

STATE OF CONNECTICUT
DEPARTMENT OF SOCIAL SERVICES
OFFICE OF LEGAL COUNSEL, REGULATIONS, AND ADMINISTRATIVE HEARINGS
55 FARMINGTON AVENUE
HARTFORD, CT 06105-3726

██████████ 2019
Signature Confirmation

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

NOTICE OF DECISION

PARTY

██████████
██████████
██████████

PROCEDURAL BACKGROUND

On ██████████ 2018, the Department of Social Services (the “Department”) issued a notice of action discontinuing Acquired Brain Injury Waiver program services (“ABI”) for ██████████ (the “Appellant”).

On ██████████ 2018, the Appellant’s counsel, Michael Magliocco, requested an administrative hearing to contest the Department’s decision to discontinue such benefits.

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

On ██████████ 2018, OLCRAH, at the request of the Appellant’s counsel, rescheduled the administrative hearing for ██████████ 2018.

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On ██████████ 2018, in accordance with sections 17b-60, 17-61, and 4-176e to 4-184 inclusive, of the Connecticut General Statutes, OLCRAH held an administrative hearing.

The following individuals were present at the [REDACTED] 2018 hearing:

[REDACTED] the Appellant
[REDACTED] Appellant's Sister
[REDACTED], Appellant's Friend
Michael Magliocco, Appellant's Counsel
Carmine Perri, Appellant's Counsel
Beth Carangelo, Community Nurse Coordinator for the Department
Amy Dumont, ABI program representative for the Department
Doreen Andrew, Primary Care Manager ("PCM"), Connecticut Community Care Inc.
Christopher Turner, Hearing Officer

On [REDACTED] 2019, letter sent to Appellant's counsel closing hearing record.

On [REDACTED] 2019, medical records obtained by Appellant's counsel and forwarded by e-mail.

On [REDACTED] 2019, the Appellant's counsel requested to reconvene the hearing to go over additional medical information to dispute the Department's finding that the Appellant's return to her home poses a safety risk.

On [REDACTED] 2019, a letter was sent to the Appellant's counsel requesting possible reconvene times.

On [REDACTED] 2019, fax received from Appellant's counsel. The preferred reconvene times of [REDACTED] 19 or [REDACTED] 19 were indicated.

On [REDACTED] 2019, OLCRAH scheduled a reconvene of the administrative hearing for [REDACTED] 2019.

On [REDACTED] 2019, in accordance with sections 17b-60, 17-61, and 4-176e to 4-184 inclusive, of the Connecticut General Statutes, OLCRAH held an administrative hearing.

The following individuals were present at the [REDACTED] 2019, reconvened hearing:

[REDACTED] the Applicant
[REDACTED] Appellant's Sister
Michael Magliocco, Appellant's Counsel
Carmine Perri, Appellant's Counsel
Beth Carangelo, Community Nurse Coordinator for the Department
Amy Dumont, ABI program for the Department
Doreen Andrew, PCM, Connecticut Community Care Inc.
Christopher Turner, Hearing Officer

STATEMENT OF THE ISSUES

The first issue to be decided is whether the Department's decision to discontinue ABI services was correct.

The second issue to be decided is whether the Department's determination that the Appellant cannot be discharged home because of personal safety issues was correct.

