

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

██████████, 2020
Signature Confirmation

Client Id: # ██████████
Hearing Id: # 149095

NOTICE OF DECISION

PARTY

██████████
██████████ ██████████
████████████████████

PROCEDURAL BACKGROUND

On ██████████ 2019, ██████████ (the "Appellant") requested an administrative hearing to contest the delay in the Department of Social Services (the "Department") processing of the Appellant's request for homemaker services through the Social Work In Home Supports ("SWIS") Program.

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

On ██████████ 2019, the Appellant contacted OLCRAH to request a continuance of the hearing and also that the hearing be conducted by telephone. OLCRAH granted the Appellant's requests.

On ██████████ 2019, the OLCRAH issued a notice rescheduling the administrative hearing to be conducted by telephone on ██████████ 2019.

On ██████████ 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:

██████████ the Appellant, via telephone conference call
Luisa Parente, Social Worker, DSS, Middletown
Myrtle Turner, Social Work Supervisor, DSS, Middletown
Maureen Foley-Roy, Hearing Officer

The hearing officer left the hearing record open to provide the Appellant an opportunity to read and comment on the hearing summary. The record closed on [REDACTED], 2020.

STATEMENT OF THE ISSUE

The issue to be decided is whether the Department's delay in processing the Appellant's request for homemaker services through the SWIS Program is correct. .

FINDINGS OF FACT

1. In 1998, the Department approved essential services through the Medicaid program for the Appellant. She currently receives chore services. (Supervisor's testimony)
2. On [REDACTED] 2017, the Appellant was approved for 7 hours of homemaker services for the period from [REDACTED] 2017 through [REDACTED] 2018. (Exhibit 1: Community Based Services Authorization for Payment signed [REDACTED] 2017)
3. In [REDACTED] of 2018, a homemaker provider with a medical condition came to the Appellant's home. The Appellant was concerned with the medical condition and did not feel that the homemaker was a good fit, so she terminated the services. (Appellant's and Social Worker's testimony)
4. In [REDACTED] of 2018, the Appellant requested that the homemaker services continue. She would reach out to the social staff periodically with suggestions of providers that she felt would be a good fit. She would not allow social staff into her home to conduct an assessment. (Social Worker and Social Work Supervisor's testimony)
5. Social work staff has never conducted a review in the Appellant's home. The past two reviews were conducted in coffee shops at the Appellant's request. (Social Worker's testimony and Appellant's testimony)
6. Because of the Appellant's geographical location, the fact that the Appellant prefers to use only approximately 3 to 3 and a half hours of homemaker services each week, and she needs to find a homemaker that is a good fit, the Department has had difficulty finding a providers to perform the homemaker services for less than 7 hours per week. The Appellant did have a satisfactory provider for more than two years but that provider no longer serves her area. (Appellant's testimony, Social Work Supervisor's testimony)
7. On [REDACTED] 2019, the SWIS procedure manual was revised. (Exhibit 5: SWIS procedure manual)

8. The Appellant is not comfortable with the social worker and the social work supervisor. She feels it would be difficult to complete an assessment when she feels disrespected and the parties are not getting along. She did not have a problem with her previous social worker, who retired. (Appellant's testimony)
9. On [REDACTED] 2019, the Department sent the Appellant a letter via U.S regular mail and certified mail regarding her annual review for the SWIS Program. The letter stated that the Department was requesting a personal meeting in the Appellant's home on Thursday, [REDACTED] 2019 at 12 pm. The letter advised that the assessment would take approximately one hour and provided the contact information for the Social Work Supervisor if the Appellant had any questions. (Exhibit 4: Letter dated [REDACTED], 2019)
10. The Appellant has not allowed the social work staff into her home to conduct an assessment to determine the need for homemaker services or to conduct an in home assessment or annual review. (Social Worker and Social Worker Supervisor's testimony)
11. The Department has not authorized homemaker services for the Appellant and has not denied homemaker services for the Appellant. (Hearing Summary and Social Work Supervisor's testimony)
12. On [REDACTED] 2020, the hearing summary was returned to the Department by the post office because the Appellant refused delivery. (Exhibit 6: Returned mail)
13. 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. The hearing was continued for twenty days at the request of the Appellant because she was not available on the originally scheduled hearing date. In addition, the hearing record was held open for eighteen additional days to provide the Appellant with an opportunity to review and comment on the hearing summary and exhibits. Therefore, this decision was due not later than [REDACTED] 2020 and is therefore timely.

CONCLUSIONS 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.
2. Regulations of Connecticut State Agencies Section 17b-4 (a)1 –17b4(a) 6 governs the Department of Social Services Community Based Services program.

