

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

██████████ 2021
SIGNATURE CONFIRMATION

CLIENT ID #: ██████████
HEARING ID #: 165878

NOTICE OF DECISION

PARTY

██████████
██████████
██████████

PROCEDURAL BACKGROUND

On ██████████ 2020, the Department of Social Services (the “Department”) issued a notice of action (“NOA”) to ██████████ (the “Appellant”) granting HUSKY C Medicaid for Home and Community Based Services effective ██████████ 2020.

On ██████████ 2020, the Appellant requested an administrative hearing to appeal the start date of her Medicaid Home Care Waiver Services.

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

On ██████████ 2020, because the Appellant’s power of attorney had a scheduling conflict on the originally scheduled hearing date, OLCRAH issued a notice rescheduling the hearing for ██████████ 2021.

On ██████████ 2021, because the Appellant’s power of attorney reported a family emergency that prevented attendance on the previously scheduled hearing date, OLCRAH issued a notice rescheduling the hearing for ██████████ 2021.

On ██████████ 2021, because the Appellant was hospitalized on the previously

scheduled hearing date, OLCRAH issued a notice rescheduling the hearing for [REDACTED] 2021. The hearing was scheduled to be held telephonically due to the COVID-19 pandemic.

On [REDACTED] 2021, 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 telephonically. The Appellant's representatives did not object to a telephonic hearing.

The following individuals were present at the hearing:

[REDACTED] Appellant's power of attorney
[REDACTED] Appellant's authorized representative
Shawn Hardy, Eligibility Services Specialist, Community Options Unit
Pamela Adams, Supervisor, Community Options Unit
James Hinckley, Hearing Officer

Because the hearing could not be concluded in the allotted time, the hearing adjourned and, by mutual agreement of the participants, was scheduled to reconvene on [REDACTED] 2021. On [REDACTED] 2021, the hearing reconvened and was held to conclusion.

STATEMENT OF THE ISSUE

The issue is whether the Department correctly determined the Appellant's date of eligibility for Category 3 Medicaid home care waiver services.

FINDINGS OF FACT

1. On [REDACTED] 2020, the Appellant was approved for Category 2 services from the state-funded portion of the Connecticut Home Care Program for Elders ("CHCPE"). (Hearing Record)
2. On [REDACTED] 2020, the Appellant applied for HUSKY C Medicaid for Home and Community Based Services. (Department's Ex. 1: W-1 LTC Medicaid Application)
3. The HUSKY C Medicaid portion of the CHCPE pays for a higher level of services -- termed "Category 3" -- than the state-funded portion of the program, which pays for "Category 2" services. (Ms. Adam's testimony)
4. On [REDACTED] 2020, the Department issued an NOA to the Appellant denying her application for the reason, "The value of your assets is more than the amount we allow you to have." (Appellant's Ex. C: NOA dated [REDACTED] 2020)
5. On [REDACTED] 2020, the Appellant requested a fair hearing, alleging, in part, that

the denial was caused by the Department's failure to properly notify the Appellant's representatives. (Appellant's Ex. D: Hearing Request)

6. On [REDACTED] 2020, the Department rescinded the denial and agreed to process the application back to the original [REDACTED] 2020 application date. As a result, the hearing request was dismissed because the hearing issue became moot. (Appellant's Ex. E: Email correspondence, Hearing Record)
7. On [REDACTED] 2020, the Department granted HUSKY C effective [REDACTED] 2020. (Hearing Record)
8. On [REDACTED] 2020, the Department approved Category 3 home care services beginning [REDACTED] 2020. A communication was sent by a Department representative on [REDACTED] 2020 to Connecticut Community Care, Inc., a vendor contracted by the Department to administer home care services, that stated, "You can begin cat 3 services eff [REDACTED] 2020." (Department's Ex. 4: Case narratives)
9. On [REDACTED] 2020, the Appellant requested a fair hearing, stating "I do not agree with DSS" determination that I am not eligible for HUSKY C until [REDACTED] 2020. It should have been approved beginning [REDACTED] 2020." (Appellant's Ex. G: Hearing Request)
10. On [REDACTED] 2020, the Department issued an NOA to the Appellant granting HUSKY C Medicaid effective [REDACTED] 2020. As a result, the hearing request asking for a [REDACTED] 2020 HUSKY C approval date was dismissed because the hearing issue became moot. (Department's Ex. 5: [REDACTED] 2020 NOA, Hearing Record)
11. On [REDACTED] 2020, the Appellant requested the instant fair hearing, which appeals the start date of Category 3 services. (Hearing Record)

CONCLUSIONS OF LAW

1. The Department is the state agency that administers the Medicaid program pursuant to Title XIX of the Social Security Act. The Department may make such regulations as are necessary to administer the medical assistance program. Connecticut General Statutes (Conn. Gen. Stat). § 17b-2; Conn. Gen. Stat. § 17b-262
2. "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 under subsection (i) of this section. ..." Conn. Gen. Stat. §17b-342(a)

3. **The CHCPE has both a Medicaid component and a state-funded component. The eligibility criteria for the Medicaid component and the state-funded component are different.**
4. Section 17b-342(c)(4) of the Regulations of Connecticut State Agencies (Regs. Conn. State Agencies) provides as follows:

The following three category types define the funding sources which pay for the client's community based services and home health services. The category types apply to care managed cases, self directed cases and the assisted living service program component.

