

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

██████ 2023  
Signature Confirmation

Client ID ██████████  
Case ID ██████████  
Request # 216925

**NOTICE OF DECISION**

**PARTY**

████████████████████  
████████████████████  
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**PROCEDURAL BACKGROUND**

On ██████ 2023, the Department of Social Services (the “Department”) sent ██████ (the “Appellant”) a Notice of Action (“NOA”) denying her request for community homecare services under the Husky C – Home and Community Based Services program.

On ██████ 2023, the Appellant requested an administrative hearing to contest the Department’s decision to deny such services.

On ██████ 2023, the Office of Legal Counsel, Regulations, and Administrative Hearings (“OLCRAH”) issued a notice scheduling the administrative hearing for ██████ 2023.

On ██████ 2023, the Appellant requested a continuance which OLCRAH granted.

On ██████ 2023, the OLCRAH issued a notice scheduling the administrative hearing for ██████ 2023.

On ██████ 2023, 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 via teleconference at the Appellant’s request.

The following individuals called in for the hearing:

[REDACTED] [REDACTED] Appellant  
 [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] Attorney for the Appellant  
 [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] Attorney for the Appellant  
 Carrie Eichman, Department Representative  
 Lisa Nyren, Fair Hearing Officer

### **STATEMENT OF THE ISSUE**

The issue to be decided is whether the Department's [REDACTED] [REDACTED] 2023 decision to deny the Appellant's [REDACTED] [REDACTED] 2023 request for community homecare services was correct.

### **FINDINGS OF FACT**

1. On [REDACTED] [REDACTED] 2023, the Department received a W-1LTSS Application for Long-Term Services and Supports ("LTSS application") from the Appellant requesting help paying for community homecare indicating on the application she has worked with the Department on an assessment or screening of long-term care needs. (Exhibit 1: LTSS Application)
2. The Appellant is age [REDACTED] born on [REDACTED]. The Appellant is disabled. The Appellant's diagnosis includes type 1 diabetes, lymphedema in the right leg, drop foot in the left leg, and fluid retention. The Appellant has had a triple bypass and has pins in her hips after being involved in a car crash. (Exhibit 1: LTSS Application and Appellant Testimony)
3. The Appellant lives alone in an apartment in the community. The Appellant requires assistance with her activities of daily living ("ADL's). The Appellant requires hands on support for toileting, bathing, transferring, hygiene and grooming. The Appellant uses a wheelchair for ambulation. (Exhibit 1: LTSS Application and Appellant Testimony)
4. The Appellant relies on her nephew who visits daily, up to three times each day, to assist her with transfers from her bed to the wheelchair, hygiene, bathing, grooming, and toileting. The Appellant has life alert. (Appellant Testimony)
5. To be eligible for homecare services under the Connecticut Home Care Program for Elders ("CHCPE"), an applicant must be age sixty-five (65) or older. An applicant under age sixty-five (65) may qualify for home care

services if known to the Department under waiver programs administered by the Department. (Department Representative Testimony)

6. Applicants under age 65 must be on a waiver to qualify for home care services. Applicants under age 65 must contact the Community Options Unit (formerly Alternate Care Unit) to be placed on the PCA waiver waitlist. Applicants under age 65 must contact Infoline 211 to qualify for home care services under the Community First Choice (“CFC”) program. (Department Representative Testimony)
7. On [REDACTED] [REDACTED] 2023, the Department emailed Department of Developmental Services (“DDS”) and Department staff to inquire on the Appellant’s status under Departmental waiver programs. (Exhibit 3: Email Waiver Responses)
8. On [REDACTED] [REDACTED] 2023, the Department received confirmation that the Appellant is not known to DDS. (Exhibit 3: Email Waiver Responses)
9. On [REDACTED] [REDACTED] 2023, the Department received confirmation that the Appellant is not known to the Autism waiver program. (Exhibit 3: Email Waiver Responses)
10. On [REDACTED] [REDACTED] 2023, the Department received confirmation that the Appellant is not known to the Personal Care Attendant (“PCA”) waiver program and the Acquired Brain Injury (“ABI”) waiver program. (Exhibit 3: Email Waiver Responses)
11. On [REDACTED] [REDACTED] 2023, the Department received confirmation that the Appellant is not known to the Mental Health Waiver (“MHW”) program. (Exhibit 3: Email Waiver Responses)
12. On [REDACTED] [REDACTED] 2023, the Department denied the Appellant’s application for community homecare services. The Appellant does not meet the age criteria under the CHCPE because she is under the age of sixty-five and is not known to the Department under the DDS waiver programs, autism waiver program, PCA waiver program, ABI waiver program, or MHW program. (Hearing Record)
13. On [REDACTED] [REDACTED] 2023, the Department determined the Appellant eligible for Medicaid under the Husky C – Medically Needy Aged, Blind, Disabled – spend-down program beginning [REDACTED] [REDACTED] 2023 through [REDACTED] [REDACTED] 2023. (Exhibit 4: Notice of Action)
14. On [REDACTED] [REDACTED] 2023, the Department issued the Appellant a Notice of Action denying her application for Husky C – Home and Community Based Services. (Exhibit 4: Notice of Action)

