

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

██████████, 2018
Signature Confirmation

Client ID # ██████████
Request # ██████████

NOTICE OF DECISION

PARTY

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██████████
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██████████

PROCEDURAL BACKGROUND

On ██████████ 2017, the Department of Social Services (the "Department") sent ██████████, (the "Appellant") a Notice of Action ("NOA") denying his application for H01 Home and Community Based services program because he did not meet the technical requirements of the program.

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

On ██████████ ██████████, 2017, the Office of Legal Counsel, Regulations, and Administrative Hearings ("OLCRAH") issued a Notice scheduling the administrative hearing for ██████████, 2017.

On ██████████ 2017, in accordance with sections 17b-60, 17-61 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:

██████████, Appellant's father and Representative
Megan Monopoly, Department's Representative
Almelinda McLeod, Hearing Officer

A separate decision will be issued regarding Husky C denial.

The hearing record was held open for the submission of additional evidence. On [REDACTED], 2017, the hearing record was closed.

STATEMENT OF THE ISSUE

The issue to be decided is whether the Department correctly denied the Appellant's family Home and Community Based Services ("HCBSD") H01 waiver pursuant to the regulations.

FINDINGS OF FACT

1. On [REDACTED], 2017, the Appellant went to the local office and inquired about applying for a Home and Community based services waiver program (H01) for his [REDACTED] year old autistic son who is residing out of state. (Exhibit 1)
2. On [REDACTED] 2017, the Appellant applied for the Medicaid coverage of the H01 program. (Exhibit 4)
3. H01 is Husky A Medicaid assistance under the Medicaid Waiver program that has been approved with Centers of Medicare and Medicaid ("CMS").
4. The general criteria to qualify for an H01 is that the applicant be 21 years old or younger residing in a long term care facility, is categorically needy for Husky A Medicaid, qualifies for nurse care services under a waiver program approved by CMS and that without such services would require care in a long term care facility.
5. On [REDACTED], 2017, the Department's Autism unit confirmed that the Appellant did not have a spot on the Autism Spectrum Waiver. (Exhibit 1)
6. Having a spot means that the applicant has been approved for a waiver and placed on a waiting list. (Department testimony)
7. On [REDACTED] the Department inquired with DDS as to whether the Appellant was a DDS client and whether he had a spot on the DDS waiver. (Exhibit 1, 2)
8. On [REDACTED] 2017, the Department's review of the [REDACTED] 2017 application stated that the Appellant resided in a special education

school named [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED]
 [REDACTED] (Hearing summary)

9. On [REDACTED], 2017, the Department confirmed through DDS that the Appellant did not have a case manager assigned to his case, had no out of state information and that no waiver services can be approved while living out or placed out of the state of Connecticut. (Exhibit 1 and Exhibit 2)
10. On [REDACTED] 2017, the Department determined that the Appellant was neither on the Autism Spectrum Waiver wait list or the DDS waiver wait list. (Exhibit 5)
11. DDS determines eligibility for the waiver and decides what services can be provided. If DDS will not provide the services, the Department cannot grant the H01 case without the waiver. (Department testimony)
12. On [REDACTED] [REDACTED] 2017, the Department denied the Appellant's H01 application for failing the technical requirements of securing a spot on a wait list in order to qualify to receive home and community based services under a waiver program approved by CMS.
13. On [REDACTED], 2017, the Appellant inquired with DDS as to how get a waiver for his son and was informed that there were no available spots on the DDS waivers at the time due to Departmental cut-backs. (Appellant testimony)
14. The Appellant inquired about services for his son in the state of Massachusetts. (Appellant testimony)

CONCLUSIONS OF LAW

1. Section 17b-2 (10) of the Connecticut General Statutes authorizes the Commissioner of the Department of Social Services to administer the state social services plan for the implementation of the social services block grants pursuant to the Social Security Act.
2. Section 17b-283 of the Connecticut General Statutes provides for the Medicaid and home and community based services waiver program for children and young adults with disabilities and states that the Commissioner of Social Services shall, within available appropriations, administer a Medicaid waiver program pursuant to Section 1915 (c) of the Social Security Act to provide home and community based services for person who are institutionalized or at risk of institutionalization and who (1)

- are twenty-one years of age or younger; (2) have a physical disability and may also have a co-occurring developmental disability; and (3) meet the financial eligibility established in the waiver.
3. Section 17b-283-3 (23) of the Regulations of Connecticut State Agencies provide in part, the definition of “waiting list” means the record maintained by the Department, after the program reaches the maximum capacity permitted under the waiver .
 4. Uniform Policy Manual (“UPM”) 2540.64 provides this group includes individuals who: (1) would be eligible for HUSKY A as categorically needy 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 (“CMS”) ; and 3. would, without such services require care in a LTCF.
 5. UPM 2540.64 pertains to the duration of Eligibility. Individuals qualify for Husky A as categorically needy for as long as they meet the conditions above and receive home and community –based services under a waiver.
 6. **The Department correctly determined the Appellant was not a wait list with neither the Department of Social Services Autism Spectrum nor DDS.**
 7. **The Department correctly determined that the Appellant had not been qualified to receive home and community based services under a waiver program approved by CMS.**
 8. **The Department correctly denied the Appellant’s application for the Husky A Medicaid, H01 for Home and community based services.**

DISCUSSION

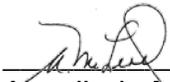
After reviewing the evidence and testimony presented, the Department's action to deny the H01 Home and Community Based services is upheld.

Regulations provide that in order to be eligible for services under the H01 waiver, an applicant must be determined eligible by qualifying to receive home and community based services under a waiver approved by CMS. In this case, the Appellant did not establish medical assistance eligibility under a waiver program approved by CMS. The Department was unable to grant the H01 Medicaid assistance without the Appellant being first approved for a waiver.

The Appellant is encouraged to follow up with both the Department of Social Services, Autism Spectrum and DDS to take steps to secure a spot on the waiting list and apply when funds become available.

DECISION

The Appellant's appeal is DENIED



Almelinda McLeod
Hearing Officer

CC: Musa Mohamud, SSOM, Hartford Regional Office
Judy Williams, OSMM, Hartford Regional Office
Jay Bartolomei, Fair Hearing Liaison Supervisor
Megan Monopoli, Fair Hearing Liaison, Hartford

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.

