

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

██████████, 2020  
Signature confirmation

Case: ██████████  
Client: ██████████  
Request: 149404

**NOTICE OF DECISION**

**PARTY**

██████████

**PROCEDURAL BACKGROUND**

On ██████████ 2019, the Department of Social Services (the "Department") issued a *Notice of Action* to ██████████ (the "Appellant") terminating his participation in the Connecticut Mental Health Waiver effective ██████████ 2019.

On ██████████ 2019, the Office of Legal Counsel, Regulations, and Administrative Hearings ("OLCRAH") received the Appellant's administrative hearing request.

On ██████████ 2019, the OLCRAH issued a notice scheduling the administrative hearing for ██████████ 2019. The OLCRAH granted the Appellant's request for a postponement.

On ██████████ 2020, in accordance with sections 17b-60, 17b-61 and 4-176e to 4-189, inclusive, of the Connecticut General Statutes, the OLCRAH held an administrative hearing. The following individuals attended the hearing:

██████████, Appellant  
██████████, Community Health Resources, Appellant's witness  
Erin Leavitt-Smith, Department of Mental Health and Addiction Services ("DMHAS"),  
Department's representative  
Katie Daly, Advanced Behavioral Health, Department's witness  
Saya Miyakoshi, Department's observer  
Eva Tar, Hearing Officer

The hearing record closed ██████████ 2020.

## **STATEMENT OF ISSUE**

The issue is whether the Department correctly terminated the Appellant's participation in the Connecticut Mental Health Waiver.

## **FINDINGS OF FACT**

1. Through [REDACTED] 2019, the Appellant was enrolled in the Connecticut Mental Health Waiver. (Department Exhibits 2 and 3)
2. The Connecticut Mental Health Waiver is limited to providing services to 615 participants; it currently has a waiting list. (Leavitt-Smith testimony)
3. In order to participate in the Connecticut Mental Health Waiver, individuals must meet the program's diagnostic criteria and also require its services for three activities of daily living ("ADLs"). (Leavitt-Smith testimony)
4. The Appellant meets the diagnostic criteria associated with the Connecticut Mental Health Waiver. (Leavitt-Smith testimony)
5. The Appellant independently performs the following ADLS: bathing, dressing, toileting, mobility, transferring, and eating. (Appellant testimony)(Department Exhibit 5)
6. The Appellant does not use a cane, walker, wheelchair, or other assistive device for mobility. (Appellant testimony)
7. The Appellant uses handles that were placed in his shower to address his balance issues. (Appellant testimony)
8. The Appellant requires oversight with his medications. (Appellant testimony)(Department Exhibit 5)
9. The majority of the Appellant's medications are taken orally. The Appellant uses skin creams and receives an injection once per month for headaches. (Appellant testimony)(Appellant Exhibit C)
10. The Appellant has difficulty planning and preparing meals. (Appellant testimony)
11. The Appellant operates his motor vehicle and arranges for its repairs. (Appellant testimony)
12. The Appellant pays his bills using checks and a debit card. (Appellant testimony)
13. On [REDACTED], 2019, a DMHAS licensed clinical social worker met with Appellant and his Community Health Resources caseworker to discuss the Appellant's transitioning off of the Connecticut Mental Health Waiver. (Department Exhibit 4)

14. On [REDACTED] 2019, the Department issued a *Notice of Action* to the Appellant, removing him from the Connecticut Mental Health Waiver effective [REDACTED] 2019. (Department Exhibit 3)
15. Connecticut General Statutes § 17b-61 (a), as amended on passage by Section 309 of *Public Act No. 19-117 (January Session)*, provides that a final decision shall be rendered not later than 90 days from the date the Commissioner receives a request for a fair hearing, noting in part that the time for rendering a final decision shall be extended whenever the aggrieved person requests or agrees to an extension.

On [REDACTED] 2019, the OLCRAH received the Appellant's hearing request. The OLCRAH granted the Appellant's request for a postponement of the initially scheduled hearing date of [REDACTED] 2019. The hearing record closed on [REDACTED] 2020. The 21-day postponement of the initially scheduled hearing date accordingly extended the deadline for this final decision. This final decision would have become due by [REDACTED] 2020. This final decision is timely.

### **CONCLUSIONS OF LAW**

1. Section 17b-2 of the Connecticut General Statutes in part authorizes the Commissioner of the Department of Social Services to administer the Medicaid program pursuant to Title XIX of the Social Security Act.

Section 17b-602a (a) of the Connecticut General Statutes permits the Department and DMHAS "to establish and implement a Medicaid-financed home and community-based program to provide community-based services and, if necessary, housing assistance, to adults with severe and persistent psychiatric disabilities being discharged or diverted from nursing home residential care."

