

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

REQUEST # ██████████
CLIENT ID # ██████████

NOTICE OF DECISION

PARTY

██████████

PROCEDURAL BACKGROUND

On ██████████, 2017, the Department of Social Services' (the "Department") Community Options Unit issued a Notice of Action to ██████████ (the "Appellant"), denying his request for payment of the installation of a multi-zone ductless split air conditioning system in his home, under the Acquired Brain Injury ("ABI") Waiver Program.

On ██████████, 2017, the Appellant's co-conservators, ██████████ and ██████████ requested an administrative hearing on behalf of the Appellant to contest the Department's denial of the Appellant's request for payment of the installation of a multi-zone ductless split air conditioning system.

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

On ██████████, 2018, 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. The following individuals were present at the hearing:

██████████, Appellant
██████████, Appellant's mother
██████████, Appellant's father
██████████, for the Appellant
Beth Carangelo, Department Representative, Community Nurse Coordinator
Amy Dumont, Department Representative, Program Manager
Thomas Monahan, Hearing Officer

STATEMENT OF THE ISSUE

The issue to be decided is whether the Department's denial of the Appellant's request for payment of the installation of a multi-zone ductless split air conditioning system in his home is correct and in accordance with state law.

FINDINGS OF FACT

1. The Appellant is a recipient of the ABI waiver program and medical assistance under the Medicaid program. (Appellant's Representative's testimony; Hearing Summary)
2. The Appellant is [REDACTED] years of age (DOB [REDACTED]). (Exhibit B p.8: Doctors letter, Starling Physician's)
3. In [REDACTED] the Appellant sustained a traumatic brain injury ("TBI") in an automobile accident. (Appellant's Representative's testimony, Exhibit B, p.8: Letter from Dr. Cappelluti, [REDACTED])
4. Because of the accident and the TBI, the Appellant also suffers from a chronic respiratory condition. (Appellant Representative's testimony, Exhibit B, p.8: Letter from Dr. Cappelluti, [REDACTED])
5. The Appellant is on a feeding tube. (Appellant Representative's testimony)
6. In [REDACTED], the Appellant had multiple occurrences of aspiration pneumonia and seizures, which required hospitalizations. Liquid and solid material collects in the Appellant's lungs and the Appellant has large amounts of saliva in his mouth and throat. (Appellant Representative's testimony, Ex. B, p. 7: Conservator's letter to case manager)
7. Hot humid days make breathing more difficult for the Appellant. (Ex. D: Letter from Dr. Cappelluti, [REDACTED])
8. The Appellant receives daily treatments for his respiratory issues from family members and aides. The treatments include: a respiratory vest, a nebulizer, and suction machine for his mouth and when needed an attachment to the suction machine, which extends down the Appellant's throat. (Appellant Representative's testimony, Ex. B: p. 7: Conservator's letter to case manager)
9. The Appellant uses oxygen at night when sleeping and has a Hepa UV air purifier in his bedroom. There is a dehumidifier in the lower level of the home. (Appellant Representative's testimony, Ex. B: p. 7: Conservator's letter to case manager)
10. The Appellant's ABI care plan includes PCAs, Respite Care and Independent living Skills assistance. (Appellant Representative's testimony, EX. F: Care plan)

11. The Appellant lives in a home with his mother. The mother lives on the main floor, which has one bedroom and one bathroom and central air conditioning. The Appellant lives on the lower level, which has two bedrooms, a bathroom modified for the Appellant and no air conditioning. (Hearing record)
12. The Appellant requested authorization for installation of a multi-zone ductless split air conditioning system for the lower level of the home. The estimate consists of one condenser unit and three evaporative wall units. Installation calls for the three evaporative wall units to be hung in the Appellant's two bedrooms and main living area, with a line from each wall unit connected to the outside condenser unit. (Hearing record, Ex: B: Split ductless system estimate)
13. The proposed multi-zone ductless split air conditioning system provides the same cooling effect and works in a similar manner as a traditional central air conditioning system. (See Finding of Fact # 12; Ex. B)
14. There is limited space for a wall or window air conditioner in the lower level. (Appellant Representative's testimony)
15. On [REDACTED], the Department denied the Appellant's request for installation of a ductless air conditioning system for the reason that air conditioning is not permitted as an environmentally accessibility adaption service under the ABI waiver program. (Ex. C: Notice of Action. [REDACTED])

CONCLUSIONS OF LAW

1. The Department operates under proposed regulations, which were amended effective July 1, 2016 in accordance with the provisions of subsection (a) of section 4-168 of the Connecticut General Statutes. The Department, in accordance with section 17b-10 of the Connecticut General Statutes, will implement and operate under the proposed regulations updated effective July 1, 2016 while it is in the process of adopting the regulations. Such operating policy is listed as sections 17b-260a-1 through 17b-260a-18 of the Regulations of Connecticut State Agencies.
2. The Acquired Brain Injury (ABI) waiver program is established pursuant to sections 17b-260a(a) and 17b-260a(b) of the Connecticut General Statutes and 42 USC 1396n(c). The ABI waiver program provides, within the limitations described in sections 17b-260a-2 to 17b-260a-18, inclusive, of the Regulations of Connecticut State Agencies, a range of nonmedical, home and community-based services to individuals 18 years of age or older with an ABI who, without such services, would otherwise require placement in a hospital, nursing facility (NF), or Intermediate Care Facility for Individuals with Intellectual Disabilities (ICF/IID). The intention of the ABI waiver program is to enable such individuals, through person-centered planning, to receive home and community-based services necessary to allow such individuals to live in the community and avoid institutionalization. Conn. Agencies Regs. Section 17b-260a-1.

