

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

[REDACTED], 2019  
**Signature Confirmation**

CL ID # [REDACTED]  
Request ID #144600

**NOTICE OF DECISION**

**PARTY**

[REDACTED]

**PROCEDURAL BACKGROUND**

On [REDACTED] 2019, the Department of Social Services (the "Department") sent [REDACTED] (the "Appellant") a Notice of Action ("NOA") denying his application for the Connecticut Home Care Program for Elders ("CHCP") program.

On [REDACTED] 2019, the Appellant requested an administrative hearing to contest the Department's deny his application for CHCP.

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

On [REDACTED], 2019, 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], Appellant  
[REDACTED], Appellant's Daughter, Representative, Interpreter  
[REDACTED], Connecticut Community Care, Inc. ("CCCI"), Representative  
[REDACTED], Connecticut Community Care, Inc. ("CCCI"), Representative  
Allison Weingart, Community Nurse Coordinator, Department's Representative  
Miklos Mencseli, Hearing Officer

The hearing record closed on [REDACTED], 2019.

## **STATEMENT OF THE ISSUE**

The issue to be decided is whether the Department's denial of the Appellant's application for the CHCP program is correct.

## **FINDING OF FACTS**

1. On [REDACTED] 2019, at the Appellant's home, a Universal Assessment conducted by CCCI with the Appellant was completed. (Summary, Exhibit 2: Universal Assessment form, 64 pages)
2. The Appellant is a [REDACTED]-year-old who resides with his significant other. (Summary, Appellant's Daughter Testimony)
3. The Appellant's primary medical conditions are Diabetes Mellitus, COPD, Hypertension and history of Cerebral Vascular Accident in [REDACTED] 2018. (Summary, Hearing Record Testimony)
4. CCCI determined the Appellant is Independent with the following Activities of Daily Living ("ADL"): bathing, dressing, toileting, transferring and eating. (Summary, Exhibit 1: 2019 Universal Assessment Outcome form, Hearing Record Testimony)
5. A registered nurse for the Department reviewed the universal assessment. Based on the Appellant's assessment, the determination made that the Appellant does not meet the functional eligibility requirement for the CHCP program. (Summary, Department's Testimony)
6. On [REDACTED], 2019, the Department sent the Appellant an NOA denying his application for the CHCP program as he does not meet the need/functional criteria for the program. (Hearing Record Testimony)
7. The Appellant since his stroke in [REDACTED] 2018 has a loss of hearing, smell and suffers from depression. (Appellant's daughter Testimony)
8. The loss of hearing, smell and depression does not meet the functional critical need criteria as set forth in the regulations for the CHCP program. (CCCI Representative Testimony, Department's Testimony)
9. The Appellant is still driving to attend activities outside of the home. (Hearing Record Testimony)
10. 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 requested an administrative hearing on [REDACTED] 2019. Therefore, this decision is due not later than [REDACTED], 2019.

## **CONCLUSION OF LAW**

1. Section 17b-2 of the Connecticut General Statutes authorizes the Commissioner of the Department of Social Services to administer the Medicaid program.

“The department’s uniform policy manual is the equivalent of a state regulation and, as such, carries the force of law.” *Bucchere v. Rowe*, 43 Conn. Supp. 175, 178 (1994) (citing Conn. Gen. Stat. § 17b-10; *Richard v. Commissioner of Maintenance*, 214 Conn. 601, 573 A.2d (1990)).

