

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

██████████ 2022  
Signature confirmation

Case ██████████  
Client: ██████████  
Request: 190325

**NOTICE OF DECISION**

**PARTY**

██████████  
██████████  
██████████  
██████████

**PROCEDURAL BACKGROUND**

On ██████████ 2022, the Department of Social Services (the “Department”) issued a *Notice of Action* to ██████████ (the “Appellant”) terminating her participation in the Connecticut Mental Health Waiver effective ██████████ 2022.

On ██████████ 2022, the Office of Legal Counsel, Regulations, and Administrative Hearings (“OLCRAH”) received the Appellant’s administrative hearing request.

On ██████████ 2022, the OLCRAH issued a notice scheduling the administrative hearing for ██████████, 2022.

On ██████████, 2022, in accordance with sections 17b-60, 17b-61 and 4-176e to 4-189, inclusive, of the Connecticut General Statutes, the OLCRAH held an administrative hearing by telephone conferencing. The following individuals participated:

██████████, Appellant  
██████████, ██████████ Appellant’s Witness  
Erin Leavitt-Smith, Department of Mental Health and Addiction Services (“DMHAS”) Representative  
Ann Marie Luongo, Advanced Behavioral Health, DMHAS Witness  
Brenda Lopez, Department’s Observer  
Eva Tar, Hearing Officer

The hearing record closed on ██████████ 2022.

## **STATEMENT OF ISSUE**

The issue is whether the Department correctly determined that the Appellant did not meet the Connecticut Mental Health Waiver's level of care requirement, rendering her ineligible to continue to participate in the Waiver.

## **FINDINGS OF FACT**

1. The Connecticut Mental Health Waiver is an approved waiver under 1915c of the Social Security Act. (Hearing record)
2. As one of the requirements for participation in the Connecticut Mental Health Waiver, an individual must meet its nursing facility level of care criteria by requiring assistance with three or more of the following activities of daily living ("ADLs"): bathing, dressing, toileting, transferring, feeding/eating, meal preparation, and medication administration. (Leavitt-Smith Testimony) (Exhibit 6)
3. Applicants who only require help with two ADLs may still qualify for participation in the Connecticut Mental Health Waiver if they have four cognitive deficits. (Leavitt-Smith Testimony) (Exhibit 6)
4. Cognitive deficits involve the following categories: Orientation, Concentration, Comprehension, Planning, Judgment, Attention, Memory, and Abstract Reasoning. (Luongo Testimony)
5. The Appellant demonstrated two cognitive deficits: in Abstract Reasoning and Judgment. (Luongo Testimony)
6. On [REDACTED], 2022, a DMHAS clinician assessed the Appellant as independent in bathing, dressing, transferring, toileting, feeding/eating, meal preparation, and ambulation. The DMHAS clinician found that the Appellant could take medication at the correct times if individual dosages were prepared in advance by another person or if the Appellant was given daily reminders. (Exhibit 1)
7. The Appellant does not require the hands-on assistance of another individual to complete the following: bathing, dressing, transferring, toileting, feeding/eating, meal preparation, and ambulation. (Appellant Testimony)
8. The Appellant uses a machine that dispenses her medication. (Appellant Testimony)
9. The Appellant has a diagnosis of ataxia; she also has anxiety and depression. (Appellant Testimony)
10. The Appellant has episodes of dizziness. (Appellant Testimony)
11. The Appellant uses a cane for balance. (Appellant Testimony)

12. The Appellant believes she is a fall risk. (Appellant Testimony)
13. The Appellant has difficulty cleaning her bathtub and bringing her garbage to a dumpster. (Appellant Testimony)
14. On ██████████ 2022, the Department issued a *Notice of Action* to the Appellant terminating her participation in the Connecticut Mental Health Waiver effective ██████████ 2022, stating that the Appellant did not meet the functional eligibility requirements of the waiver. (Exhibit 4)
15. Connecticut General Statutes § 17b-61 (a) provides: “The Commissioner of Social Services or the commissioner's designated hearing officer shall ordinarily render a final decision not later than ninety days after the date the commissioner receives a request for a fair hearing pursuant to section 17b-60, ....”

On ██████████ 2022, the OLCRAH received the Appellant’s hearing request. This decision would be due no later than ██████████ 2022. This decision is timely.

### **CONCLUSIONS OF LAW**

1. Section 17b-2 of the Connecticut General Statutes in part authorizes the Commissioner of the Department of Social Services to administer the Medicaid program pursuant to Title XIX of the Social Security Act.

Section 17b-602a (a) of the Connecticut General Statutes provides: “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.”

“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 \(1990\)](#)).

