

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

██████████ 2021
Signature Confirmation

██████████
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Request # 165462

NOTICE OF DECISION

PARTY

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PROCEDURAL BACKGROUND

On ██████████ 2020, the Department of Social Services (the “Department”) sent ██████████ (the “Appellant”), through his conservator, ██████████ (“Conservator”), a Notice of Action (“NOA”) denying his application for the Home and Community Based Services (“HCBS”) Mental Health Waiver program because he did not meet the functional or serious mental illness (“SMI”) criteria for the Mental Health Waiver Program.

On ██████████ 2020, the Appellant requested an administrative hearing to contest the Department’s decision to deny the Mental Health Waiver Program.

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
████████████████████, Appellant’s Conservator

██████████, Director of Long-Term Services and Supports, Department of Mental Health and Addiction Services (“DMHAS”)

██████████, Care Manager Supervisor of the Mental Health Waiver Program, Advanced Behavioral Health

██████████, Behavioral Health Clinical Manager, DMHAS
Carla Hardy, Hearing Officer

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

STATEMENT OF THE ISSUE

The issue to be decided is whether the Department correctly denied the Appellant’s Home and Community Based Services (“HCBS”) Mental Health Waiver pursuant to the regulations.

FINDINGS OF FACT

1. ██████████ (“Conservator”) is Conservator of the Person and Estate for the Appellant. (Hearing Record)
2. The Appellant is 56 years old (DOB ████████/64), disabled and resides in a household consisting of one member. (Exhibit 3: Eligibility Screening and Disposition; Hearing Record)
3. On ██████████ 2020, DMHAS, who operates the Mental Health Waiver, received a DMHAS Mental Health Waiver Request form from the Appellant for an eligibility assessment of the DMHAS Mental Health waiver. (Hearing Summary)
4. The Department operates several Medicaid Home and Community-Based Services waiver programs authorized under Section 1915(c) of the Social Security Act which provide community-based services to individuals who would otherwise require institutionalization. (Hearing Record)
5. The general criteria to qualify as a Connecticut Mental Health waiver participant is that the Applicant is an adult, 22 years or age or older; who is Medicaid eligible; meets the criteria for nursing home level of care; voluntarily chooses to participate in the waiver; and has a diagnosis of a serious mental illness (“SMI”). (Exhibit 3)
6. The Department reviewed the Mental Health Waiver Request for basic eligibility requirements to determine if the Appellant meets the

requirements for placement on the Mental Health Waiver List. (Exhibit 3; Hearing Summary)

7. The Department determined through its research of the Appellant's DMHAS history that he was identified as having a medical diagnosis of Other Specified Depressive Disorder, Other Specified Obsessive/Compulsive Related Disorder, and Other Conduct Disorder in 2016. In 2014, he was diagnosed with Asperger's Disorder. (Hearing Summary; Care Manager Supervisor's Testimony)
8. The Appellant does not take any medications. (Conservator's Testimony)
9. The Appellant has not had any recent hospitalizations. (Conservator's Testimony)
10. The Appellant does not have any current diagnoses. (Conservator's Testimony)
11. The Appellant's muscles cramp up, causing him pain. (Appellant's Testimony)
12. The Appellant refuses to visit a medical professional for assessment. (Conservator's Testimony)
13. The Appellant is independent with bathing, dressing, transferring, toileting, eating/feeding, and medication administration. The Appellant needs assistance with meal preparation. (Exhibit 3; Behavioral Health Clinical Manager's Testimony)
14. There are three critical needs that are required to meet the criteria for skilled nursing facility ("SNF") level of care which include the activities of daily living ("ADLS"), medication management and mental illness. (Behavioral Health Clinical Manager's Testimony; Hearing Summary)
15. The Appellant has one of the three critical needs required to meet SNF level of care and to be assigned to the Mental Health Waiver list. His identified critical need is meal preparation. (Behavioral Health Clinical Manager's Testimony; Hearing Summary)
16. The Social Work In Home Supports ("SWIS") program provides homemaker services to those who qualify. (Behavioral Health Clinical Manager's Testimony)
17. The Appellant was discharged from the SWIS program in early 2020 due to disagreements with caregivers. (Conservator's Testimony)

18. On [REDACTED] 2020, the Department determined from the information submitted, that the Appellant did not meet the criteria required to meet approval for the Mental Health Waiver. (Hearing Summary)
19. On [REDACTED] 2020, the Department sent the Appellant through his Conservator an NOA informing him that per the HCBS Waiver 1915(c) Appendix B, he does not meet the eligibility requirement for the Mental Health Waiver as he does not meet the functional or serious mental illness (“SMI”) criteria for the Mental Health Waiver Program. (Exhibit 5: NOA, [REDACTED]/20)
20. 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] 2021, and is therefore timely.

CONCLUSIONS OF LAW

1. Section 17b-2 (10) of the Connecticut General Statutes authorizes the Commissioner of the Department of Social Services to administer the state social services plan for the implementation of the social services block grants pursuant to the Social Security Act.
2. Section 17b-602(a) of the Connecticut General Statutes provides that the Department of Social Services, in consultation with the Department of Mental Health and Addiction Services, may seek approval of an amendment to the state Medicaid plan or a waiver from federal law, whichever is sufficient and most expeditious, to establish and implement a Medicaid-financed home and community-based program to provide community-based services and, if necessary, housing assistance, to adults with severe and persistent psychiatric disabilities being discharged or diverted from nursing home residential care.
3. Title 42 C.F.R. § 441.300 provides, “Section 1915 (c) of the [Social Security Act, 42 U.S.C. § 1396n(c)] permits States to offer, under a waiver of statutory requirements [by the Secretary of Health and Human Services], an array of home and community based services that an individual needs to avoid institutionalization.”
4. Title 42 CFR § 441.301 (b)(1)(iii) provides in order to obtain approval of a waiver from HHS, a state must submit a waiver request that contains all of

the information and assurances contained in 42 CFR § 441.301,441.302 and 441.303. These requirements include, but are not limited to, an assurance by the State that services will only be provided to those “beneficiaries who the agency determines would, in the absence of these services, require the Medicaid-covered level of care provided in [an institutional level of care].”

The Secretary of HHS has approved the State’s request for a waiver to operate the Mental Health Waiver program and, as required by Section 17b-8 of the Connecticut General Statutes, the application was approved by the appropriate joint standing committees of the General Assembly. Accordingly, the Department may operate the Mental Health Waiver program in accordance with the contents of the approved application, including the eligibility requirements contained therein.

The Appellant did not provide evidence that he met three critical needs.

The Department correctly determined that the Appellant did not meet the eligibility criteria for SNF level of care.

On [REDACTED] 2020, the Department correctly issued a Notice of Action to the Appellant informing him that he did not meet the eligibility requirement for the Mental Health Waiver because he did not meet the functional or serious mental illness criteria for SNF level of care.

DECISION

The Appellant’s appeal is **DENIED**.


Carla Hardy
Hearing Officer

Pc: Department of Social Services Community Options
Cheryl Janes, DMHAS

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 060105-3725.

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, 165 Capitol Avenue, Hartford, CT 06106 or the Commissioner of the Department of Social Services, 55 Farmington Avenue, Hartford, CT 06105-3725. 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.