15. During 2020 and 2021, the Appellant was institutionalized in a skilled nursing facility and qualified for community homecare services through █████ 2022 when services were terminated. The Appellant does not know why services were terminated or which program she qualified under. (Appellant Testimony)
16. 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 █████ █████ 2023. However, the hearing, which was originally scheduled for █████ █████ 2023, was rescheduled to █████ █████ 2023 at the request of the Appellant, which caused a 19-day delay. Because this 19-day delay resulted from the Appellant's request, this decision is not due until ██████████ █████ 2023, and therefore timely.

### **CONCLUSIONS OF LAW**

1. Section 17b-2(6) of the Connecticut General Statutes ("Conn. Gen. Stat.") provides as follows:

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 Act.

2. State statute provides as follows:

The Commissioner of Social Services is authorized to take advantage of the medical assistance programs provided in Title XIX, entitled "Grants to States for Medical Assistance Programs", contained in the Social Security Amendments of 1965 and may administer the same in accordance with the requirements provided therein, including the waiving, with respect to the amount paid for medical care, of provisions concerning recovery from beneficiaries or their estates, charges and recoveries against legally liable relatives, and liens against property of beneficiaries.

Conn. Gen. Stat. § 17b-260

3. "The Department of Social Services is designated as the state agency for the administration of the state social services plan for the implementation of social services block grants and community services block grants pursuant to the Social Security Act." Conn. Gen. Stat. § 17b-2(10)
4. "The Department of Social Services shall be the lead agency for services to persons with physical or mental disabilities and shall coordinate the

delivery of such services by all state agencies servicing persons with disabilities.” Conn. Gen. Stat. § 17b-606(a)

5. 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))
6. Section 2540.92(A) of the Uniform Policy Manual (“UPM”) provides for Individuals Receiving Home and Community Based Services (W01) as follows:

This group includes individuals 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.

“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.” UPM § 2540.92(B)

7. State statute provides as follows:

The Commissioner of Social Services shall seek a waiver from federal law to establish a personal care assistance program for persons eighteen years of age or older with disabilities funded under the Medicaid program. Such a program shall be limited to a specified number of slots available for eligible program recipients and shall be operated by the Department of Social Services within available appropriations. Such a waiver shall be submitted to the joint standing committees of the General Assembly having cognizance of matters relating to appropriations and the budgets of state agencies and human services in accordance with section 17b-8 no later than January 1, 1996.

Conn. Gen. Stat. § 17b-605a(a)

Section 17b-262-587 of the Regulations of Connecticut State Agencies provides as follows:

Sections 17b-262-587 through 17b-262-596b, inclusive, of the Regulations of Connecticut State Agencies set forth the Department of Social Services' requirements for payment of personal care assistance services for adults.

The Department operates the Personal Care Assistance Waiver Program that assists eligible disabled adults by paying for personal care assistance services. The purpose of sections 17b-262-587 through 17b-262-596b, inclusive, of the Regulations of Connecticut State Agencies is to describe the program requirements, services available and limitations under (1) the Personal Care Assistance Waiver Program, which is conducted under a federal waiver under section 1915(c) of the Social Security Act to the Medical Assistance Program pursuant to section 17b-262 of the Connecticut General Statutes (CGS).