**The Department and DMHAS are authorized under Section 17b-602a (a) of the Connecticut General Statutes to cooperate in the implementation of the Connecticut Mental Health Waiver, a Medicaid-financed home and community-based program.**

2. Section 1915 (c)(1) of the Social Security Act [Title 42, United States Code (“U.S.C.”) § 1396n] provides in part:

The Secretary may by waiver provide that a State plan approved under this title may include as “medical assistance” under such plan payment for part or all of the cost of home or community-based services (other than room and board) approved by the Secretary which are provided pursuant to a written plan of care to individuals with respect to whom there has been a determination that *but for* the provision of such services the individuals would require the level of care provided in a hospital or a nursing facility or intermediate care facility for the mentally retarded....”

42 U.S.C. § 1396n (emphasis added).

**The Connecticut Mental Health Waiver is subject to the requirements of Section 1915 (c)(1) of the Social Security Act as well as the plain language of the approved Medicaid waiver.**

3. Section 17b-259b (a) of the Connecticut General Statutes defines “medically necessary” and “medical necessity” as follows:

For purposes of the administration of the medical assistance programs by the Department of Social Services, “medically necessary” and “medical necessity” mean those health services required to prevent, identify, diagnose, treat, rehabilitate or ameliorate an individual's medical condition, including mental illness, or its effects, in order to attain or maintain the individual's achievable health and independent functioning provided such services are: (1) Consistent with generally-accepted standards of medical practice that are defined as standards that are based on (A) credible scientific evidence published in peer-reviewed medical literature that is generally recognized by the relevant medical community, (B) recommendations of a physician-specialty society, (C) the views of physicians practicing in relevant clinical areas, and (D) any other relevant factors; (2) clinically appropriate in terms of type, frequency, timing, site, extent and duration and considered effective for the individual's illness, injury or disease; (3) not primarily for the convenience of the individual, the individual's health care provider or other health care providers; (4) not more costly than an alternative service or sequence of services at least as likely to produce equivalent therapeutic or diagnostic results as to the diagnosis or treatment of the individual's illness, injury or disease; and (5) based on an assessment of the individual and his or her medical condition.

Conn. Gen. Stat. § 17b-259b (a).

“Clinical policies, medical policies, clinical criteria or any other generally accepted clinical practice guidelines used to assist in evaluating the medical necessity of a requested health service shall be used solely as guidelines and shall not be the basis for a final determination of medical necessity.” Conn. Gen. Stat. § 17b-259b (a).

**The Appellant did not establish with probative evidence that her medical conditions are generating symptoms of such severity that it would be medically necessary—as “medically necessary” is defined at Conn. Gen. Stat. § 17b-259b**

**(a)—for her to receive institutionalization at a hospital or a skilled nursing facility.**

**The type of services that the Appellant wants provided through the Connecticut Mental Health Waiver—i.e., housekeeping and taking care of her garbage—are chore services, which are services that are primarily for the convenience of the Appellant.**

**The chore services that the Appellant requests from the Connecticut Mental Health Waiver are not medically necessary, as “medically necessary” is defined at Conn. Gen. Stat. § 17b-259b (a).**

4. Section 2540.92 A. of the Department’s Uniform Policy Manual (“UPM”) provides for individuals receiving home- and community-based services paid for by the Medicaid program. This coverage group is described as follows:

This group includes individuals who:

1. would be eligible for MAABD [Medicaid for the Aged, Blind, and Disabled] 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. *without such services, require care in an LTCF.*

UPM § 2540.92 A. (emphasis added).

“Duration of Eligibility. 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.

**The Appellant did not establish that *but for* the chore services she is requesting from the Connecticut Mental Health Waiver, she would require institutionalization in a hospital or skilled nursing facility.**

**The Appellant did not meet the criteria set in UPM § 2540.92 for receiving home- and community-based services paid for by the Medicaid program.**

**The Department correctly terminated the Appellant’s participation in the Connecticut Mental Health Waiver.**

## **DISCUSSION**

The Connecticut Mental Health Waiver is an approved home- and community-based services waiver authorized under section 1915 (c) of the Social Security Act. This Medicaid waiver provides home- and community-based services to eligible adults with severe mental illness who would otherwise require institutionalization at a hospital or skilled nursing facility.

The Appellant seeks the continuation of her coverage through the Connecticut Mental Health Waiver because she would like help with housekeeping tasks and bringing her

garbage to a dumpster. While chore services may be helpful, these are not services required to be in place to prevent the Appellant's immediate hospitalization or placement in a skilled nursing facility. These chore services are not medically necessary to prevent her institutionalization.

The Appellant is independent in completing her activities of daily living ("ADLs"). The Appellant does not meet the level of care requirements of the Connecticut Mental Health Waiver.

**DECISION**

The Appellant's appeal is DENIED.

*Eva Tar-electronic signature*

Eva Tar

Hearing Officer

Cc: Erin Leavitt-Smith, DMHAS  
Community Options, DSS-CO  
Amy Koropatkin, DSS-New Britain  
Patricia Ostroski, DSS-New Britain

### **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.