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

[redacted] **2019**
Signature Confirmation

Case ID # [redacted]
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 denying her application for the Connecticut Home Care Program for Elders ("CHCPE") Medicaid Waiver due to not meeting the age requirement.

[redacted] 2018, the Appellant requested an administrative hearing to contest the Department's decision to deny such benefits.

[redacted] 2019, the Office of Legal Counsel, Regulations, and Administrative Hearings ("OLCRAH") issued a notice scheduling the administrative hearing for [redacted] 2019.

[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 hearing:

[redacted] Appellant
Tammy Ober, Proctor for the Department
Victor Robles, Department's Representative by telephone
Christopher Turner, Hearing Officer

STATEMENT OF THE ISSUE

The issue to be decided is whether the Department was correct when it denied the Appellant's CHCPE application.

FINDINGS OF FACT

1. On [redacted] 2018, the Department received the Appellant's Long-term Care/Waiver application for homecare services. (Exhibit 1: W-1 LTC application, Hearing summary)

2. On [redacted] 2018, the Department's representative sent an E-mail to Paul Chase inquiring on whether the Appellant is on the Department's Acquired Brain Injury ("ABI") or Personal Care Assistance waiting lists. (Exhibit 2: E-mail correspondence; Hearing summary)

3. On [redacted] 2018, Paul Chase responded: the Appellant is not on the ABI or PCA waiting lists. (Exhibit 2: E-Mail correspondence)

4. On [redacted] 2018, the Department's representative denied the Appellant's application for home care services. (Exhibit 4: Notice dated 12/11/18)

5. The Appellant's is [redacted]. Her date of birth is [redacted]. (Record; Appellant's testimony)

6. The Appellant lives alone. (Record; Appellant's testimony)

7. The Appellant is a recipient of medical assistance for aged, blind or disabled with a spenddown of $[redacted]. (Exhibit 4)

8. The Appellant was a recipient of [redacted] services from [redacted]. (Appellant's testimony)

9. The issuance of this decision is timely under Connecticut General Statutes 17b-61(a), which requires a decision be issued within 90 days of the request for an administrative hearing. The Appellant requested an administrative hearing on [redacted] 2018. Therefore, this decision was due no later than [redacted] 2019.

CONCLUSIONS OF LAW

1. Connecticut General Statutes § 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. Connecticut General Statutes § 17b-342 provides for the Connecticut home-care program for the elderly. (a) 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 which 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 annualized cost of the community-based services provided to such persons under the program shall not exceed sixty per cent of the weighted average cost of care in skilled nursing facilities and intermediate care facilities. The program shall be structured so that the net cost to the state for long-term facility care in combination with the community-based 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 mental retardation 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.

3. Uniform Policy Manual (“UPM”) § 8040 provides for Connecticut Home Care Program for Elders program. This program provides home health and community based services either under a waiver to the Medicaid program or under an appropriation by the General Assembly. The financial eligibility requirements for these two parts of the program differ. The Medicaid waiver requirements are specified under UPM 2500 "Medical Coverage Groups" and other areas of the UPM. This section of

the manual applies to the state-funded portion of the program. The state-funded portion is not an entitlement program and services and access to services may be limited based on available funding. The Department may place new applicants on a waiting list in order of their date of application within the program region. The Connecticut Home Care Program for Elders provides an alternative to the elderly individual who is inappropriately institutionalized or at risk of institutionalization as long as the individual is not taking an unacceptable risk by putting his or her life and health and that of others in immediate jeopardy.

UPM § 8040.10 (A) provides the Department screens individuals for possible participation in the Connecticut Home Care program. An individual is first screened for the Medicaid Waiver portion of this program. If the individual does not meet the eligibility criteria for participation in the Medicaid Waiver portion of this program, he or she is screened for participation in the state-funded portion of the program. Individuals in the following circumstances are screened for participation in the Connecticut Home Care program: 1. those individuals identified by a nursing facility, who are expected to be admitted into a nursing home directly from their home in the community within 60 days; or 2. those individuals expected to be admitted into a nursing home upon hospital discharge, when they had been admitted to the hospital directly from their home in the community; or 3. those individuals who are currently institutionalized but would be able to remain at home without risk to their or others safety if home care services were provided; or 4. *those individuals who contact the Department and want to be considered for participation in the program*.

The Department properly screened the Appellant for the state-funded portion of the Connecticut Home Care program.

