

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

[REDACTED], 2019  
Signature Confirmation

Case ID # [REDACTED]  
Client ID # [REDACTED]  
Request # 129953

**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") discontinuing her benefits under the Home and Community Based Services ("HCBS") Mental Health Waiver program because she did not compliant with her Recovery Plan and Risk Agreement.

On [REDACTED] 2018, the Appellant requested an administrative hearing to contest the Department's decision to discontinue such benefits.

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, 17-61 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  
Cheryl Janes, Clinical Manager, Dept. of Mental Health and Addiction Services/DMHAS  
Nicole Cavalan, Community Support Clinician, Mental Health Waiver  
Katie Daly, Supervisor, Mental Health Waiver

██████████ Attorney, CT Legal Rights Project  
██████████ Paralegal, CT Legal Rights Project  
Swati Sehgal, Hearing Officer

### **STATEMENT OF THE ISSUE**

The issue to be decided is whether the Department correctly discontinued the Appellant's Home and Community Based Services ("HCBS") Mental Health Waiver pursuant to the regulations.

### **FINDINGS OF FACT**

1. The Appellant is █████ years old, DOB (1██████████), disabled and resides in a household consisting of one member. (Appellant's Testimony; Hearing Record)
2. The Appellant receives 10.50 hours a week from Mental Health CT("MHC") under Recovery Plan. These hours are for skill building, staff from the program helps the Appellant to achieve or complete a task. The Appellant's participation is required and the Appellant is failing to participate. (Community Support Clinician's testimony)
3. The Appellant also receives three hours a week for community support to manage her doctor's appointments, and section 8 search. (Community Support Clinician's testimony)
4. On ██████████ 2018, the Appellant's landlord issued a notice to quit possession to vacate the property by ██████████, 2018 for not paying her rent on time and condition of her living environment. ( Exhibit 1: Time line and Community Support Clinician's Testimony)
5. On ██████████, 2018, the Appellant was served with an Eviction Housing Summons due to failure to vacate the property in a timely manner. (Exhibit 1 and Community Support Clinician's Testimony)
6. On ██████████, 2018, the Appellant met with MHC team. The Appellant was informed that she needed to be more compliant with her Recovery Plan and engage with staff. The Team also presented their concerns about the Appellant taking care of four cats with her physical limitations and not being able to clean the litter box and cat vomit etc. Cats are not getting their routine checkups and annual shots. ( Exhibit1 and Community Support Clinician's testimony)

7. On [REDACTED] 2018, probate Court hearing was scheduled for the Appellant to have a voluntary Conservator of Estate. The Appellant decided otherwise and did not attend the hearing. (Exhibit 1 and Community Support Clinician's Testimony)
8. On [REDACTED] 2018 the Appellant had received four extensions from Section 8 allowing her additional time to locate other housing. (Exhibit1)
9. On [REDACTED] 2018, several MHC staff reported incidents of flea bites while working with the Appellant. The Appellant was asked to get an exterminator because staff could not work with her until exterminator came out to check her apartment and her cats for fleas. (Exhibit1)
10. On [REDACTED], 2018, the Appellant contacted the Community Support clinician and reported that exterminator visited the home and did not find any evidence of fleas. She was asked to provide a written report from the exterminator stating the same and no such information was received. (Exhibit 1)
11. On [REDACTED] 2018, a meeting was held to discuss Risk Agreement with the Appellant. The Appellant refused to get evaluated by ASCEND to get approved for short term rehab due to her physical limitations. She agreed to sign the Risk Agreement. (Exhibit 1)
12. The Appellant has seen about twenty apartments so far and has not decided on one yet. (Exhibit 1)
13. On [REDACTED] 2018, the Appellant signed the Risk Agreement. This agreement serves as documentation of a conversation through which the individual or his/her legal representative have been presented with the potential risks identified through the assessment process, the source of those risks, the alternatives available to address the risks identified and an acknowledgement by the individual or his/her legal representative that the identified risks exist and the individual has agreed to assume these risk in order to return to the community. (Exhibit 2: Risk Agreement)
14. On [REDACTED] 2018, the MHC team met with the Appellant to discuss the Risk Agreement and her Recovery Plan. (Exhibit 1)
15. On [REDACTED] 2018, the Appellant did not follow the terms of the Risk Agreement. Appellant failed to participate with the staff. The Appellant failed to keep the home clean, the staff still found cat feces and vomit ever where. The Appellant did not provide evidence in regards to exterminator's visit. The Appellant failed to locate and secure an

apartment to move. Notice of Action was sent to the Appellant notifying that she was at risk of losing her Mental Health Waiver services in 30 days due to non-compliance with her Risk Agreement and Recovery Plan. (Exhibit1)

