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

[redacted] **2017**
Signature Confirmation

Request # 829110
Client ID # [redacted]

NOTICE OF DECISION

PARTY

[redacted]

PROCEDURAL BACKGROUND

The Department of Social Services (the "Department") sent [redacted] (the "Appellant") a Notice of Action ("NOA") denying the Appellant's Home Care Waiver for Adults ("W01") Medicaid because she has declined the services provided under the Mental Health Waiver ("MHW") program as administered by the Department of Mental Health and Addiction Services ("DMHAS").

On [redacted] 2017, the Appellant requested an administrative hearing to contest the Department's decision to deny such benefits.

On [redacted] 2017, the Office of Legal Counsel, Regulations, and Administrative Hearings ("OLCRAH") issued a notice scheduling the administrative hearing for [redacted] 2017.

The administrative hearing was rescheduled by OLCRAH. On [redacted] 2017, OLCRAH issued a notice scheduling the administrative hearing for [redacted] 2017.

On [redacted] 2017, 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] Appellant

[redacted] Appellant's Witness and father
Cheryl Janes, DMHAS' Representative
[redacted].,
Spero Parasco, DMHAS Connecticut Valley Hospital Campus
Sybil Hardy, Hearing Officer

The record remained open for the submission of additional information. No additional information was received. On [redacted] 2017 the hearing record closed.

STATEMENT OF THE ISSUE

The issue to be decided is whether the Department's decision to deny the Appellant's Medicaid application for the MHW for Adults program was correct.

FINDINGS OF FACT

1. On [redacted] 2017, the Department received an application on behalf of the Appellant for Medicaid assistance for the DMHAS MHW services included under Individuals Receiving Home and Community Based Waiver Services. (Exhibit 3:)

2. The MHW is designed to provide support and skill building in order to keep individuals living in the community. Uninterrupted provision of mental health waiver services must occur so that DMHAS can assure safety, which is a criterion for the mental health waiver. (Exhibit 4: Letter from DMHAS, [redacted]/17)

3. During [redacted] 2016, the Department granted Medicaid assistance under the MHW program for the Appellant. (Hearing Record)

4. The Appellant is 43 years old (D.O.B. [redacted]/73). (Appellant's Testimony)

5. DMHAS thought the Appellant's sister, [redacted], was her conservator and was allowed to represent the Appellant. (Hearing Record, Exhibit 3: Timeline for Service Provision)

6. The Appellant lived with her sister at [redacted] in [redacted] for approximately one year. (Appellant's Testimony, Hearing Record)

7. On [redacted] 2017, DMHAS, who administers the MHW program, referred the case to [redacted]. (the "contractor1") and Valued Relationships ("contractor2), who are DMHAS' contractors for providing community support services covered under the MHW program. The contractors established a recovery plan to help the Appellant in the community. (Hearing Record, Exhibit 1: Progress Notes Detail)

8. The Appellant's sister informed the contractor that she needed to present for all meetings scheduled with the Appellant. (Exhibit 1)

9. Prior to [redacted] 2016, the Appellant's sister declined services with [redacted] because the Recovery Assistant ("RA") assigned to her case was [redacted] and the Appellant is [redacted]. (Exhibit 3)

10. On [redacted] 2017, the contractor sent another RA, who is [redacted], to the Appellant's home to provide services. The Appellant's sister declined services. (Exhibit 3)

11. On [redacted] 2017, the same RA made another attempt to go the Appellant's home and provide services to the Appellant. There was no response. (Exhibit 3)

12. On [redacted] 2017, the RA informed her supervisor and the RA team that the Appellant's sister was declining to meet with both the RA and CSP. She made a request to setup a meeting with the Appellant and her sister to discuss the importance of her cooperation. (Hearing Summary, Exhibit 3)

13. On [redacted] 2017, the contractor met with the Appellant and her sister to decide the best fit for RA and to establish a schedule for five hours three times per week. This scheduled was agreed upon by both the Appellant and her sister. (Exhibit 1)

14. During the period of [redacted] 2016 through [redacted] 2017, the Appellant received only one day of services. (Exhibit 1)

15. On [redacted] 2017, the RA met with the Appellant in her home and provided services. (Exhibit 3)

16. On [redacted] 2017, the same RA returned to the Appellant's home and services were declined by the Appellant's sister. (Exhibit 3)

17. During [redacted] 2017, the Appellant's sister declined services indicating that the Appellant was in New Jersey. (Exhibit 3)

18. During [redacted] 2017, the contractor made several attempts by phone to contact the Appellant's sister and discuss her reasons for declining services. The Appellant's sister did not did not provide a reason and disconnected the calls. (Exhibit 3)

19. During [redacted] 2017, the Appellant's services dates were rescheduled several times at the Appellant's sister's request. (Exhibit 3)

20. On [redacted] 2017, the Appellant's sister's requested a change in the service schedule and the schedule was approved by the contractor. (Exhibit 3)