4. Connecticut General Statutes § 17b-342 (i) (1) provides on and after July 1, 1992, the Commissioner of Social Services shall, within available appropriations, administer a state-funded portion of the program for persons (A) who are sixty-five years of age and older; (B) who are inappropriately institutionalized or at risk of inappropriate institutionalization; (C) whose income is less than or equal to the amount allowed under subdivision (3) of subsection (a) of this section; and (D) whose assets, if single, do not exceed the minimum community spouse protected amount pursuant to Section 4022.05 of the department's uniform policy manual or, if married, the couple's assets do not exceed one hundred fifty per cent of said community spouse protected amount and on and after April 1, 2007, whose assets, if single, do not exceed one hundred fifty per cent of the minimum community spouse protected amount pursuant to Section 4022.05 of the department's uniform policy manual or, if married, the couple's assets do not exceed two hundred per cent of said community spouse protected amount.

UPM § 8040.20 provides for categorical requirements of the CHCPE program. (A) The individual must meet one of the following criteria: 1. be 65 years of age or older; or 2. on June 19, 1992, have been receiving services under the Home Care Demonstration Project previously operated by the former Department on Aging; or 3. as of June 30, 1992 have been receiving services from any of the following programs: a. the Promotion of Independent Living for the Elderly Program previously operated by the Department on Aging; or b. the Pre-admission Screening/ Community Based Services program formally operated by the Department of Income Maintenance

The Department properly determined the Appellant has not reached the age of [redacted]

5. 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. (b) The commissioner may seek federal approval for a second waiver, in addition to the waiver described in subsection (a) of this section, from federal law for a Medicaid-financed, home and community-based program for individuals with acquired brain injury.

   Regulations of Connecticut State Agencies § 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.

6. Regulations of Connecticut State Agencies § 17b-260a-3 provide for definitions. (48) Waiting list means a record maintained by the department that includes the names, and dates of completed ABI waiver applications, of all individuals who have submitted completed applications for ABI waiver services and whose applications have been screened and found to be functionally eligible for the program.

   The Department properly determined the Appellant is not on the ABI waiting list.

7. Regulations of Connecticut State Agencies § 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.

   Regulations of Connecticut State Agencies § 17b-260a-5 provides (a) 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: (c) The programmatic requirements for eligibility are as follows: An individual shall: (1) Be between the ages of 18 and 64 at the time the application is completed; (2) Have an ABI, as defined in section 17b-260a-3(1) of the Regulations of Connecticut State Agencies.

   Regulations of Connecticut State Agencies § 17b-260a-9 provides that (a) The Department shall review completed applications that it receives in the order in which they are received. Acceptance to the ABI waiver program shall be on a first-come, first-served basis, except that individuals transitioning from the Money Follows the Person program or Department of Mental Health and Addiction Services Acquired Brain Injury Services to the ABI waiver program shall have priority for reserved spaces. (b) ***The department shall conduct a pre-screen of the applicant following the receipt of the application, and prior to placing the applicant's name on the waiting list, to determine whether the applicant*** (1) meets the financial and programmatic requirements described in section 17b-260a-5 of the Regulations of Connecticut State Agencies, and (2) requires one of the level-of-care categories described in subsection (d) of this section. (c) Applications shall be pre-screened based upon the information contained in the completed application, as well as information obtained from: the individual; a neuropsychological examination report prepared by a qualified neuropsychologist; and any other clinical personnel who are familiar with the individual's case and history. In order to be considered, the neuropsychological examination report must have been completed no more than two years prior to the application date, provided however, that the department retains the discretion to increase this time limitation on a case-by-case basis. The neuropsychological examination report shall be submitted to the department no later than six months following the application date, except that the department may extend this deadline for an additional 90 days if a neuropsychological examination appointment has been scheduled. Failure by the individual to meet this deadline shall result in the denial of the application.

The Department failed to carry out a pre-screening of the Appellant following receipt of the Appellant's application for ABI services.

DECISION

The Appellant's appeal concerning the Department's decision to deny the Appellant's CHCPE application due to not meeting the age requirement is rejected.

The Appellant's appeal regarding the Department's decision to deny her request for ABI services is granted.

This decision does not confer eligibility to Appellant but does allow the application process to resume.

ORDER

The Department is instructed to conduct a pre-screen of the Appellant, before placing the Appellant's name on the waiting list, to determine whether the Appellant meets the financial and programmatic requirements described in section 17b-260a-5 of the Regulations of Connecticut State Agencies.

Proof of compliance with this order is due no later than [redacted] 2019 and will include a screen print of the Appellant's eligibility determination group.

Christopher Turner
Hearing Officer

Cc: Pamela J. Adams, Community Options DSS Central Office
Paul Chase, Community Options DSS Central Office
Victor Robles, DSS 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, 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.