the conditions above and receive home and community-based services under a waiver.

**The Department correctly determined that the Appellant is not on the waitlist for any waiver program and does not meet the criteria for the W01 coverage group.**

5. UPM § 8040 provides that the Connecticut Home Care Program for Elders provides an alternative to the elderly individual who is inappropriately institutionalized or at risk of institutionalization as long as the individual is not taking an unacceptable risk by putting his or her life and health and that of others in immediate jeopardy.
6. UPM § 8040.20(A)(1) provides that individuals must be 65 years of age or older to meet the categorical eligibility requirements of the Connecticut Home Care Program for Elders.

The Department correctly determined that the Appellant does not meet the age requirement of Connecticut Home Care Program for Elders.

The Department correctly denied the Appellant's application for Medicaid under the W01 program because the Appellant does not meet the program requirements.

**DECISION**

The Appellant's appeal is **DENIED**.

  
Carla Hardy  
Hearing Officer

Pc: Cheryl Stuart, Department of Social Services, Norwich Office  
Jerry DeJesus, Department of Social Services, Hartford Office

### **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 06105-3725.

### **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.