State regulation provides as follows:

The application process consists of:

1. A financial eligibility determination by the Department in accordance with the eligibility standards for participation in the Department's Title XIX medical assistance program that are contained in the Uniform Policy Manual;
2. A preliminary determination by central office administrative staff as to the consumer's needs and financial eligibility based on a review of the information provided on the "Personal Care Assistance Request" form; and
3. A referral to the appropriate regional office when an assessment for services is indicated to determine if a cost effective plan of services can be developed to provide services to the person in the community.

Regs., Conn. State Agencies § 17b-262-590(a)

State regulation provides as follows:

As a result of the limitation of the number of slots and/or funding, the Department shall establish a statewide waiting list for the Personal Care Assistance Waiver program when the Department has filled its maximum allocation of slots or reached the funding level in the approved waiver. Names shall be placed on the waiting list in the same order as the "Personal Care Assistance Request" form is received in Central Office.

Regs., Conn. State Agencies § 17b-262-591(a)

**The Department correctly determined the Appellant was not on the PCA waiver program waitlist and therefore ineligible for services under the PCA Waiver program.**

8. State statute provides as follows:

The Commissioner of Social Services shall seek a waiver from federal law to establish a Medicaid-financed, home and community-based program for individuals with acquired brain injury. Such waiver shall be submitted no later than October 1, 1995, and shall be operated continuously to the extent permissible under federal law. Notwithstanding the addition of any new waiver program serving such individuals, the commissioner shall ensure that services provided pursuant to this subsection are not phased out and that no person receiving such services is institutionalized in order to meet federal cost neutrality requirements for the waiver program established pursuant to this subsection.

Conn. Gen. Stat. § 17b-260a

Under the ABI waiver, Connecticut limits waiver services to one or more groups or subgroups of individuals: Aged or Disabled with Brain Injury, minimum age 18. [Department of Health and Human Services, Centers for Medicare and Medicaid Services. Application for 1915(c) Home and Community – Based Services Waiver: CT.0302.R05.00 – January 01, 2022]

**The Department correctly determined the Appellant ineligible for services under the ABI waiver program as the hearing record is void of any evidence confirming an ABI diagnosis and the Appellant is not known to the Department as pending such waiver services.**

9. “The Department of Social Services is designated as the state agency for the administration of services for persons with autism spectrum disorder in accordance with sections 17a-215 and 17a-215c.” Conn. Gen. Stat. § 17b-2(11)

State statute provides as follows:

The commissioner of Social 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 diagnosed with autism spectrum disorder but not with intellectual disability.

Conn. Gen. Stat. § 17a-215c(i)

Under the autism waiver, Connecticut limits waiver services to one or more groups or subgroups of individuals: autism, minimum age 3 years. [Department of Health and Human Services, Centers for Medicare and

Medicaid Services. Application for 1915(c) Home and Community – Based Services Waiver: CT.0993.R02.00 – January 01, 2023]

**The Department correctly determined the Appellant ineligible for services under the Autism waiver program as the hearing record is void of any evidence confirming an autism diagnosis and the Appellant is not known to the Department as pending such waiver services.**

10. State statute provides as follows:

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.

Conn. Gen. Stat. § 17b-602a(a)

Under the mental health waiver, Connecticut limits waiver services to one or more groups or subgroups of individuals: serious mental illness, minimum age 22 years. [Department of Health and Human Services, Centers for Medicare and Medicaid Services. Application for 1915(c) Home and Community – Based Services Waiver Draft: CT.005.03.00 – April 1, 2022]

**The Department correctly determined the Appellant ineligible for services under the MHW program as the Appellant was not known to the Department as pending for such waiver services.**

**The Department correctly determined the Appellant is not on a waitlist for any home care waiver program under Medicaid and does not meet the criteria for community home care services under the W01 coverage group.**

11. Department policy provides as follows:

This chapter describes the eligibility requirements for the Connecticut Home Care Program for Elders (“CHCPE”). This program provides home health and community based services under either a waiver to the Medicaid program or under an appropriation by the General Assembly. The financial eligibility requirements for these two parts of the program differ. The Medicaid waiver requirements are specified under UPM 2500 "Medical



Coverage Groups" and other areas of the UPM. This section of the manual applies to the state-funded portion of the program. The state-funded portion is not an entitlement program and services and access to services may be limited based on available funding. The Department may place new applicants on a waiting list in order of their date of application within the program region.

