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

[redacted] 2018
Signature Confirmation

Client ID # [redacted]
Request # [redacted]

NOTICE OF DECISION

PARTY

[redacted]

PROCEDURAL BACKGROUND

On [redacted] 2018, the Department of Social Services (the "Department") sent [redacted] (the "Appellant") a Notice of Action ("NOA) granting her medical benefits under the State funded CT Home Care Program effective [redacted], 2018 .

On [redacted], 2018, the Appellant requested an administrative hearing to contest the Department's decision to grant services under the State funded Ct Home Care Program effective [redacted] 2018.

On [redacted], 2018, the Office of Legal Counsel, Regulations, and Administrative Hearings ("OLCRAH") issued a notice scheduling the administrative hearing for [redacted], 2018.

On [redacted], 2018, 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], Daughter&Appellant/ HealthCare Surrogate for [redacted]
Pamela Adams, Department Representative
Gregg Seiderer, Department Representative
[redacted] Department fair hearing helper
Almelinda McLeod, Fair Hearing Officer

STATEMENT OF THE ISSUE

The issue to be decided is whether the Department's decision to begin payment for home and community based services under the State funded CT Home Care Program effective [redacted], 2018 is correct.

FINDINGS OF FACT

1. On [redacted] 2018, the Department uploaded documents along with a W-1LTC application requesting for the State of Connecticut to pay for Assisted Living Services ("ASLA") into the ASCEND system. (Hearing summary and Exhibits 2,3, 4, 5,6,7,8,9,10,11, 12, 13, 14, 15,16 and 17).

2. The eligibility process for the ALSA program requires that all functional eligibility is determined by clinical staff and financial eligibility is determined before services can begin. (Department testimony)

3. On [redacted] 2018, [redacted], contact person and Social Worker for [redacted] submitted ALSA outcome cost sheet and care plan to the ASCEND system. (Hearing record, Exhibit 23, Exhibit E)

4. On [redacted], 2018, the Department reviewed the W-1LTC application and requested additional verifications. Specifically Current Bank statement for Bank of America ending [redacted], Current bank statement for Fifth Third Bank ending [redacted] and IRA ending [redacted]. (Exhibit 23 and Exhibit 23)

5. On [redacted] 2018, the Department received Bank of America bank account verifications on checking and IRA statement. (Hearing summary and Exhibits 18 and 19)

6. On [redacted] 2018 the Department received the Fifth Third Bank account verification. (Exhibit 20)

7. On [redacted] 2018, the Department requested a statement from the CT Partnership for Long Term Care showing all accounts exempt under the asset protection plan. (Exhibit 23 and Department testimony)

8. On [redacted] 2018, [redacted] forwards an e-mail correspondence between the Appellant and [redacted] Director of the State of CT Partnership for Long Term Care with the Office of Policy and Management as the clarification requested by the Department. (Exhibit 23)

9. On [redacted], 2018, the Department processed the application and was then able to make a determination of eligibility and authorized the community Action Agency, CCCI to begin to pay for ALSA services effective [redacted] 2018. (Exhibit 22 and Exhibit 25)

10. On [redacted], 2018, the Department issued a notice of action ("NOA") to the Appellant. The notice stated the Department approved Medicaid under the State funded CT Home Care Program effective [redacted] 2018. (Exhibit : Notice of Action)

11. The approval of Medicaid under the Ct. Home Care for Elderly program allows the Department to pay for the assessment provided by CCCI on [redacted] 2018. (Department testimony)

12. The Department is unable to retroactive services because the Department is regulated to oversee the services taking place. Once the Department's approval is official, the Department is then responsible to oversee all services provided; therefore the Department cannot oversee services prior to the official approval of [redacted] 2018. (Department testimony)

13. The Appellant disagrees with the effective date of [redacted], 2018 because all of the required verifications had been submitted on [redacted], 2017 and a subsequent request for financial information was not necessary since the only change to the checking and IRA accounts would be in interest only. In addition, the services for her mom had been approved by a previous worker effective [redacted] 2018. (Appellant's Daughter Testimony)

14. The Appellant acknowledged that the only official notice received from the Department was the NOA issued on [redacted], 2018.

CONCLUSIONS OF LAW

1. Connecticut General Statute ("C.G.S.") § 17b-2(6) provides that 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. State Statute provides that 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. [C.G.S. 17b-342(a)]

3. UPM § 2540.92(A) provides that this group includes individual 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.

4. Regulations provides that 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. Agency Regs. § 17b-342-1(a)]

5. Regulation provides that persons seeking home care services may initiate a screening for program participation by submitting a Home Care Request Form or by calling the department. Individuals or client representatives are responsible for assuring that all information necessary for determining eligibility including, but not be limited to, completing and submitting a program financial application and providing any required verifications, is submitted on their behalf to the department. <u>Authorization for home care services shall not be granted, nor a plan of care implemented, until</u>

complete information has been provided and a financial and functional eligibility determination has been issued by the department. Failure to provide required information and non-cooperation with any of the program requirements shall be grounds for denial or discontinuance from the Connecticut Home Care Program. [Conn. Agency Regs. § 17b-342-1(g)]

6. The Department correctly determined eligibility for the ALSA services program once all functional and financial eligibility was met as required by regulations.