**The Department and DMHAS are authorized under Section 17b-602a (a) of the Connecticut General Statutes to cooperate with respect to the implementation of the Connecticut Mental Health Waiver, a Medicaid-financed home and community-based program.**

2. Section 1915 (c)(1) of the Social Security Act [Title 42, United States Code ("U.S.C.") § 1396n] provides in part:

The Secretary may by waiver provide that a State plan approved under this title may include as "medical assistance" under such plan payment for part or all of the cost of home or community-based services (other than room and board) approved by the Secretary which are provided pursuant to a written plan of care *to individuals with respect to whom there has been a determination that but for the provision of such services the individuals would require the level of care provided in a hospital or a nursing facility or intermediate care facility for the mentally retarded....*"

42 U.S.C. § 1396n (emphasis added).

"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 Income Maintenance, 214 Conn. 601, 573 A.2d 712 \(1990\)](#)).

Section 2540.92 A. of the Department's Uniform Policy Manual ("UPM") states that for individuals receiving home and community based services paid for by the Medicaid program, the coverage group is described as follows:

This group includes individuals who:

1. would be eligible for MAABD [Medicaid for the Aged, Blind, and Disabled] if residing in a long term care facility (LTCF); and
2. qualify to receive home and community-based services under a waiver approved by the Centers for Medicare and Medicaid Services; and
3. *without such services, require care in an LTCF.*

UPM § 2540.92 A (emphasis added).

**To continue to be eligible to participate in the Connecticut Mental Health Waiver, a participant must establish that *but for* those services provided to him by the Connecticut Mental Health Waiver in a home and community-based setting, the participant would require the level of care provided in a hospital or a nursing facility.**

3. Section 17b-259b (b) of the Connecticut General Statutes provides:

For purposes of the administration of the medical assistance programs by the Department of Social Services, "medically necessary" and "medical necessity" mean those health services required to prevent, identify, diagnose, treat, rehabilitate or ameliorate an individual's medical condition, including mental illness, or its effects, in order to attain or maintain the individual's achievable health and independent functioning provided such services are: (1) Consistent with generally-accepted standards of medical practice that are defined as standards that are based on (A) credible scientific evidence published in peer-reviewed medical literature that is generally recognized by the relevant medical community, (B) recommendations of a physician-specialty society, (C) the views of physicians practicing in relevant clinical areas, and (D) any other relevant factors; (2) Clinically appropriate in terms of type, frequency, timing, site, extent and duration and considered effective for the individual's illness, injury or disease; (3) Not primarily for the convenience of the individual, the individual's health care provider or other health care providers; (4) Not more costly than an alternative service or sequence of services at least as likely to produce equivalent therapeutic or diagnostic results as to the diagnosis or treatment of the individual's illness, injury or disease; and (5) Based on an assessment of the individual and his or her medical condition.

Conn. Gen. Stat. §17b-259b (a).

**DMHAS correctly acted on [REDACTED], 2019 to assess the Appellant's need for and usage of Connecticut Mental Health Waiver services so as to determine the medical necessity of those services.**

**The Appellant does not require Connecticut Mental Health Waiver services to reach three or more ADLs, as he is independent in performing his ADLs of bathing, dressing, toileting, mobility, transferring, and eating.**

Services such as medication oversight and meal preparation are primarily for the convenience of the Appellant.

Connecticut Mental Health Waiver services are not medically necessary, as “medically necessary” is defined at Section 17b-259b of the Connecticut General Statutes, so as to prevent the Appellant’s in-patient hospitalization or institutionalization at a skilled nursing facility.

The Department correctly terminated the Appellant’s participation in the Connecticut Mental Health Waiver, as the Appellant no longer meets the program’s level of care criteria.

### **DISCUSSION**

The Connecticut Mental Health Waiver is a home and community based services waiver authorized under section 1915 (c) of the Social Security Act. This Medicaid waiver provides home and community based services to eligible adults with severe mental illness who are at risk of in-patient institutionalization at a hospital or skilled nursing facility.

The Appellant acknowledges that he is independent with his ADLs. However, the Appellant would like help with his meals and medication oversight.

Individuals who need help with meal preparation and medication oversight have challenges that may be addressed at a lower level of care than in-patient institutionalization in a hospital or skilled nursing facility.

The Appellant is encouraged to continue working with DMHAS to engage other community supports, such as participating in a medication blister pack program, as suggested by the Department’s representative at the hearing. DMHAS may also be able to get the Appellant in touch with local programs that could address his nutrition and meal preparation concerns.

### **DECISION**

The Appellant’s appeal is DENIED.

*Eva Tar-electronic signature*  
Eva Tar  
Hearing Officer

Cc: Erin Leavitt-Smith, DMHAS  
Community Options, DSS-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 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, 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 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.