(A) Category Type 1:

This category applies to elders who are at risk of institutionalization but who might not immediately enter a hospital or nursing facility in the absence of the program, This category type is available to elders who meet the financial and functional eligibility for the state-funded portion of the program as defined in section 17b-10-1 of the Regulations of Connecticut State Agencies and the department's Uniform Policy Manual section 8040. Some clients under Category Type 1 may be Medicaid recipients because they do not meet the functional criteria for the Medicaid waiver portion of the program.

(B) Category Type 2

This category applies to elders who would otherwise require admission to a nursing facility on a short or long term basis. This category type is available to elders **who meet the financial and functional eligibility criteria for the state-funded portion of the program** as defined in the department's Uniform Policy Manual section 8040.

(C) Category Type 3

This category applies to elders who, but for the provision of home care services, would require nursing facility 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.

- (D) The program category type identifies the maximum funding level available for all program clients. The access agencies, department staff and assisted living service agencies **shall specify the category type on the client's plan of care in the funding source section.**

(emphasis added)

5. “Plan of care’ means 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 service 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;” (emphasis added) Regs. Conn. State Agencies § 17b-342-1(b)(26)
6. **Different components of the Connecticut home-care program for the elderly have different eligibility criteria and different maximum funding levels. When the Appellant was found eligible for the state-funded portion of the program in ██████████ 2020, her plan of care was for Category 2 services. When she later applied for Medicaid, it was to cover Category 3 services that had a higher maximum funding level. Her prior-approved Category 2 plan of care was not valid when she became eligible for the Medicaid portion of the program, because the services were different. When she became eligible for HUSKY C Medicaid she needed to be approved for a Category 3 plan of care before Category 3 services could begin.**
7. “All home care services provided to individuals under the Connecticut Home Care Program shall be authorized in accordance with procedures established by the department prior to the delivery of the service;” Regs. Conn. State Agencies § 17b-342-3(a)(1)
8. “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.” (emphasis added) Regs. Conn. State Agencies § 17b-342-3(a)(7)
9. “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;” Regs. Conn. State Agencies § 17b-342-3(a)(11)
10. The Department’s Uniform Policy Manual (“UPM”) “is the equivalent of a state regulation and, as such, carries the force of law.” *Bucchere v. Rowe*, 43 Conn. Supp. 175, 177 (1994) (citing Conn. Gen. Stat. 17-3f(c) [now 17b-10]; *Richard v. Commissioner of Income Maintenance*, 214 Conn. 601, 573 A. 2d 712(1990)).
11. “The beginning date of assistance is the later of the following dates: 1. The date of application; or 2. The earliest date that the plan of care can be

implemented after all eligibility requirements are met.” UPM §8040.10(F)

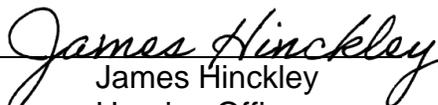
12. Reimbursement for Category 3 services is only available after a Category 3 plan of care has been approved. State regulation provides that no reimbursement is available for “services provided prior to the...determination of program eligibility or not documented in an approved plan of care.”
13. The Appellant had to be found eligible for Medicaid before she could begin receiving Category 3 services. The operative date was not the date of eligibility for Medicaid, but the *date the determination of program eligibility was made*. The Department made the determination of Medicaid eligibility for the Appellant on [REDACTED] 2020; therefore, a plan of care implementing Category 3 services for her could begin no sooner than [REDACTED] 2020.
14. The Department correctly determined the Appellant’s date of eligibility for Category 3 Medicaid home care waiver services.

DISCUSSION

The Appellant’s [REDACTED] 2020 Medicaid start date means the Appellant is eligible for reimbursement for doctor visits and other covered services retroactive to [REDACTED] 2020. The Medicaid effective date has no bearing on the Category 3 services begin date. No services under any portion of the CHCPE may begin until after a plan of care specific to the appropriate category of services has been approved. The Appellant had a Category 2 plan in place that covered services under the state-funded portion of the program, but needed a Category 3 plan of care before Category 3 services could be paid. To qualify for Category 3 services an individual must qualify for Medicaid. The Category 3 plan could not be approved until after the determination of Medicaid eligibility for the Appellant was made.

DECISION

The Appellant’s appeal is Denied.


James Hinckley
Hearing Officer

cc: [REDACTED]
[REDACTED]
hearings.commops@ct.gov

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.