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

[redacted] 2016
Signature confirmation

Client: [redacted]
Request: 758142

NOTICE OF DECISION

PARTY

[redacted]

PROCEDURAL BACKGROUND

On [redacted] 2016, the Department of Social Services (the "Department") administratively discontinued [redacted] (the "Appellant") state-funded Connecticut Home Care for Elders ("CHC" or "M03")[1] program services, effective [redacted] 2016.

On [redacted] 2016, [redacted] the Appellant's attorney-in-fact, filed a request with the Office of Legal Counsel, Regulations, and Administrative Hearings ("OLCRAH") on the Appellant's behalf to dispute the Department's action.

On [redacted] 2016, the OLCRAH issued a notice to the Appellant, scheduling the administrative hearing for [redacted] 2016.

On [redacted] 2016, 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. [redacted] (the "attorney-in-fact"), the holder of the Appellant's power of attorney, represented the Appellant's interests at the administrative hearing. The following individuals attended the administrative hearing:

[redacted] Appellant's attorney-in-fact (son)
[redacted] Appellant's witness (daughter)
[redacted] Appellant's witness (son-in-law)

[1] The state-funded CHC program is identified on the Department's computer system as "M03." The term "M03" is used in testimony and in the agency's exhibits.

Anthony Grant, Department's representative
John Dileonardo, Department's representative
Eva Tar, hearing officer

The administrative hearing record closed on [redacted] 2016.

STATEMENT OF ISSUE

The issue is whether the Department correctly discontinued the Appellant's state-funded CHC program services.

FINDINGS OF FACT

1. From [redacted] 2014 through [redacted] 2016, the Appellant was a state-funded CHC program services recipient. (Department's Exhibit 2: Printout, [redacted]/16)

2. For eligible recipients, the state-funded CHC program pays for a portion of their home-care services.

3. On [redacted] 2015, [redacted] admitted the Appellant as a resident. (Department's Exhibit 1: W-265, signed [redacted]/16)

4. The [redacted] is a licensed boarding home. (Department's Exhibit 1)

5. On [redacted] 2015, the Department received the Appellant's Aid to the Aged, Blind, and Disabled ("AABD") program application. (Department's Exhibit 11: Printouts, [redacted]/16)(Department's Exhibit 13: Notice Content-NCON, [redacted]/16)

6. For eligible recipients, the AABD program is a cash assistance program that pays toward a recipient's room and board expenses in a licensed boarding home. (Department's representative's testimony)

7. The AABD program has a Medicaid coverage group ("MAABD," "S-track," or "HUSKY C")[2] associated with it. (Department's representative's testimony)

8. On [redacted] 2015, the Department granted the Appellant Medicare Savings Program ("MSP" or "Q01")[3] coverage, effective [redacted] 2016. (Department's Exhibit 3: Printouts, varying dates)

9. For eligible recipients, the MSP pays for their monthly Medicare B premiums.

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[2] The Medicaid for the Aged, Blind, and Disabled ("MAABD") program is identified on the Department's computer system collectively as "S-track programs," i.e., "S02" or "S99," and in correspondence as "HUSKY C." The terms "S-track" and "S99" are used in testimony and in the agency's exhibits.

[3] The Medicare Savings Program ("MSP") is identified on the Department's computer system as "Q01." The term "Q01" appears in the agency's summary and exhibits.

10. On [redacted] 2016, the Department discontinued the Appellant's CHC program services eligibility in order to transition the Appellant to the MAABD coverage group. (Department's Exhibit 15: Narrative-NARR, varying dates)(Department's representative's testimony)

11. On [redacted] 2016, the Department issued a notice to the Appellant, granting the Appellant MAABD coverage in a "spend-down" status for the period from [redacted] 2016 through [redacted] 2016; the "spend-down" to be met in order to activate his MAABD coverage equaled $5,587.34. (Department's Exhibit 13)

12. The Department calculated the Appellant's "spend-down" to be met by using the following figures as representing his gross monthly income: $1,629.00 (Social Security benefits) and $131.82 (private retirement benefits). (Department's Exhibit 13)

13. The Appellant's home-care services, as previously paid for by the state-funded CHC program, would be covered by the MAABD coverage group, if the Appellant meets his "spend-down" and continues to be a MSP recipient. (Department's representative's testimony)(Department's Exhibit 15)

14. On [redacted] 2016, the Department issued a *Notice of Denial* to the Appellant, denying his [redacted] 2015 AABD application. (Department's Exhibit 13)