7. Regulation defines "home care services" as any combination of community based services and home health services as defined in sections 17b-342-1(b) (9) and (21) of the Regulations of the State Agencies which enable elders to live in noninstitutional settings. Such services may be provided to elders living in private homes, congregate housing, assisted living demonstration project facilities, housing and urban development facilities, private facilities and homes for the aged and other community living situations as long as the services needed are not considered a regular component of the services of the community living situation. [Conn. Agency Regs. § 17b-342-1(b)(20)]

8. Regulation provides for the Connecticut Home Care Program, all home care services shall be included as part of a written plan of care developed initially and updated regularly by the access agency, the assisted living service agency, department staff or department designee. The plan of care shall specify the start date of services, services to be provided, category type of services, frequency, cost, funding source and the providers of all home care services. The type and frequency of services contained in the plan of care shall be based upon the documented needs found in the assessment of the elderly person's needs and shall be reimbursed by the department only when it is determined that each service is needed in order to avoid institutional placement. For any services where the client would be at risk if the schedule of the service varied, a back-up plan shall be identified in the total plan of care. Services not included as part of the approved plan of care or not covered by sections 17b-342-1 to 17b-342-5, inclusive, of the Regulations of Connecticut State Agencies are not eligible for reimbursement from the Connecticut Home Care Program. [Conn. Agency Regs. § 17b-342-1(d)(7)]

9. Regulation defines "plan of care" as a written individualized plan of home care services which specifies the type and frequency of all services and funding sources required to maintain the individual in the community, the names of the services providers and the cost of services, regardless of whether or not there is an actual charge for the service. The plan of care

shall include any in-kind services and any services paid for by the client or the client's representative. [Conn. Agency Regs. § 17b-342-1(b)(26)

10. Regulation provides that the client's individual plan of care must be signed by the client or the client's representative and the access agency staff, assistance living agency staff, department staff or department designee. [Conn. Agency Regs. § 17b-342-1(d)(8)]

11. Regulation provides that if the department determines that a plan of care is feasible and cost-effective under the program, the elderly person may remain in the community with assistance provided under the Connecticut Home Care Program. If home care is desired, the plan of care shall be authorized by the department. [Conn. Agency Regs. § 17b-342-1(d)(6)]

12. Regulation provides that all home care services provided to individual under the Connecticut Home Care Program shall be authorized in accordance with procedures established by the department prior to the delivery of the services. [Conn. Agency Regs. § 17b-342-3(a)(1)]

13. UPM § 8040.10(F) (2) provides that the beginning date of assistance is the later of the following dates: the earliest date that the plan of care can be implemented after all eligibility requirements are met.

14. The Department received <u>all</u> verifications, care plan and asset protection clarifications needed to make a determination of eligibility on [redacted] 2018.

15. **The Department correctly determined and authorized ALSA services effective [redacted], 2018.**

16. **The Department correctly determined that the approval of Medicaid under the CT Home Care for Elderly program for the ALSA services allowed payment to the access agency, CCCI for their assessment effective [redacted] 2018.**

17. Regulation provides that reimbursement is not available from the department for any services provided prior to the assessment or the determination of program eligibility or not documented in an approved plan of care. [Conn. Agency Regs. § 17b-342-3(a)(7)]

18. Regulation provides that reimbursement is not available for services arranged by program clients or representatives, access agencies, assisted living service agencies or service providers without prior approval by the department or department designee. [Conn. Agency Regs. § 17b-342-3(a)(11)]

19. **The regulations do not support retroactive payment for services provided prior to the authorization date of [redacted], 2018.**

20. **The Department correctly determined home care services provided prior to the [redacted] 2018 authorization date for services under the CT Home Care for Elderly Program will not be paid for by the Department.**

DECISION

The Appellant's appeal is DENIED.

Almelinda McLeod
Fair Hearing Officer

CC: Shirlee Stout , Community Options, DSS- CO
Paul Chase, Community Options, DSS-CO
Lisa Bonetti, Community Options, DSS- CO
Laurie Filippini, Community Options, DSS- CO
Pam Adams, Community Options Supervisor, DSS- CO
Gregg Seiderer, Community Options Worker, 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, 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 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.