FINDINGS OF FACT

1. The Appellant suffered a Traumatic Brain Injury ("TBI") in [REDACTED] due to a car accident. (Attorney Perri's memorandum; Testimony)
2. On [REDACTED] 2002, Attorney Michael Magliocco was appointed the Appellant's Conservator of Person. (Exhibit D: Court of Probate document)
3. In the period between [REDACTED] 2017, and [REDACTED] 2018, the Appellant was treated at [REDACTED] seven times. (Medical records pages 225-226 of 744)
4. On [REDACTED] 2018, the Appellant was admitted to [REDACTED] with a diagnosis of weakness. (Medical records page 225 of 744)
5. On [REDACTED] 2018, the Appellant entered [REDACTED] from [REDACTED] Hospital. (Medical records page 210 of 744; Hearing summary)
6. On [REDACTED] 2018, the Appellant was treated at [REDACTED] emergency department for [REDACTED]. The Appellant returned to [REDACTED] on [REDACTED] 18. (Medical records page 225 of 744; page 492 of 744)
7. On [REDACTED] 2018, the Appellant was treated at [REDACTED] Hospital Emergency Department for [REDACTED]. (Medical records page 225 of 744)
8. On [REDACTED] 2018, Doreen Andrew conducted the Appellant's annual Plan of Care review. (Exhibit D)
9. On [REDACTED] 2018, Doreen Andrew approved/renewed the Appellant's Plan of Care through [REDACTED] 2019. (Exhibit D)
10. On [REDACTED] 2018, the Appellant was taken to [REDACTED] Hospital Emergency Department for treatment of [REDACTED] (Medical records page 224 of 744)
11. On [REDACTED] 2018, the Appellant was taken to [REDACTED] Hospital Emergency Department for treatment of peripheral edema. (Medical records page 483 of 744)

12. On [REDACTED] 2018, the PCM determined if the Appellant returned home the Appellant would need hands-on care in excess of the services previously provided by the Appellant's home health aides. (Exhibit D)
13. On [REDACTED] 2018, the Appellant received a thirty-day extension through [REDACTED] 18 from the ABI waiver time limits for a stay in a facility. (Exhibit D: Page 4 of 32)
14. On [REDACTED] 2018, the Appellant reached her ninetieth day of residence at [REDACTED] (Record)
15. On [REDACTED] 2018, Ms. Andrew assessed the Appellant's care needs at the nursing home. The Appellant is a two-person assist at the facility. (Exhibit D; Hearing summary)
16. On [REDACTED] 2018, the Appellant was taken to [REDACTED] Hospital Emergency Department for treatment of [REDACTED] (Medical records page 461 of 744)
17. On [REDACTED] 2018, the Appellant received a second thirty-day extension through [REDACTED] 2018. (Exhibit D)
18. On [REDACTED] 2018, the PCM and Attorney Magliocco discussed plans to apply for ABI II in order to utilize personal care assistants ("PCA") services. (Exhibit D)
19. On [REDACTED] 2018, the PCM submitted a discontinuance recommendation form to DSS. (Exhibit D)
20. On [REDACTED] 2018, the Department issued a notice of action to the Appellant discontinuing the Appellant's ABI waiver services due to a decline in the Appellant's health status that prevents the Department from preparing a discharge plan for the Appellant due to safety issues. (Exhibit A: Notice of action; Department's summary)
21. Before the Appellant's admission to [REDACTED], the Appellant had been receiving ABI services and 24-hour care since [REDACTED] (Testimony)
22. The medical conditions the Appellant has been treated for and currently suffers from, include but are not limited to, TBI, Type 2 diabetic, Dialysis 3 times weekly, anemia, hyperthyroidism, hyperlipidemia, end-stage renal disease, obstructive sleep apnea, hypertension, gastroesophageal reflux disease. (Medical records page 221/229 of 744)
23. The ABI Waiver I program does not support the provision of duplicative services. In the Appellant's case, the use of two PCA's cannot be utilized. (Exhibit D; Hearing summary; Department's testimony)