21. On [redacted] 2017, the contractor requested a copy of the Conservatorship for the Appellant. (Exhibit 3)

22. On [redacted] 2017, the RA was asked to leave when she arrived for the Appellant's service appointment. (Exhibit 3)

23. On [redacted] 2017, the Appellant's sister called the RA and told her not come for the Appellant's scheduled appointment. (Exhibit 3)

24. On [redacted] 2017, the contractor called the Appellant's sister to discuss the Appellant's services and whether they are still interested in the MHW services. (Exhibit 3)

25. On [redacted] 2017, the contractor contacted the Appellant's sister to schedule a meeting to discuss the cancellation of services and possible disenrollment in the MHW program. The Appellant's sister disconnected the phone call and the contractor was unable to reach the Appellant's sister when she called back. (Exhibit 3)

26. On [redacted] 2017, DMHAS developed a contract that was signed by the Appellant, indicating that the contractor was not able to provide case management because the Appellant has refused services. The Appellant agreed to follow through with future service appointments. (Exhibit 4)

27. On [redacted] 2017, DMHAS signed the agreement to continue providing services for trial period of [redacted] 2017 through [redacted] 2017 with the understanding the Appellant could not cancel services more than twice within that period. The contract was signed by DMHAS and the Appellant. (Exhibit 4)

28. On [redacted] 2017, the contractor was able to meet with the Appellant but her sister was disruptive during the appointment. (Exhibit 3)

29. During [redacted] 2017, the Appellant's sister canceled several appointments, did not respond when RA came to the home and did not answer the phone. The contractor could not leave messages because the voicemail was full. (Exhibit 3)

30. The Appellant has no access to a phone and all calls were made to the Appellant's sister. (Appellant's Testimony)

31. On [redacted] 2017, the Department sent the Appellant a NOA indicating that her waiver services from the MHW program are terminated because she has declined MHW services. (Exhibit 7: NOA)

32. The Appellant did not see any notices sent to her address of record and would not have been able to understand them on her own. (Appellant's Witness' Testimony)

33. Neither DMHAS nor the contractor received verification that the Appellant's sister was her Conservator of Person. (Hearing Record, Fact # 21)

34. During [redacted] 2017, the Appellant moved out of her sister's apartment and returned to live with her father in [redacted], Connecticut. (Appellant's Testimony, Appellant)

35. On [redacted] 2017, the Appellant's sister did not attend the scheduled administrative hearing with the Appellant. (Hearing Record)

36. The Appellant is not receiving waiver services and has not reapplied. (DMHAS Representative)

CONCLUSIONS OF LAW

1. Section 17b-2 and § 17b-260 of the Connecticut General Statutes, authorizes the Department of Social Services to administer the Medicaid program pursuant to Title XIX of the Social Security Act.

2. Section 17b-10(b) of the Connecticut General Statutes provides for the department to adopt as a regulation in accordance with the provisions of chapter 54, any new policy necessary to conform to a requirement of an approved federal waiver application initiated in accordance with section 17b-8 and any new policy necessary to conform to a requirement of a federal or joint state and federal program administered by the department, including, but not limited to, the state supplement program to the Supplemental Security Income Program, but the department may operate under such policy while it is in the process of adopting the policy as a regulation, provided the department posts such policy on the eRegulations System prior to adopting the policy. Such policy shall be valid until the time final regulations are effective.

3. Uniform Policy Manual Section 2540.92(A) provides that the coverage group for individual receiving home and community based services (W01) are individual who

    (a) Would be eligible for MAABD if residing in a long term care facility (LTCF); and
    (b) Qualify to receive home and community-based services under a waiver approved by the Centers for Medicare and Medicaid Services; and
    (c) Would without such services, require care in an LTCF.

4. Title 42 of the Code of Federal Regulations ("CFR") § 441.300 provides that the Act permits States to offer, under a waiver of statutory requirements, an array of home and community-based services that an individual needs to avoid institutionalization. Those services are defined in $440.10 of this subchapter. This subpart describes what the Medicaid agency must do to obtain a waiver.

5. 42 CFR § 441.301(c)(1) provides that the waiver must include the following:

    (a) Person-centered planning process. The individual will lead the person-centered planning process where possible. The individual's representative should have a participatory role, as needed and as defined by the individual, unless State law confers decision-making authority to the legal representative. All references to individuals include the role of the individual's representative, In addition to being led by the individual receiving services and supports, the person-centered planning process;
        (i) Includes people chosen by the individual.
        (ii) Provides necessary information and support to ensure that the individual directs the process to the maximum extent possible, and is enabled to make informed choices and decisions.
        (iii) Is timely and occurs at times and locations of convenience to the individual.
        (iv) Reflects cultural considerations of the individual and is conducted by providing information in plain language and in a manner that is accessible to individuals with disabilities and persons who are limited English proficient, consistent with §435.905(b) of this chapter.
        (v) Includes strategies for solving conflict or disagreement within the process, including clear conflict-of-interest guidelines for all planning participants.
        (vi) Providers of HCBS for the individual, or those who have an interest in or are employed by the provider of HCBS for the individual must not provide case management or develop the person-centered service plan, except when the State demonstrates that the only willing and qualified entity to provide case management and/or develop person-centered service plans in a geographic area also provides HCBS. In these cases, the State must devise conflict of interest protections including separation of entity and provider functions within provider entities, which must be approved by CMS. Individuals must be provided with a clear and accessible alternative dispute resolution process.
        (vii) Offers informed choices to the individual regarding the services and supports they receive and from whom.
        (viii) Includes a method for the individual to request updates to the plan as needed.
        (ix) Records the alternative home and community-based settings that were considered by the individual.