3. Section 17b-4(a)-6 of the Regulations of Connecticut Agencies provides that a person aggrieved by any action or inaction of the Department may request a fair hearing in accordance with Connecticut General Statutes Sections 17-603 and 17-604 as same may be amended. The Department of Social Services' fair hearing procedures are governed by applicable provisions of the Uniform Administrative Procedure Act and the Department's separate fair hearing regulations.
4. Section 17b-4 (a)2 (b) (1) of the Regulations of Connecticut State Agencies provides that in order to be eligible for any services, the adult must reside in Connecticut, be between the ages of 18 and 64, be a person with a disability as defined in Section 17b-4 (a) 1 and meet the income guidelines as defined in subsection 9d) of this section.
5. Section 17b-4(a)-2(c) of the Regulations of Connecticut State Agencies provides that (1) the adult applicant for paid services shall document the medical basis of his or her need, and the Department will review all documentation submitted to determine its sufficiency. Medical data may include a statement from a medical doctor, therapist or other appropriate health care professional stating that services are necessary to allow the applicant to remain in the community. The incapacitated supervising relative of a family shall also document medical need when applying for paid services. **(2) The Department social worker shall assess the case to determine the impact of the disability on the individual and/or the family and how this directly affects their ability to meet needs. (3) A Department social worker shall determine whether services provided or paid for by the Department can adequately meet the need.** (4) The Department may authorize Community-Based Services for families and adults when the social worker's assessment indicates that a need for services exists due to an individual's disability, appropriate medical data confirms this assessment, and fiscal information verifies that there is financial eligibility. (Emphasis added)
6. Section 17b-4(a)-3(b) of the Regulations of Connecticut State Agencies provides that a determination of eligibility by the Department shall be made no later than 60 days following the receipt by the Department of the completed application. A notice of action shall be mailed to the applicant.
7. Section 17b-4(a)-3(c) of the Regulations of Connecticut State Agencies provides that **staff assigned by the Commissioner**, with the assistance of the applicant shall assess the applicant's needs, determine what needs are unmet and develop an appropriate plan for Community-Based Services within established cost limits. (Emphasis added)
8. Section 17b-4(a)-3(e) of the Regulations of Connecticut Agencies provides that program eligibility for paid and unpaid services shall be reviewed at least once per year. Eligibility will be reviewed more frequently in cases where services needs are of short term.

9. The Appellant has been requesting additional services from the SWIS program since 2018, and has refused to comply with the review process and application for additional services under the SWIS program. The Department failed to deny the Appellant request for additional services no later than 60 days following the request for additional services.

DISCUSSION

The Department has a procedures manual by which the Department processes request for eligibility for the SWIS program. In part, it provides the following:

Section 4 provides that the social worker will conduct a home visit during which the social worker will inform the applicant of the need to verify financial eligibility and the need to provide a medical statement to determine level of care needs.

Section 6 I states in part that the SWIS program requires a review of the client's eligibility on the anniversary month of the initial grant of services. Reviews must be conducted face to face via a home visit at least every 24 months. Telephonic review may be conducted every other year. Some cases may need to be reviewed more frequently where service needs are short term or a change is noted in the client's circumstances.

Section 6 provides that in conducting reviews, the social worker shall contact the client either by telephone or by sending a letter to schedule an appointment to review eligibility. Prior to the home visit, the Social Worker reviews information on Impact to confirm income, assets and type of benefits.

Regulations clearly establish that a face to face interview is required biannually to review eligibility. The procedures manual specifies that the interview must be in the home. The regulations are quite clear that an assessment of need is required. It is reasonable and logical that a home visit would be necessary to determine the need for homemaker services.

The Appellant argues that she did not have this issue with her previous social worker. It may be that previous social worker was remiss in his duties. It is also possible that the in home interview requirement was clarified with the issuance of the 2019 SWIS manual. The undersigned cannot speculate on what happened in the past and can only rule on the eligibility requirements of the program at this time and the Department is correct in requiring an in home review.

Since the Department has not been allowed to assess the Appellant's eligibility for services, the Department should have denied the request and notified the Appellant in writing of such denial.

DECISION

The Appellant's appeal in regards to process delay is **GRANTED**.

ORDER

1. The Department must send the Appellant a denial of her request for additional services under the SWIS program for failure to comply with the application and review process.
2. Compliance with this order is due by [REDACTED], 2020 and shall consist of documentation that the Department has denied the Appellant's request for home care services.



Maureen Foley-Roy
Hearing Officer

Cc: Brian Sexton Operations Manager, Middletown
Dorian Long, DSS Social Work, C.O.
Effie Morris-Ferguson, DSS Social Work, C. O.
Myrtle Turner, Social Work Supervisor, Middletown
Luisa Parente, Social Worker, Middletown

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 06105-3725.

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, 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 06105-3725. 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.