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

[redacted] **2016**
Signature Confirmation

Client Id: # [redacted]
Hearing Id: # 763278

NOTICE OF DECISION

PARTY

[redacted]

PROCEDURAL BACKGROUND

On [redacted] 2016, the Department of Social Services (the "Department") discontinued [redacted] (the "Appellant") Home and Community based Medicaid assistance.

On [redacted] 2016, the Appellant requested an administrative hearing to contest the Department's action to discontinue his Medicaid assistance.

On [redacted] 2016, the Office of Legal Counsel, Regulations, and Administrative Hearings ("OLCRAH") issued a notice 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, OLCRAH held an administrative hearing.

The following individuals were present at the hearing:

[redacted], the Appellant
[redacted] Appellant's Representative
Barbara Brunner, Department's Representative
Karri Filek, Department's Representative
Christopher Turner, Hearing Officer

STATEMENT OF THE ISSUE

The issue to be decided is whether the Department's decision to discontinue the Appellant's Home Care Waiver Medicaid Assistance ("W01") was correct.

FINDINGS OF FACT

1. The Appellant is 35 years old (DOB [redacted]/81) and an assistance unit of one. (Record; Appellant's testimony)

2. The Appellant resides alone in the town of [redacted], Connecticut. (Record; Appellant's testimony)

3. On [redacted] 2007, the Department received the Appellant's application for W01 assistance. (Exhibit 4: Department's Assistance Status Screen print)

4. On [redacted] 2007, the Department granted the Appellant W01 assistance. (Exhibit 5: Department's narrative entry)

5. On [redacted] 2007, the Department removed the Appellant from the W01 waiver as the Appellant failed to hire employees to provide care on his behalf. (Exhibit 2: E-Mail chain)

6. On [redacted] 2015, the Appellant was referred to Personal Care Attendant ("PCA") Waiver program. (Exhibit 1: PCA Waiver waitlist printout)

7. On [redacted] 2016, the Department initiated the Appellant's W01 redetermination. (Exhibit 13: Department's narrative)

8. On [redacted] 2016, the Department completed the Appellant's W01 redetermination. (Exhibit 13)

9. On [redacted] 2016, the Department's representative reviewed the Appellant's Community First Choice ("CFC") referral from the PCA Waiver waitlist. (Exhibit 2)

10. On [redacted] 2016, the Department's representative was notified the Appellant lost his W01 waiver eligibility on [redacted]/07 but continued to receive services. (Exhibit 2)

11. On [redacted] 2016, the Department confirmed the Appellant lost his waiver spot for individuals receiving Home and Community Based Services ("W01"). The Department closed the Appellant's W01 coverage and granted him spenddown medicals. The Department notified the Appellant that he would have to submit medical bills totaling $3,561.06 to meet a spenddown in order to become eligible for MAABD coverage. (Exhibit 7: Department's narrative entry; Exhibit 8: Assistance Status screen print)

12. The PCA Waiver program provides personal care assistance services included in a care plan to maintain adults with chronic, severe, and permanent disabilities in the community. Without these services, the adult would otherwise require institutionalization. A Department social worker, in partnership with the adult, develops the care plan. Effective January 1, 2015, an Access Agency care manager develops the plans with the consumer. Adults must be age 18-64 to apply, must have significant need for hands on assistance with at least two activities of daily living (eating, bathing, dressing, transferring, toileting), must lack family and community supports to meet the need, and must meet all technical, procedural and financial requirements of the Medicaid program. Medicaid for Employees with Disabilities is an option. Eligible adults must be able to direct their own care and supervise private household employees, or have a Conservator to do so. An adult deemed eligible for the PCA Waiver is eligible for all Medicaid-covered services. A waiting list applies. (Department's testimony; Record)

13. The Appellant testified he did not complete the hiring process in 2007. (Exhibit 2; Appellant's testimony)

14. As of the hearing date, the Appellant remains active W01. (Hearing summary, Department's testimony; Appellant's testimony)

CONCLUSIONS OF LAW

1. Section 17b-2 of the Connecticut General Statutes authorizes the Commissioner of the Department of Social Services to administer the Medicaid program.

2. Connecticut General Statutes § 17b-605 authorizes the Commissioner of the Department of Social Services to develop and implement a personal care assistance program for persons with severe physical disabilities.

3. Regulations of Connecticut State Agencies ("RCSA") § 17b-262-587 through 17b-262-596b contains the regulations concerning the Personal Care Assistance Waiver Program.

4. RCSA § 17b-262-589 provides in order to be eligible to receive coverage for the cost of personal care assistance services under the Department's Personal Care Assistance Waiver Program, an individual shall either have already been determined eligible to participate in the Department's Title XIX medical assistance program and also be determined to meet the additional programmatic requirements for coverage of personal care assistance services that are specified in this section or qualify for personal care assistance services by meeting all of the technical, specific financial, and programmatic requirements stated in this section.

5. Uniform Policy Manual ("UPM") 2540.01 (A) provides in order to qualify for Medicaid; an individual must meet the conditions of a least one coverage group.

   UPM § 2540.01 (D) provides, unless otherwise stated in particular coverage group requirements, all individuals must meet the MA technical and procedural requirements to be eligible for Medicaid.

6. UPM § 2540.92 (A) provides individuals receiving home and community based services includes individuals who:

   1. would be eligible for MAABD 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. would, without such services, require care in an LTCF.

   UPM § 2540.92 (B) provides 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.

7. RCSA § 17b-262-589 (e) provides, in relevant part, an applicant for coverage of personal care assistance services shall meet all of the following programmatic requirements for eligibility: (1) the consumer shall be 18 through 64 years of age inclusive; (2) the consumer shall have a primary medical diagnosis that is a chronic, severe and permanent physical disability which results in a significant need for physical assistance with two or more of the following activities of daily living: bathing dressing, eating, transfers, bowel and bladder care; and the consumer shall be in a condition that would otherwise require institutionalization in a nursing facility without such services. An individual whose primary disability is mental retardation, mental illness or whose need for personal care assistance is the result of a degenerative neurologically based dementia, including but not limited to Alzheimer's disease is not eligible for personal care assistance services. In the case of dual diagnosis, the Department may request an assessment, made by a qualified medical provider to determine which disabling condition is primary. (3) the consumer shall have the cognitive ability to be the essential participant in the development of his or her personal care services plan and to hire,

direct, and fire his or her personal care assistants unless the consumer has a conservator who acts on his or her behalf and fulfills the foregoing requirements; (7) the consumer shall acknowledge that he or she is the employer of his or her personal care assistants and shall sign a written document accepting full responsibility as the employer of his or her personal care assistants. (14) the consumer shall hire qualified personal care assistants within three months of approval of the service plan and a determination of Medicaid eligibility or the application shall be denied and the consumer will not maintain his or her slot on the waiting list. The application and eligibility determination process can be resumed at any time in the future.

8. The Department correctly determined that the Appellant is not eligible for continued coverage under the W01 program due to his failure to hire individuals to provide care for him within the designated period.

DECISION

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

Christopher Turner
Hearing Officer

Cc: CarolSue Shannon, Operations Manager Danbury
Barbara Brunner, DSS Danbury
Karri Filek, 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.