15. On [redacted] 2016, [redacted] discharged the Appellant. (Appellant's attorney-in-fact's testimony)

16. On [redacted] 2016, the Appellant moved into his son and daughter-in-law's residence. (Appellant's attorney-in-fact's testimony)

CONCLUSIONS OF LAW

1. Section 17b-342 of the Connecticut General Statutes addresses the Connecticut home-care program for the elderly.

2. The Commissioner of Social Services shall administer the Connecticut home-care program for the elderly state-wide in order to prevent the institutionalization of elderly persons (1) who are recipients of medical assistance, (2) who are eligible for such assistance, (3) who would be eligible for medical assistance if residing in a nursing facility, or (4) who meet the criteria for the state-funded portion of the program under subsection (i) of this section. For purposes of this section, a long-term care facility is a facility that has been federally certified as a skilled nursing facility or intermediate care facility. The commissioner shall make any revisions in the state Medicaid plan required by Title XIX of the Social Security Act prior to implementing the program. The program shall be structured so that the net cost to the state for long-term facility care in combination with the services under the program shall not exceed the net cost the state would have incurred without the program. The commissioner shall investigate the possibility of receiving federal funds for the program and shall apply

for any necessary federal waivers. A recipient of services under the program, and the estate and legally liable relatives of the recipient, shall be responsible for reimbursement to the state for such services to the same extent required of a recipient of assistance under the state supplement program, medical assistance program, temporary family assistance program or supplemental nutrition assistance program. Only a United States citizen or a noncitizen who meets the citizenship requirements for eligibility under the Medicaid program shall be eligible for home-care services under this section, except a qualified alien, as defined in Section 431 of Public Law 104-193, admitted into the United States on or after August 22, 1996, or other lawfully residing immigrant alien determined eligible for services under this section prior to July 1, 1997, shall remain eligible for such services. Qualified aliens or other lawfully residing immigrant aliens not determined eligible prior to July 1, 1997, shall be eligible for services under this section subsequent to six months from establishing residency. Notwithstanding the provisions of this subsection, any qualified alien or other lawfully residing immigrant alien or alien who formerly held the status of permanently residing under color of law who is a victim of domestic violence or who has intellectual disability shall be eligible for assistance pursuant to this section. Qualified aliens, as defined in Section 431 of Public Law 104-193, or other lawfully residing immigrant aliens or aliens who formerly held the status of permanently residing under color of law shall be eligible for services under this section provided other conditions of eligibility are met. Conn. Gen. Stat. § 17b-342 (a).

3. On and after July 1, 1992, the Commissioner of Social Services shall, within available appropriations, administer a state-funded portion of the program for persons (A) who are sixty-five years of age and older; (B) who are inappropriately institutionalized or at risk of inappropriate institutionalization; (C) whose income is less than or equal to the amount allowed under subdivision (3) of subsection (a) of this section; and (D) whose assets, if single, do not exceed the minimum community spouse protected amount pursuant to Section 4022.05 of the department's uniform policy manual or, if married, the couple's assets do not exceed one hundred fifty per cent of said community spouse protected amount and on and after April 1, 2007, whose assets, if single, do not exceed one hundred fifty per cent of the minimum community spouse protected amount pursuant to Section 4022.05 of the department's uniform policy manual or, if married, the couple's assets do not exceed two hundred per cent of said community spouse protected amount. Conn. Gen. Stat. § 17b-342 (i)(1).

4. Sections 17b-342-1 through 17b-342-5 of the Regulations of Connecticut State Agencies addresses the Connecticut Home Care Program for Elders.

   The purpose of sections 17b-342-1 to 17b-342-5, inclusive, of the Regulations of Connecticut State Agencies is to describe non-financial program requirements, services available and limitations under the Connecticut Home Care Program for Elders. This program provides home health services, community based services, and

assisted living services under a waiver to the Medicaid program and under a program funded by the General Assembly. Conn. Agencies Regs. § 17b-342-1 (a).

5. The community-based services covered under the program shall include, but not be limited to, the following services to the extent that they are not available under the state Medicaid plan, occupational therapy, homemaker services, companion services, meals on wheels, adult day care, transportation, mental health counseling, care management, elderly foster care, minor home modifications and assisted living services provided in state-funded congregate housing and in other assisted living pilot or demonstration projects established under state law. Personal care assistance services shall be covered under the program to the extent that (1) such services are not available under the Medicaid state plan and are more cost effective on an individual client basis than existing services covered under such plan, and (2) the provision of such services is approved by the federal government. Recipients of state-funded services and persons who are determined to be functionally eligible for community-based services who have an application for medical assistance pending shall have the cost of home health and community-based services covered by the program, provided they comply with all medical assistance application requirements. Access agencies shall not use department funds to purchase community-based services or home health services from themselves or any related parties. Conn. Gen. Stat. § 17b-342 (c).

