

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

██████████, 2019
Signature Confirmation

Case #: ██████████
Client ID #: ██████████
Request #: ██████████

NOTICE OF DECISION

PARTY

██████████

PROCEDURAL BACKGROUND

██████████, 2018, the Department of Social Services (the “Department”) issued ██████████ (the “Appellant”) a Notice of Action/Service Budget Reduction indicating the Appellant’s application for Community First Choice (“CFC”) was denied.

██████████, 2018, the Appellant filed an administrative hearing request with the Office of Legal Counsel, Regulations, and Administrative Hearings (“OLCRAH”) to contest the Department’s decision to deny his request for CFC benefits.

On ██████████, 2018, OLCRAH issued a notice scheduling the administrative hearing for ██████████, 2018.

On ██████████, 2018, in accordance with sections 17b-60, 17b-61, and 4-176e to 4-184, inclusive, of the Connecticut General Statutes, the OLCRAH held an administrative hearing.

The following individuals attended the hearing:

██████████, Appellant
██████████, Appellant’s Father
Deborah Fox, Community Nurse for the Department
Christopher Turner, Hearing Officer

The hearing record was left open to allow the Appellant to comment on the hearing summary and allow the Department to conduct a second review of the Appellant's circumstances and complete a new universal assessment. On [REDACTED], 2019, the record closed.

STATEMENT OF ISSUE

The issue to be decided is whether the Department correctly denied the Appellant's application for Community First Choice benefits due to the Appellant not meeting the nursing facility level of care criteria.

FINDINGS OF FACT

1. The Appellant is a participant in the Medicaid Husky D program as administered by the Department. (Record; Appellant's testimony)
2. The Appellant's date of birth is [REDACTED]. (Exhibit 1: Universal Assessment; Appellant's testimony)
3. The Appellant's diagnoses include [REDACTED]. (Exhibit 1; Hearing summary; Appellant's testimony)
4. The Appellant lives with [REDACTED]. (Record; Appellant's testimony)
5. On [REDACTED], 2018, a representative from the [REDACTED] conducted a face-to-face assessment with the Appellant at his home. (Exhibit 1: Universal Assessment; Hearing summary)
6. The Appellant reports no issues with [REDACTED]. (Hearing summary; Appellant's testimony)
7. The Appellant reports needing extensive assistance [REDACTED]. (Exhibit 1; Appellant's testimony)
8. The Appellant testified he does not receive [REDACTED]. (Appellant's testimony)
9. The Appellant testified he does [REDACTED]. (Appellant's testimony)

10. On [REDACTED], 2018, the Department determined the Appellant does not meet the medical criteria for institutional level of care in a skilled nursing facility and as a result, services from CFC were denied as not being medically necessary as defined in state statute. (Record)
11. On [REDACTED], 2019, the Department conducted a face-to-face reassessment with the Appellant at his home. (Record)
12. On [REDACTED], 2019, CFC approved the Appellant's request for community-based services. CFC's decision to approve services for the Appellant means the previous denial has been overturned and as a result, the Appellant's request is now approved. In view of that, there has been no "action" taken to deny CFC services covered under the Medicaid program. (Record)
13. The issuance of this decision is timely under Connecticut General Statutes 17b-61(a), which requires that a decision be rendered within 90 days of the request for an administrative hearing. The Appellant requested an administrative hearing on [REDACTED], 2018. The hearing record was extended [REDACTED] days to allow the Appellant to review and comment on the Department's hearing summary. As a result, this decision was due no later than [REDACTED], 2019 and is therefore timely.

CONCLUSIONS OF LAW

1. Connecticut General Statutes § 17b-2 (6) provides that 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 Security Act.
2. Section 17b-263c (b) of the Connecticut General Statutes provides in part that the commissioner may implement policies and procedures necessary to (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".
3. Title 42 of the Code of Federal Regulations § 441.510 provides that to receive Community First choice services under this section, an individual must meet the following requirements: (a) Be eligible for medical assistance under the State plan; (b) As determined annually — (1) Be in an eligibility group under the State plan that includes nursing facility services; or (2) If in an eligibility group under the State plan that does not include such nursing facility services, have an income that is at or below 150 percent of the Federal poverty level (FPL). In determining whether the 150 percent of the FPL requirement is met, States must apply the same methodologies as would apply under their Medicaid State plan, including the same income disregards in accordance with section 1902(r)(2) of the Act; and, (c) Receive a determination, at least annually, that in the absence of the home and community-

based attendant services and supports provided under this subpart, the individual would otherwise require the level of care furnished in a hospital, a nursing facility, an intermediate care facility for individuals with intellectual disabilities, an institution providing psychiatric services for individuals under age 21, or an institution for mental diseases for individuals age 65 or over, if the cost could be reimbursed under the State plan. The State administering agency may permanently waive the annual recertification requirement for an individual if: (1) It is determined that there is no reasonable expectation of improvement or significant change in the individual's condition because of the severity of a chronic condition or the degree of impairment of functional capacity; and (2) The State administering agency, or designee, retains documentation of the reason for waiving the annual recertification requirement. (d) For purposes of meeting the criterion under paragraph (b) of this section, individuals who qualify for medical assistance under the special home and community-based waiver eligibility group defined at section 1902(a)(10)(A)(ii)(VI) of the Act must meet all section 1915(c) requirements and receive at least one home and community-based waiver service per month. (e) Individuals receiving services through Community First Choice will not be precluded from receiving other home and community-based long-term care services and supports through other Medicaid State plan, waiver, grant or demonstration authorities.


4. Uniform Policy Manual (“UPM”) § 1570.25 (c)(2)(k) provides the administrative duties of the Fair Hearing Official include rendering a Fair hearing decision in the name of the Department, in accordance with the criteria in this chapter, to resolve the dispute.

UPM § 1570.25 (F) (2) provides that the Department must consider several types of issues at an administrative hearing, including the following: a. eligibility for benefits in both initial and subsequent determinations.

The Department has granted the Appellant CFC services. The Appellant’s hearing issue has been resolved; therefore, there is no issue on which to rule. “When the actions of the parties themselves cause a settling of their differences, a case becomes moot.” McDonnell v. Maher, 3 Conn. App. 336 (Conn. App. 1985), citing, Heitmuller v. Stokes, 256 U.S. 359, 362-3, 41 S.Ct. 522, 523-24, 65 L.Ed. 990 (1921).

DECISION

The Appellant's appeal is dismissed as moot.


Christopher Turner
Hearing Officer

Cc: Deborah Fox, DSS Central Office
Christine Weston, DSS Central Office
Sallie Kolreg, DSS Central Office
Dawn Lambert, DSS Central 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, law, and 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, if 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 06105-3725. 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.