24. The ABI Waiver II program has a waiting list in excess of one year. (Department's testimony)
25. The Appellant has participated in several occupational and physical therapy sessions as a resident of [REDACTED] (Medical records pages 345 to 371 of 744)
26. The Appellant has had a reduced number of hospitalizations since her admission to [REDACTED] (Hearing summary; Testimony)
27. The Appellant's home is a single story residence that is wheelchair accessible with a handicap accessible bedroom and bathroom fitted with a Hoyer lift for transferring, a second bedroom and bathroom for caregivers and/or guests and an automatic front door opener for ease of entry and exit. (Attorney Perri's memorandum; Testimony)
28. The Appellant has always wanted to return home since her admission to [REDACTED] (Testimony)
29. Attorney Perri's argument that regulation language is flexible concerning the amount of time an individual can stay in an institution while maintaining ABI Waiver I eligibility is not supported by state statute or regulation. The time limit restriction supersedes the safety issue. (Record)
30. The issuance of this decision is timely under Connecticut General Statutes § 17b-61(a), which requires that a decision be issued within 90 days of the request for an administrative hearing. The Appellant's counsel requested an administrative hearing on [REDACTED] 2018. The first hearing was held on [REDACTED] 2018 after the granting of three extensions requested by Appellant's counsel. The hearing was reconvened on [REDACTED] 2019, and as a result, this decision was due no later than [REDACTED] 2019.

CONCLUSIONS OF LAW

1. Connecticut General Statutes § 17b-2 provides that the Department of Social Services is designated as the state agency for the administration of (6) the Medicaid program pursuant to Title XIX of the Social Security Act.
2. Connecticut General Statutes § 17b-260a. provides (a) The Commissioner of Social Services shall seek a waiver from federal law to establish a Medicaid-financed, home and community-based program for individuals with acquired brain injury. Such waiver shall be submitted no later than October 1, 1995, and shall be operated continuously to the extent permissible under federal law. Notwithstanding the addition of any new waiver program serving such individuals, the commissioner shall ensure that services provided pursuant to this subsection are not phased out and that no person receiving such services is institutionalized in order to meet federal

cost neutrality requirements for the waiver program established pursuant to this subsection.

3. Regulations of Connecticut State Agencies (“RCSA”) Section (“§”) 17b-260a-1 provides 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.
4. RCSA § 17b-260a-2 provides for the ABI program scope. 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.
5. RCSA § 17b-260a-4 provides the ABI waiver program is not an entitlement program. Services, waiver slots, and access to services under the ABI waiver program may be limited based on available funding and program capacity.
6. RCSA § 17b-260a-5 provides (d) notwithstanding subsections (a), (b) and (c) of this section, an individual shall not be eligible for ABI waiver program services if: (1) The individual: (D) Requires inpatient care in an acute care hospital, NF, ABI NF, ICF-IID or CDH, or who is otherwise institutionalized for a period of ninety days or more, provided, however such durational limitation may be extended for an additional thirty days upon submission of documentation from a medical professional indicating that the applicant’s discharge is expected within thirty days.


The Department was correct when it proposed to discontinue the Appellant’s ABI Waiver Services because the Appellant has required inpatient care in an acute care or long term acute care hospital for a period of more than ninety days while being allowed two thirty-day extensions. In addition, no documentation from a medical professional was received to indicate the Appellant’s discharge was expected within thirty days.

DISCUSSION

Regulation is clear that if a recipient of the ABI waiver program has required inpatient care in an acute care or long term acute care hospital or nursing facility for a period of more than ninety days, while being allowed one thirty day extension, the individual shall not be eligible for ABI waiver program services. In the present case, the Appellant received two thirty-day extensions with the second thirty-day extension concluding [REDACTED] 2018. It was not until [REDACTED] 2018 that the Department issued a notice of action to discontinue the Appellant's ABI services. Since the Appellant has been a resident of [REDACTED] since [REDACTED] 2018, the Department's action to discontinue waiver services for the Appellant on [REDACTED] 2018 was correct. As a result, no ruling on whether the Appellant's discharge to her home presents a safety issue, that is, the Appellant is a two-person assist (in the facility but not home) as the issue is moot due to the Appellant exceeding the ninety day, plus two sixty-day extensions, stay in an institution. As a result, the Department's action to discontinue the Appellant's benefits through the ABI program because of her extended stay in a nursing home is upheld.

DECISION

The Appellant's appeal is denied.


Christopher Turner
Hearing Officer

Cc: Amy Dumont, ABI program, DSS Central Office
Beth Carangelo, Community Nurse, DSS Central Office
[REDACTED]

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 06105-3730.

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 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.