2. Uniform Policy Manual (“UPM”), Section 8040 provides that 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.
3. Regs., Conn. State Agencies § 17b-342-1 provides for Connecticut home care program for elders; standards for access agencies and requirements for assisted living service agencies

(a) Scope

The purpose of sections 17b-342-1 to 17b-342-5, inclusive, of the Regulations of Connecticut State Agencies is to describe non-financial program requirements, services available and limitations under the Connecticut Home Care Program for Elders. This program provides home health services, community based services and assisted living services funded under a waiver to the Medicaid program and under a program funded with an appropriation by the General Assembly. The financial eligibility requirements for these three parts of the program differ and are specified under sections 2540.92 and 8040 to 8040.50, inclusive, of the Uniform Policy Manual of the Department of Social Services. This program includes all clients transferred from the following programs as of July 1, 1992: Promotion of Independent Living for the Elderly, Department on Aging Home Care Demonstration Project and Long Term Care Preadmission Screening and Community Based Services Program. Sections 17b-342-1 to 17b-342-5, inclusive, of the Regulations of Connecticut State Agencies also establish standards and requirements for access agencies and assisted living service agencies which operate under the Connecticut Home Care Program for Elders and the Connecticut Partnership for Long Term-Care.

4. Regs., Conn. State Agencies § 17b-342-1(b), provides for definitions as used in sections 17b-342-1 to 17b-342-5, inclusive, of the Regulations of Connecticut State Agencies the following definitions apply:
  - (5) "Assessment" means a comprehensive written evaluation of an individual's

medical, psychosocial and economic status, degree of functional impairment and related service needs. For the purposes of the Connecticut Home Care Program, this assessment shall include a face-to-face interview and shall utilize a standard assessment tool approved by the department.

5. On [REDACTED] 2019, an assessment completed for the Appellant.
6. Regs., Conn. State Agencies § 17b-342-1(c), provides for the general purposes of the [Connecticut Home Care Program] CHCPE:
  - (A) Assess whether cost-effective home care services can be offered to elders who are at risk of institutionalization;
  - (B) determine, prior to admission to a nursing facility whether the elder does or does not need nursing facility services;
  - (C) authorize department payment for elders for nursing facility care or home care services if appropriate; and
  - (D) provide a full range of community based services, home care services and assisted living services to eligible individuals who choose to remain in the community, if such services are appropriate, available and cost effective.
  - (2) The program application process shall consist of:
    - (A) A financial eligibility determination in accordance with section 17b-10-1 of the Regulations of Connecticut State Agencies and the department's Uniform Policy Manual sections 8040 and 2540.
    - (B) an initial determination as to the elder's needs, which shall include the category of services needed, the elder's functional eligibility and potential service options under the program. The initial determination shall be conducted by department staff based on completion or review of the health screen form.
      - (i) As a result of a review of the health screen form, the department shall determine:
        - (aa) Whether the elderly person meets the functional level for admission to the program;
        - (bb) whether the elderly person needs care that would otherwise be provided in a nursing facility;
        - (cc) which program component and category of services may be appropriate and authorized for the person in the community.
7. Regs., Conn. State Agencies § 17b-342-1(c)(3), provides for determination of need.
  - (A) The determination as to whether the elder is at risk of institutionalization or needs services that would otherwise require institutionalization shall be made by the department based upon an evaluation of the completed health screen

- and an assessment, if deemed appropriate.
- (B) The basis for determining the level, type, frequency and cost of services and funding source that an elder may receive under the program shall be determined by their financial and functional eligibility and need for services.
  - (C) Functional eligibility means the elder must be at risk of institutionalization and needs assistance with at least one critical need. For the purposes of eligibility, critical needs are defined as "activities of daily living" which are hands-on-activities or tasks that are essential for a client's health and safety. These include, but are not limited to; bathing, dressing, transferring, toileting (bowel or bladder), feeding, meal preparation, administration of medication or ambulation.

- 8. Based on the assessment the Appellant does not meet the functional criteria to be eligible for the CHCPE program.
- 9. The Appellant has the physical ability to complete his ADLs.
- 10. The Department is correct in its determination that the Appellant does not meet the criteria to be eligible under the Connecticut Home Care Program for Elders ("CHCP") program

**DECISION**

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

  
**Miklos Mencseli**  
**Hearing Officer**

C: Musa Mohamud, Operations Manager, DSS R.O. #10 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 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.