6. DMHAS incorrectly determined that the Appellant's sister was her Conservator of Person without receiving legal documentation to support her claim.

7. 42 CFR 441.301(C)(2) provides in part that the person-centered service plan must reflect the services and supports that are important for the individual to meet the needs identified through an assessment of functional need, as well as what is important to the individual with regard to preferences for the delivery of such services and supports.

8. DMHAS correctly established a person-centered service plan for the Appellant after she was approved for the MHS program. DMHAS even addressed cultural issues that were important to the Appellant's sister.

9. 42 CFR 441.302(c)(1) provides that an evaluation of the need for the level of care provided in a hospital, a NF, or an ICF/IID when there is a reasonable indication that a beneficiary might need the services in the near future (that is, a month or less) unless he or she receives home or community-based services. For purposes of this section, "evaluation' means a review of an individual beneficiary's condition to determine—

    i. If the beneficiary requires the level of care provided in a hospital as defined in §440.10 of this subchapter, a NF as defined in section 1919(a) of the Act, or an ICF/IID as defined by §440.150 of this subchapter, and
    ii. That the beneficiary, but for the provision of waiver services, would otherwise be institutionalized in such a facility.

10. DMHAS correctly determined that could not evaluate or re-evaluate the Appellant's need for level of care services.

11. 42 CFR 441.303 provides in part that the agency must furnish CMS with sufficient information to support the assurances required by §441.302. Except as CMS may otherwise specify for particular waivers, the information must consist of the following:
    (a) A description of the records and information that will be maintained to support financial accountability.
    (b) A description of the safeguards necessary to protect the health and welfare of beneficiaries. This information must include a copy of the standards established by the State for facilities that are covered by section 1616(e) of the Act.
    (c) A description of the agency's plan for the evaluation and reevaluation of beneficiaries, including—
        1. A description of who will make these evaluations and how they will be made
        2. A copy of the evaluation form to be used
        3. The agency's procedure to ensure the maintenance of written documentation on all evaluations and reevaluations;
        4. The agency's procedure to ensure reevaluations of need at regular intervals.

12. DMHAS correctly determined they could not provide support and skill building in order to keep the Appellant living in the community without being able to provide services consistently and without interruption.

13. 42 CFR 441.307(b) provides that if DMS or the State terminates the waiver, the State must notify beneficiaries of services under the waiver in accordance with §431.210 of this subchapter and notify them 30 days before terminating services.

14. DMHAS incorrectly discontinued the Appellant's MHW services. The notice of action was not clear in its intent or the timeframe of the action. DMHAS stopped services immediately after the NOA was issued.

DISCUSSION

The Department incorrectly discontinued the Appellant's MHW services based on its determination that the Appellant refused services. The Appellant's sister repeatedly represented herself as the Appellant's Conservator but did not provide any legal verification. The Appellant agreed to the services and seemed excited about participating in the program. The Appellant lived with her sister in her apartment in [redacted] Her sister repeatedly cancelled appointments and sent away the CSP when they came to the home. The Appellant's sister continued to make decisions that were not in the Appellant's best interest and she did not involve the Appellant in any of the decisions regarding her treatment.

The Appellant provided credible testimony that is supported by evidence provided for the administrative hearing. The Appellant's sister did not allow the Appellant the opportunity to speak for herself and continued to turn away the Appellant's support workers at her discretion. The Appellant has never lived on her own or made decision on her own. According to the witness' testimony, she did not receive any of DMHAS' notices and would not be able to understand them and was unaware of the reason she was attending the administrative hearing on [redacted] 2017.

The Appellant and her witness testified that she is now returned to her father's home and he is willing to have DMHAS and the support personnel come to the home and provide MHW services.

When DMHAS decided to discontinue MHW services they did not provide the Appellant the required thirty days. The NOA issued by the Department did not clearly state what action was taken and the timeframe of the action. The Appellant did not receive the NOA because her sister withheld the information and submitted the administrative hearing request.

DECISION

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

ORDER

1. The Department is ordered to re-open the Appellant's MHW program services effective immediately.

2. Compliance of this order will be submitted to the undersigned no later than [redacted] 2017.

Sybil Hardy
Hearing Officer

Pc: Elizabeth Thomas, Operations Manager, DSS R.O. # 11, Manchester
Kathy Bruni, Director, Community Options, Central Office, Hartford
Cheryl Janes, MHW Manager, DMHAS, Middletown, CT

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 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, 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. 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.