

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

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

Client ID # ██████████
Request # 145469

NOTICE OF DECISION

PARTY

██████████
██████████
██████████

PROCEDURAL BACKGROUND

On ██████████ 2019, the Department of Social Services (the "Department") issued ██████████ (the "Appellant") a Notice of Action ("NOA") discontinuing her benefits for Personal Care Assistance ("PCA") under the waiver program.

On ██████████, 2019, the Appellant requested an administrative hearing to contest the Department's decision to discontinue such benefits.

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

On ██████████, 2019, 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
██████████, Appellant's Home Care Aide
Elizabeth Orejuela, RN, Department's Representative
Paul Chase, Department's representative
Scott Zuckerman, Hearing Officer

STATEMENT OF THE ISSUE

The issue to be decided is whether the Department correctly discontinued the Appellant's PCA waiver benefits, pursuant to the regulation.

FINDINGS OF FACT

1. On [REDACTED], 2015, the Appellant was approved for benefits under the PCA Waiver program. (Hearing Record)
2. Allied Community Resources ("Allied") is the fiscal agency that facilitates the PCA waiver for the Department. (Hearing Record)
3. The PCA waiver allows the Appellant, as the employer, to hire PCAs from a list of qualified candidates screened through Allied. (Hearing Record)
4. [REDACTED] is the employee hired by the Appellant to provide PCA services since 2015. (Hearing Record)
5. From [REDACTED], 2017, through [REDACTED], 2017, [REDACTED] was incarcerated by the State of Connecticut, Department of Corrections. (Exhibit 4: Arrest Warrant Affidavit, [REDACTED] 19)
6. From [REDACTED] [REDACTED] 2017, through [REDACTED] [REDACTED] 2017, the Appellant submitted to Allied, weekly timesheets for PCA services provided by [REDACTED]. (Hearing Summary, Exhibit 4 and Exhibit 6: Timesheets dated [REDACTED] 2017, through [REDACTED] 2017)
7. From [REDACTED], 2018, through [REDACTED] 2018, [REDACTED] was incarcerated by the State of Connecticut Department of Corrections. (Ex. 4: Arrest Warrant Affidavit)
8. From [REDACTED] 2018, through [REDACTED] 2018, the Appellant submitted to Allied, weekly timesheets for PCA services provided by [REDACTED]. (Hearing Summary, Ex. 4: Arrest Warrant Affidavit, [REDACTED]/19 and Ex. 6: Timesheets dated [REDACTED]/18 through [REDACTED]/18)
9. On [REDACTED], 2018, the Appellant participated in her annual Universal care plan. The Appellant was approved to receive 25.75 hours of PCA services per week for assistance with bathing, dressing, meal prep, shopping, and laundry. (Hearing Summary and Exhibit 7: Universal Care Plan, [REDACTED]/18)

10. From [REDACTED], 2018, through [REDACTED] 2019, [REDACTED] was incarcerated by the State of Connecticut, Department of Corrections. (Ex. 4: Arrest Warrant Affidavit)
11. On [REDACTED] 2018, the Appellant submitted to Allied, a timesheet for PCA services provided by [REDACTED]. (Hearing Summary and Exhibit 6: Timesheet dated [REDACTED]/18)
12. The Appellant knowingly submitted timesheets to Allied on behalf of [REDACTED] for PCA services he did not provide due to his incarceration. (Appellant's testimony, Facts 5-8 and 10 and 11)
13. On [REDACTED] 2019, the Department issued a Notice of Action to the Appellant discontinuing her PCA services under the PCA Waiver program effective [REDACTED], 2019. The notice stated that the Department found the Appellant to have knowingly signed timesheets authorizing payment for services not provided. (Exhibit 1: Notice of Action, [REDACTED]/19)

CONCLUSIONS OF LAW

1. Regulations of Connecticut State Agencies Section 17b-262-588 sets forth definitions and states in part:
 - (6) "Consumer" means an applicant or eligible person.
 - (11) "Eligible Person" means an applicant who meets the criteria to receive personal care assistance services in accordance with section 17b-262-589 of the Regulations of Connecticut State Agencies and who meets all the eligibility requirements for participation in the Medicaid program as set forth in the Department's regulations that are contained in its Uniform Policy Manual.
 - (17) "Personal Care Assistant" means any person, excluding the consumer's spouse, and excluding the consumer's conservator and any person related to the consumer's conservator who is employed by the consumer or the consumer's conservator and is qualified to assist the consumer in carrying out the tasks required in the personal care services plan.
2. Section 17b-262-589 of the Regulations of Connecticut State Agencies speaks to eligibility and determination of need for the Personal Care Assistance Waiver Program and states in part:
 - (a) In order to be eligible to receive coverage for the cost of personal care assistance services under the Department's Personal

Care Assistance Waiver Program, an individual shall either have already been determined eligible to participate in the Department's Title XIX medical assistance program and also be determined to meet the additional programmatic requirements for coverage of personal care assistance services that are specified in this section or qualify for personal care assistance services by meeting all of the technical, special financial, and programmatic requirements stated in this section.

(b) An individual who has not previously been determined eligible for medical assistance and who receives personal care assistance services after meeting the requirements of this section is thereby automatically determined eligible for the medical assistance program and for all other medically necessary services that are covered by this program.

(e) In addition to meeting all technical and special financial eligibility requirements stated above in subsections c. and d. of this section, an applicant for coverage of the personal care assistance services shall meet all of the following programmatic requirements for eligibility. The programmatic requirements for eligibility are in part:

(1) the consumer shall be 18 through 64 years of age inclusive;

(2) the consumer shall have a primary medical diagnosis that is a chronic, severe, and permanent physical disability which results in a significant need for physical assistance with two or more of the following activities of daily living: bathing, dressing, eating, transfers, bowel and bladder care; and the consumer shall be in a condition that would otherwise require institutionalization in a nursing facility without such services;

(3) the consumer shall have the cognitive ability to be the essential participant in the development of his or her personal care services plan and to hire, direct, and fire his or her personal care assistants unless the consumer has a conservator who acts on his or her behalf and fulfills the foregoing requirements;

(7) the consumer shall acknowledge that he or she is employer of his or her personal care assistants and shall sign a written document accepting full responsibility as the employer of his or her personal care assistants;

(h) Any consumer who is found by the Department to have knowingly signed a time sheet authorizing payments for services that were not provided may be discharged from the Personal Care

Assistance Waiver program. Any consumer discharged under this subsection shall be ineligible for personal care assistance services under the Personal Care Assistance Waiver program for a period of not more than two years.

(Adopted effective February 8, 1999; Amended March 9, 2006)

The Department correctly determined that the Appellant is a participant of the Medicaid program.


The Department correctly determined that the Appellant has a significant need for physical assistance with two or more of the activities of daily living due to a medical condition.

The Department correctly determined that the Appellant knowingly signed timesheets authorizing payments for services provided by her PCA while he was incarcerated.

The Department correctly discontinued the Appellant's PCA waiver benefits.

DECISION

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


Scott Zuckerman
Hearing Officer

CC: Community Options Unit – 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.

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.