UPM § 8040

"The individual must meet one of the following criteria: be 65 years of age or older." UPM § 8040.20(A)(1)

**The Department correctly determined the Appellant failed to meet the age requirement under the CHCPE state funded, and therefore ineligible for home care services under this program.**

12. "The application process as all activity related to the exploration, investigation and disposition of an application beginning with the filing of an assistance request and ending with the disposition of the application." UPM § 1500.01

"The application process outlines the general methods and requirements used in obtaining assistance and in determining an assistance unit's initial eligibility. The application process is essentially the same for all programs. It is designed to provide aid in a prompt and efficient manner to those who request assistance." UPM § 1505

"Individuals who desire to obtain aid must file a formal request for assistance." UPM § 1505.10(B)(1)

"All applicants are required to complete an application form, except as noted below in 1505.10A.3." UPM § 1505.10(A)(1)

"The formal request must be made in writing on the application form." UPM § 1505.10(B)(2)

Department policy provides as follows: At minimum, the following information must be presented:

- a. The full name and address of the applicant; and
- b. The signature of the applicant, caretaker relative or other individual who is requesting assistance on behalf of the applicant.

UPM § 1505.10(B)(3)

“The Department may utilize a single uniform application for multiple programs, or separate applications for individual programs.” UPM § 1505.10(A)(2)

**On [REDACTED] [REDACTED] 2023, the Appellant correctly completed an application for community homecare services and submitted this formal request for services to the Department.**

13. “The Commissioner of Social Services may establish medical homes as a model for delivering care to recipients of assistance under medical assistance programs administered by the Department of Social Services.” Conn. Gen. Stat. § 17b-263c(a)

State statute provides in pertinent part as follows:

The commissioner may implement policies and procedures necessary to (1) establish medical homes as provided for in subsection (a) of this section, and (2) pursue optional initiatives or policies authorized pursuant to the Patient Protection and Affordable Care Act, P.L. 111-148, and the Health Care and Education Reconciliation Act of 2010, including, but not limited to: (H) the establishment of a “Community First Choice Option.”

Conn. Gen. Stat. § 17b-263c(b)

State regulation provides for definitions as used in Sections 17b-4(a)-1 through 17b-4(a)-6: (c) Applicant means any person who has submitted to the Department a completed and signed application form for Community-Based Services for families and adults. Regs., Conn. State Agencies § 17b-4(a)-1

“An applicant is responsible for providing all social, medical, and financial information necessary to establish eligibility. Staff assigned by the Commissioner may assist applicants in completing applications.” Regs., Conn. State Agencies § 17b-4(a)-3(a)

“A determination of eligibility by the Department shall be made no later than 60 days following the receipt by the Department of the completed application. A notice of action shall be mailed to the applicant.” Regs., Conn. State Agencies § 17b-4(a)-3(b)

State regulation provides as follows: Spenddown

1. Applicants and recipients who have excess income shall be eligible if the excess income is less than the authorized payment for Community Based Services, and the excess income is applied to the cost of Community Based Services.

2. Excess income which is already being applied to medical expenses for the purpose of qualifying the applicant/recipient for Title XIX medical assistance shall not be considered available for community based services.

Regs., Conn. State Agencies § 17b-4(a)-2(e)

State statute provides as follows:

Social Work In-Home Support program for persons with disabilities. Eligibility. Regulations. (a) The Commissioner of Social Services, within available appropriations, may establish and operate a Social Work In-Home Support program for persons with disabilities (1) who are between the ages of eighteen and sixty-four years, and (2) who meet the eligibility requirements specified in sections 17b-4(a)-1 to 17b-4(a)-6, inclusive, of the regulations of Connecticut state agencies. Such eligibility requirements with respect to income and assets shall not apply to persons eligible for medical assistance under section 17b-597 who were receiving community-based services on October 1, 2000.

