

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

■■■■■ ■■■ 2024
Signature Confirmation

Client ID ■■■■■■
Case ID ■■■■■■
Request # 239350

NOTICE OF DECISION

PARTY

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PROCEDURAL BACKGROUND

On ■■■■ ■■■ 2024, the Department of Social Services (the "Department") sent ■■■■■■ ■■■■■■ (the "Appellant") a notice denying his request for continued Personal Care Attendant services under the Community First Choice ("CFC") program.

On ■■■■ ■■■ 2024, the Appellant requested an administrative hearing to contest the Department's decision to deny such benefits.

On ■■■■ ■■■ 2024, the Office of Legal Counsel, Regulations, and Administrative Hearings ("OLCRAH") issued a notice scheduling the administrative hearing for ■■■■ ■■■ 2024.

On ■■■■ ■■■ 2024, 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 telephone conference at the Appellant's request.

The following individuals participated in the hearing:

■■■■■■■■■■■■■■■■■■■■ Appellant
Janette Steward, RN, Nurse Consultant CFC
Randell Wilson, Program Manager CFC
Lisa Nyren, Fair Hearing Officer

STATEMENT OF THE ISSUE

The issue to be decided is whether the Department's decision to deny the Appellant's request for continued PCA services under the CFC program was correct.

FINDINGS OF FACT

1. On [REDACTED] [REDACTED] 2023, the Appellant's Medicaid coverage under the Husky D program closed because the Appellant qualified for Medicare Part A and Part B as administered by the Social Security Administration beginning [REDACTED] [REDACTED] 2023 after receiving disability benefits for two years. (Hearing Record)
2. On [REDACTED] [REDACTED] 2024, the Appellant filed an application with the Department requesting Medicaid benefits. The Department determined the Appellant eligible for Medicaid under the Husky C – Aged, Blind, and Disabled Spenddown (“Husky C – spenddown”) program. The Appellant's 6-month spenddown period was [REDACTED] [REDACTED] 2024 through [REDACTED] [REDACTED] 2024. The Spenddown amount for this period equaled \$2,110.00. For the 6-month period [REDACTED] [REDACTED] 2024 through [REDACTED] [REDACTED] 2024, the spenddown amount equals \$2,064.00. The Appellant has not met his spenddown. (Hearing Record)
3. The Appellant received Personal Care Attendant (“PCA”) services through the Community First Choice (“CFC”) program. (Stipulated)
4. Between [REDACTED] [REDACTED] 2024 and [REDACTED] [REDACTED] 2024, the Appellant communicated with the Access Agency and the Department regarding eligibility for continued services under the CFC program while under the Husky C – spenddown. (Nurse Consultant Testimony and Appellant Testimony)
5. The Appellant's PCA services under the CFC program ended in [REDACTED] 2024. (Appellant Testimony)
6. On [REDACTED] [REDACTED] 2024, the Department received a new referral from the Appellant requesting continued services. Upon review of the Appellant's services and Medicaid eligibility, the Department determined the Appellant ineligible for PCA services under the CFC program because he was not a recipient of Medicaid. The Appellant's Medicaid benefits were now under the Husky C – spenddown program which remained in spenddown status. (Nurse Consultant Testimony and Program Manager Testimony)
7. On [REDACTED] [REDACTED] 2024, the Department issued the Appellant a Denial of Special Benefits notice informing him that he is not eligible for the CFC

program because “you are not an active recipient of [REDACTED] Medicaid.” (Exhibit 1: Notice of Action)

8. If the Appellant’s spenddown is met and Medicaid becomes active, the Appellant could qualify for PCA services under the CFC program for the remainder of the spenddown period if all other CFC eligibility criteria is met. (Program Manager Testimony)
9. 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 [REDACTED] [REDACTED] 2024. Therefore, this decision is due not later than [REDACTED] [REDACTED] 2024.

CONCLUSIONS OF LAW

1. Connecticut General Statute (“ Conn. Gen. Stat.”) § 17b-2(6) 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 Security Act.

2. “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))

Section 5520.25(B) of the Uniform Policy Manual provides as follows:

When the amount of the assistance unit’s monthly income exceeds the MNIL, income eligibility for a medically needy assistance unit does not occur until the amount of excess income is offset by medical expense. This process of offsetting is referred to as a spend-down.

“When the excess income is offset by medical expenses before the expiration of the prospective period, the assistance unit is eligible for the remaining balance of the six months.” UPM § 5520.30(B)(2)

“When the amount of incurred expenses is insufficient to offset the excess income, no eligibility exists for that six-month period. UPM § 5520.30(B)(3)

3. Title 42 of the Code of Federal Regulations (“CFR”) § 441.500(a) provides as follows:

This subpart implements section 1915(k) of the Act, referred to as the community first choice option (hereafter Community first choice), to provide home and community-based attendant services and supports through a State plan.

“To receive Community First choice services and supports under this section, an individual must meet the following requirements: Be eligible for medical assistance under the State plan.” 42 CFR § 441.510(a)

State Plan Amendment (“SPA”) No 15-012 implements a Community First Choice (CFC) State Plan Option to provide home and community-based attendant services and supports pursuant to Section 1915(k) of the Social Security Act. [SPA No 15-012, Attachment 3.1K and Attachment 4.19B, July 1, 2015]

SPA No 15-012 provides as follows: The State determines eligibility for Community first choice (CFC) services in the manner prescribed under 42 CFR § 441.510. To receive CFC services and supports under this section, an individual must be eligible for medical assistance under the State plan and must be in an eligibility group that includes nursing facility services or must have income below 150% of the Federal Poverty Level (FPL) if they are in an eligibility group that does not include Nursing Facility services. [SPA 15-012 § 1(A) Eligibility]

The Department correctly determined the Appellant is not an active recipient of Medicaid because his current medical coverage is under the Husky C – Spenddown program that has not been offset by medical expenses and therefore remains in spenddown status.

On [REDACTED] [REDACTED] 2024, the Department correctly determined the Appellant is not eligible for continued services under the CFC program because he is not an active recipient of Medicaid benefits in Connecticut.

DISCUSSION

The Appellant receives \$1,578.00 per month disability benefits as administered by the Social Security Administration (“SSA”). The Appellant received PCA services under the CFC program while receiving medical coverage under the Husky D program. Beginning [REDACTED] [REDACTED] 2023, the Appellant qualified for and accepted Medicare Part A and Part B medical coverage with the SSA resulting in the discontinuance of Husky D. Husky D provides medical benefits to low-

income adults ages 19-64 who do not qualify for Medicare. Residents who are 65 years of age or older and/or who are blind or disabled may qualify for the Husky C program. However, the income limits for Husky D and Husky C differ. Because the Appellant's income exceeded the Husky C income limit, the Appellant's medical coverage was placed under the Husky C – spenddown program. Due to the loss of Medicaid, the Appellant no longer qualified for the CFC program. A recipient of CFC must be active under Medicaid. If the Appellant meets his spenddown, then he may qualify for PCA services under the CFC program for the remainder of his spenddown period.

The denial of continued PCA services under the CFC program is upheld because the Appellant has not met his obligation under the Husky C - spenddown program.

DECISION

The Appellant's appeal is DENIED.

Lisa A. Nyren

Lisa A. Nyren
Fair Hearing Officer

CC: Randell Wilson, CFC Program Manager, DSS CO
Janette Steward, RN, CFC, DSS CO

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.