16. On [REDACTED] 2019, the MHC team held another meeting with the Appellant. It was emphasized that the Appellant needs to participate with when staff is over to help because it is skill building program. The Appellant also agreed to a home visit from Animal Control to check on her cats. They also discussed the condition of the Appellant's apartment and how she needs to keep the place clean. They also discussed the apartment the Appellant was interested in to move and section 8 voucher to cover the cost. (Exhibit 3)
17. On [REDACTED] 2018, Animal control worker informed the Community Support Clinician that a home visit was completed and the Appellant was given until [REDACTED] 2018, to get annual checkups done for her cats including regular shots and rabies shot. (Exhibit 1)
18. On [REDACTED] 2018, MHC held a 6 month review meeting. The Appellant was informed about her noncompliance with her Recovery Plan and Risk Agreement. Condition of her apartment has not been improved, she has not been cleaning the litter box, there continues to be cat feces and vomit throughout the house. The Appellant has not provided the evidence that she ever had an exterminator visit to check for fleas. The Appellant has not taken her cats for their annual checkups and they still have not received their regular shots including rabies shot as stipulated in her Risk Agreement. The Appellant was also informed that MHC staff can decide at any point that they do not wish to provide services to the Appellant because their health and safety are at risk. The Appellant was advised that condition of her home needs to improve for staff to provide services and for her own well-being. (Exhibit 1 and Testimony)
19. On [REDACTED] 2018, the Appellant was also informed about scheduled move to her new apartment on [REDACTED] 2018. The Appellant did not agreed with the date and requested to reschedule the moving date. (Exhibit 3)
20. On [REDACTED] 2018, the Appellant did not pay her rent to section 8 for her new apartment therefore she was informed by section 8 Housing Authority that she lost her voucher. (Exhibit 1)
21. The Appellant is not able to walk, stand, bend or lift, and she is not able to comply with her Recovery plans hundred percent due to her physical and mental limitations. (Appellant's testimony)

22. Center for Medicare and Medicaid services approved application for Mental Health Waiver services requires that applicants and participants voluntarily participate in waiver services when the participant elects services. The Appellant has significant history of demonstrating resistance to participating in and following up on service recommendations to secure/maintain qualifying housing and to ensure participant's health and safety in order to maintain eligibility for waiver services. (Hearing Record)

### **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. 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. 42 CFR § 441.301 (b) (6) provides contents of request for a waiver be limited to one or more of the following target groups or any subgroup thereof that the State may define:
  - (i) Aged or disabled, or both.
  - (ii) Individuals with Intellectual or Developmental Disabilities, or both.
  - (iii) Mentally ill.
5. Application for 1915(c) HCBS Waiver: CT.0653.R02.00-Apr 01, 2017, Appendix B provides additional criteria under which the State further specifies its target groups as follows:
  - An adult , 22 years of age or older

- Who is Medicaid eligible
  - Meets criteria for nursing home level of care
  - Voluntarily chooses to participate in the waiver
6. Center for Medicaid and Medicare services requires that The Appellant voluntarily participate in the Waiver services when she elects services.
  7. 42 CFR § 441.301(b)(1)(i) describes the process by which the service plan is made subject to the approval of Medicaid agency.
  8. The Department of Mental Health and Addiction Services /Mental Health Waiver Program created Recovery plan for the Appellant.
  9. 42 CFR §441.301(b)(2), specify who is responsible for the development of the service plan and the qualifications of these individuals.
  10. 42 CFR § 441.301(c)(2) describes the Person-Centered Service Plan. The person-centered service plan must reflect the services and supports that are important for the individual to meet the needs identified through an assessment of functional need, as well as what is important to the individual with regard to preferences for the delivery of such services and supports. Commensurate with the level of need of the individual, and the scope of services and supports available under the State's 1915(c) HCBS waiver, the written plan must:
    - (i) Reflect that the setting in which the individual resides is chosen by the individual. The State must ensure that the setting chosen by the individual is integrated in, and supports full access of individuals receiving Medicaid HCBS to the greater community, including opportunities to seek employment and work in competitive integrated settings, engage in community life, control personal resources, and receive services in the community to the same degree of access as individuals not receiving Medicaid HCBS.
    - (ii) Reflect the individual's strengths and preferences.
    - (iii) Reflect clinical and support needs as identified through an assessment of functional need.
    - (iv) Include individually identified goals and desired outcomes.
    - (v) Reflect the services and supports (paid and unpaid) that will assist the individual to achieve identified goals, and the providers of those services and supports, including natural supports. Natural supports are unpaid supports that are provided voluntarily to the individual in lieu of 1915(c) HCBS waiver services and supports.