Conn. Gen. Stat. § 17b-605b

The Social Work In-home Support Program Procedure Manual, Version 2.9, Revised March 29, 2023 outlines the target population served which includes a person with a temporary or permanent disabling condition that impedes the individual ability to meet their own IADL and/or safety needs along with the referral process, intake, and eligibility.

14. "The Department must tell the assistance unit what the unit has to do to establish eligibility when the Department does not have sufficient information to make an eligibility determination." UPM 1015.05(c)

"The Department must inform the assistance unit regarding the eligibility requirements of the programs administered by the Department, and regarding the unit's rights and responsibilities." UPM § 1015.10(A)

**The Department failed to inform the Appellant in writing that additional information was needed to review eligibility for home care services, such as but not limited to filing a Personal Care Assistance Request, contacting 211 Infoline, or contacting the Community Options Unit.**

**The Department failed provide the Appellant with the eligibility criteria to apply for community based services under the Community First Choice ("CFC") program and failed to consider the Appellant's eligibility for such services under CFC once eligibility under the**

**Husky C – Medically Needy Aged Blind, Disabled – Spenddown program was determined.**

**Additionally, the Department failed to provide the Appellant with the eligibility criteria under the Social Work In-home Support (“SWIS”) program and failed to consider the Appellant’s eligibility for such services under SWIS upon the denial of PCA waiver services.**

### **DISCUSSION**

State statute provides that the Department is the lead agency for services to persons with both physical and mental disabilities and shall coordinate the delivery of such services. Although the Department reviewed eligibility for home care services under the waiver programs, the Department failed to look at additional community home care programs for which the Appellant may qualify.

The Appellant filed W-1LTSS Application for Long-Term Services and Supports, what she considered a universal application for home care services with the Department. Although the Department reached out to inhouse units and DDS responsible for the waiver programs to review the Appellant’s eligibility for such programs, the Department failed to review eligibility for additional home care programs administered by the Department, such as CFC or SWIS. Instead the Department telephoned the Appellant to relay additional application information regarding Infoline, Community Options and PCA Request for Referral. It is the Department’s responsibility to ensure applicants requesting assistance are afforded an opportunity to file an application for benefits the same day the applicant contacts the Department and the Department’s responsibility to have their eligibility reviewed for all programs for which the Appellant may qualify. As many Department programs are administered by separate units or other state agencies, with some Department eligibility staff limited to the administration of specific programs due to the complicated eligibility rules, to expect an applicant to understand the application process for every program and file separate applications with each unit or agency to access services or be placed on a wait list is an unreasonable request.

Although the Department correctly determined the Appellant ineligible for services under the Husky C - Home and Community Based Waiver (W01) programs, the Department failed to review eligibility for community based homecare services under the CFC and/or SWIS programs upon receipt of the Appellant’s W-1LTSS Application for Long-Term Services and Supports request.

**DECISION**

The Appellant's appeal is in part granted and in part denied.

The Department's action to deny community homecare services under the Husky C – Home and Community Based Services (W01) program is correct, however the Department's failure to review eligibility for community homecare services under additional programs administered by the Department such as CFC and/or SWIS programs is incorrect.

**ORDER**

1. The Department must continue to process the Appellant's [REDACTED] [REDACTED] 2023 application for community home care services under additional programs administered by the Department such as the CFC and/or SWIS programs.
2. The Department must issue the Appellant a written request for outstanding information necessary to determine eligibility for such programs and include the appropriate application forms necessary for each program.
3. Compliance is due 14 days from the date of this decision.

*Lisa A. Nyren*

Lisa A. Nyren  
Fair Hearing Officer

CC: [REDACTED] [REDACTED] Attorney at Law, [REDACTED]

[REDACTED]  
Jessica Carroll, SSOM RO #40  
Community Options Unit  
Carrie Eichman, RO #10

### **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, 165 Capitol Avenue, 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.