3. Sections 17b-260a-1 to 17b-260a-18, inclusive, of the Regulations of Connecticut State Agencies set forth the requirements for eligibility and payment of services to eligible individuals participating in the ABI waiver program. These regulations also describe program requirements; services available; service requirements; department, provider and individual responsibilities; residential setting requirements; and limitations under the ABI waiver program. Conn. Agencies Regs. Section 17b-260a-2.
4. As used in sections 17b-260a-1 to 17b-260a-18, inclusive, of the Regulations of Connecticut State Agencies: (1) "Acquired brain injury" or "ABI" means the combination of focal and diffuse central nervous system dysfunctions, immediate or delayed, at the brainstem level or above. These dysfunctions may be acquired through physical trauma, oxygen deprivation, infection, or a discrete incident that is toxic, surgical, or vascular in nature. The term "ABI" does not include disorders that are congenital, developmental, degenerative, associated with aging, or that meet the definition of intellectual disability as defined in section 1-1g of the Connecticut General Statutes. Conn. Agencies Regs. Section 17b-260a-3(1).
5. An applicant may be eligible to receive coverage for the cost of the services specified in section 17b-260a-8 of the Regulations of Connecticut State Agencies, through the Department's ABI waiver program, if: (1) The applicant's countable income is less than 300% of the benefit amount that would be payable under the federal Supplemental Security Income program to an applicant who lives in the applicant's own home and has no income or resources; (2) The applicant is otherwise eligible to participate in the department's Medicaid program, including any applicable asset requirements, under either the working disabled or long-term care eligibility criteria; (3) The applicant meets the programmatic requirements of subsection (c) of this section; and (4) The applicant is not ineligible for coverage under subsections (d) or (e) of this section. Conn. Agencies Regs. Section 17b-260a-5(a).
6. The Department has correctly determined that the Appellant is a current recipient of Medicaid and ABI services.
7. Home and community-based services available under the ABI waiver Program. (a) General principles. (1) ABI waiver services shall be furnished under a written service plan that is based on a person centered planning process, as described in section 17b-260a-6 of the Regulations of Connecticut State Agencies, and subject to approval by the department. (2) Except as set forth in subsection (b) of this section, ABI waiver services may be provided alone or in combination with other services, in accordance with the specific functional needs of the individual. Conn. Agencies Regs. Section 17b-260a-8(a)(1)(2).
8. Environmental Accessibility Adaptation ("EAA") Services, which are physical changes made to an individual's home that are necessary to ensure the health, welfare, and safety of the individual, or enhance and promote greater independence, without which the individual would require institutionalization. (A) EAA services include, but are not limited to, the following: (i) Installation of ramps; (ii) Widening of

doorways; (iii) modifications to meet egress requirements; (iv) Modification of bathroom facilities; and (v) Addition of specialized electrical and plumbing devices. (B) All EAA services shall be provided by agency providers or private contractors or businesses in accordance with applicable state and local building codes. (C) EAA services do not include: carpeting; central air conditioning; roof repair; house adaptations that add to the square footage of the home; or any other physical improvement to the home not of direct benefit to the individual's health, welfare, and safety, or ability to live independently. Conn. Agencies Regs. Sections 17b-260a-8(b)(11)(A)(B)(C).

9. The Department correctly determined that the proposed multi-zone ductless split air conditioning system, which provides the same cooling effect and works in a similar manner to a traditional central air conditioning system, is not a covered EAA service in the ABI waiver program.
10. The Department correctly denied authorization for the multi-zone ductless split air conditioning system because central air conditioning is not a covered EAA service.

DISCUSSION

The Appellant's conservators argued that the multi-zone ductless split air conditioning system is a physical improvement to the home that will directly benefit the Appellant. They also argued that the multi-zone ductless split air conditioning system is not central air conditioning.

Regulation states that central air conditioning is not a covered service in the ABI waiver program. The regulation the Appellant's conservator referred to states any other physical improvement to the home can be a covered service. This is not true, if the improvement to the home is central air conditioning, as the regulation specifically excludes central air conditioning as a covered EAA service.

DECISION

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

Thomas Monahan
Thomas Monahan
Hearing Officer

Amy Dumont, Program Manager, Central Office
Beth Carangelo, Social Services, RN, Central Office
Shirlee Stoute, Central Office
Paul Chase, Central Office
Lisa Bonetti, 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 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 06105-3725.

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, 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.