6. This chapter describes the eligibility requirements for the Connecticut Home Care Program for Elders (CHC). 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.[4] The Department may place new applicants on a waiting list in order of their date of application within the program region. The Connecticut Home Care Program for Elders provides an alternative to the elderly individual who is inappropriately institutionalized or at risk of institutionalization as long as the individual is not taking an unacceptable risk by putting his or her life and health and that of others in immediate jeopardy. Uniform Policy Manual ("UPM") § 8040.

7. The Department screens individuals for possible participation in the Connecticut Home Care program. An individual is first screened for the Medicaid Waiver portion of this program. If the individual does not meet the eligibility criteria for participation in the

[4] "The Connecticut Home Care Waiver (CHC) serves individuals over the age of 65 who otherwise would require services in a nursing facility. The CHC program also provides two state-funded levels of service, which are not part of the Medicaid waiver. Clients in the state-funded categories receive home care services but not Medicaid." ***Publication 06-12: Medicaid Waivers: A Desk Guide for Eligibility Workers.***

Medicaid Waiver portion of this program, he or she is screened for participation in the state-funded portion of the program. UPM § 8040.10 (A).

8. One of the criteria of the Medicaid Waiver portion of the Connecticut Home Care program is that the individual recipient's counted assets must be less than or equal to $1,600.00. UPM § 2540.92 (C).

9. AABD and MAABD – Categorically and Medically Needy. (Except Qualified Medicare Beneficiaries, Specified Low Income Medicare Beneficiaries, Additional Low Income Medicare Beneficiaries, Qualified Disabled and Working Individuals, Working Individuals with Disabilities, and Women Diagnosed with Breast or Cervical Cancer). a. The asset limit is $1,600.00 for a needs group of one. UPM § 4005.10 (A)(2)(a).

10. Elders enrolled in the program have the ability to move from one service category to another within fee-for-service if care managed or self-directed, and from one level of service to another under the assisted living component. When the elderly person's functional or financial eligibility changes, the information shall be reviewed by department staff and a determination shall be made regarding the appropriateness of the change in service category and funding source for the services under the program. Conn. Agencies Regs. § 17b-342-3 (c)(3).

11. An individual who is otherwise eligible for services pursuant to this section shall, as a condition of participation in the program, apply for medical assistance benefits pursuant to section 17b-260 when requested to do so by the department and shall accept such benefits if determined eligible. Conn. Gen. Stat. § 17b-342 (h).

12. All applicants requesting services under the CHC must comply with the requirements for applying for Medicaid if requested by the Department. UPM § 8040.10 (B)(3).

13. To be eligible for the CHC program, the individual must: make application for the Medicaid program when requested by the Department, cooperate in the eligibility process, and accept Medicaid benefits if eligible. UPM § 8040.30 (D).

14. Self-generated MA [Medicaid] Applications. Individuals who apply for AABD are automatically considered to have requested assistance from the MA program. UPM § 1505.10 (E)(1).

15. A determination of eligibility for assistance under other Medicaid coverage groups is done without requiring a separate application when: a. AABD is denied or discontinued; or b. Medicaid is denied or discontinued in regard to a particular coverage group; or c. an applicant or recipient of SAGA [State Administered General Assistance] medical assistance is determined to meet the disability requirement for the Medicaid program. UPM § 1505.10 (E)(2).

16. The Department acted within the scope of its authority when it treated the Appellant's AABD application as an application for both cash assistance and the Medicaid (MAABD) program.

17. Ending Date of Assistance. When a recipient is in need of placement in a nursing home, the ending date of assistance is the date the recipient is determined to need permanent placement. When a person dies, the ending date of assistance is the date of death. When a person becomes ineligible for any other reason, the ending date of assistance is the last day of the month in which the recipient ceases to be eligible. When a client requests to be discontinued, the ending date is the date the client requests discontinuance. UPM § 8040.10 (G).

18. The Department correctly discontinued the Appellant's state-funded CHC program services.

DECISION

The Appellant's appeal is DENIED.

Eva Tar-electronic signature
Eva Tar
Hearing Officer

cc: [redacted]
Anthony Grant, DSS-New Haven (20)
John Dileonardo, DSS-New Haven (20)
Lisa Wells, DSS-New Haven (20)
Brian Sexton, DSS-New Haven (20)

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 Legal Counsel, Regulations, and Administrative Hearings, 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 his 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.