(vi) Reflect risk factors and measures in place to minimize them, including individualized back-up plans and strategies when needed.

(vii) Be understandable to the individual receiving services and supports, and the individuals important in supporting him or her. At a minimum, for the written plan to be understandable, it must be written in plain language and in a manner that is accessible to individuals with disabilities and persons who are limited English proficient, consistent with § 435.905(b) of this chapter.

(viii) Identify the individual and/or entity responsible for monitoring the plan.

(ix) Be finalized and agreed to, with the informed consent of the individual in writing, and signed by all individuals and providers responsible for its implementation.

(x) Be distributed to the individual and other people involved in the plan.

(xi) Include those services, the purpose or control of which the individual elects to self-direct.

(xii) Prevent the provision of unnecessary or inappropriate services and supports.

(xiii) Document that any modification of the additional conditions, under paragraph (c)(4)(vi)(A) through (D) of this section, must be supported by a specific assessed need and justified in the person-centered service plan. The following requirements must be documented in the person-centered service plan:

(A) Identify a specific and individualized assessed need.

(B) Document the positive interventions and supports used prior to any modifications to the person-centered service plan.

(C) Document less intrusive methods of meeting the need that have been tried but did not work.

(D) Include a clear description of the condition that is directly proportionate to the specific assessed need.

(E) Include a regular collection and review of data to measure the ongoing effectiveness of the modification.

(F) Include established time limits for periodic reviews to determine if the modification is still necessary or can be terminated.

(G) Include informed consent of the individual.

(H) Include an assurance that interventions and supports will cause no harm to the individual.

11. Application for 1915(c) HCBS Waiver: CT.0653.R02.00-Apr 01, 2017, Appendix B-2 describes Method of Implementation of Individual Cost Limit. When an individual cost limit is specified in item B-2-a, specify that procedures that are followed to determine in advance of waiver entrance that the individual's health and welfare can be assured within the cost limit. If an applicant's health and safety needs cannot be met, they are denied access to the waiver.
12. The Appellant resisted voluntary participation and follow-up with all aspect of waiver services. MHC correctly prepared Risk Agreement and had the Appellant sign it.
13. 42 CFR §441.307(b) provides that If CMS or the State terminates the waiver, the State must notify beneficiaries of services under the waiver in accordance with § 431.210 of this subchapter and notify them 30 days before terminating services.
14. 42 CFR §441.308 provides Hearings procedures for waiver terminations and states the procedures specified in subpart D of part 430 of this chapter are applicable to State requests for hearings on terminations.
15. Application for 1915(c) HCBS Waiver: CT.0653.R02.00-Apr 01, 2017, Appendix D-1 (e) describes service Plan Development and provides in part that if a waiver participant's choices are such that waiver program is concerned that it will not be able to assure the waiver participant's health and welfare, this concern is clearly discusses with waiver participant. If the waiver participant health and welfare can be assured than the waiver participant can remain on the waiver. If this is not possible, then the waiver participant is issued a Notice of Action ("NOA"), Indicating discontinuance from the waiver. The Participant is informed that they have a right to a fair hearing, pursuant to Medicaid rules and the NOA includes information about their right to a fair hearing.
16. The Department could not assure the Appellant's health and welfare due to her choices and correctly issued NOA indicating discontinuance of waiver program.



17. The Department correctly informed the Appellant about her rights to a fair hearing.

### **DISCUSSION**


After reviewing the evidence and testimony presented, the Department's action to discontinue the DMHAS Mental Health Waiver is upheld.

Regulations provide that under the DMHAS Mental Health Waiver, participant must comply with Recovery Plan and Risk Agreement. The Appellant failed to comply with Recovery Plan and Risk Agreement. Unfortunately the Appellant does have physical and mental limitations, however regulations state that if a waiver participant's choices are such that waiver program is concerned that it will not be able to assure the waiver participant's health and welfare, participant is denied access to the waiver.

The Appellant is encouraged to apply for services under Community First Choice Program or for Home Health Aid through Medicaid.

### **DECISION**

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

  
Swati Sehgal  
Hearing Officer

CC: Shirlee Stoute, DSS-CO  
Laurie Filippini, DSS -CO  
Pamela J. Adams, DSS-CO  
Paul Chase, DSS-CO  
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 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.