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

Case#
Client ID #
Request # 157692

NOTICE OF DECISION

PARTY

PROCEDURAL BACKGROUND

On 2020, the Department of Social Services (the "Department") sent (the "Appellant") a Notice of Action ("NOA) denying his application for Community First Choice benefits under the Medicaid program.

On , 2020, the Appellant requested an administrative hearing to contest the Department's decision to deny such benefits.

On 2020, the Office of Legal Counsel, Regulations, and Administrative Hearings ("OLCRAH") issued a Notice scheduling an administrative hearing for 2020.

On 2020, the Appellant requested a reschedule of the hearing since he missed it due to his blindness, which was granted.

On 2020, OLCRAH issued a notice scheduling the administrative hearing for 2020.

On 2020, the Department failed to call in for the administrative hearing; the hearing was re-scheduled.

On 2020, OLCRAH issued a notice scheduling the administrative hearing on 2020.

On , 2020, 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:

, the Appellant
, Appellant's aunt
, Registered Nurse, Home Care
, Appellant's conservator of person
Randall Wilson, Connecticut Community Care, Inc. ("CCCI") Manager of Clinical Operations.

STATEMENT OF THE ISSUE

The issue to be decided is whether the Department's decision to deny the Appellant's application for CFC benefits under the Medicaid program was correct.

FINDINGS OF FACT

1. The Appellant is a year-old male active on the Husky C Medicaid program. (Hearing summary)

2. The Appellant's primary diagnosis is legal blindness, where he is completely blind in both eyes. The Appellant is also a diabetic. (Exhibit 1, Hearing record)

3. The Appellant resides in a studio apartment at the within facility where he is provided a bedroom with a bathroom, a refrigerator and a microwave and kitchen sink. (Hearing record)

4. The Appellant has a Residential Care Assistant ("RCA") at who have keys and access to the Appellant's room. (Hearing record)

5. facility provide the Appellant with 3 meals per day, housecleaning and laundry service once a week. The laundry service does not include putting away clothes. In addition, the RCA brings his mail but does not read it for him. (Appellant testimony)

6. The Appellant's aunt visits with the Appellant once a week to help him and reads his mail. (Hearing record)

7. The Appellant has a home health aide for hands on assistance with his bathing and dressing. This service is provided 3 times per week for one hour. The service does not include any housecleaning unless the

housecleaning specific to the bathroom becomes necessary while on their shift. (Hearing record)

8. The Appellant can dress himself on the days when there is no home health aide. The Appellant's shirts are hung up in the closet and his pants are in the drawer, however, he is unable to distinguish if the item is inside out depending on the size of the seams and it takes longer for him to dress. (Appellant testimony)

9. The Appellant has a nurse through ████ ██████ who set up his medication for the week; which are the following: Arapozol, Aspirin, Atorvastatin, Diphenhydramine, Omeprazole, Iron, Finasteride, Lorastor, Nasal spray, Furosemide (Lasix), Insulin, Labetalol, Lisinopril, Loperamide, Mira Lax, Novolin and Ozempic, Senna S, Sertraline and Timolol. He self- administers his medication. (Hearing record)

10. The Appellant self-administers his insulin injection pen for his diabetes by listening to the clicks in the morning and lunch. The RCA assists him with the night-time insulin because the dose is higher. (Hearing record)

11. On ██████ 2020, the Appellant participated in an assessment for the CFC program. (Hearing summary)

12. The initial assessment indicated the Appellant requested a personal care assistant and home health aides to provide him with assistance with his bathing and dressing). (Exhibit 2, Initial assessment)

13. On █████ 2020, the Department issued a NOA denying the services because the Appellant did not live in a residence that meet the Home and Community Based setting standard for the CFC program. (Exhibit 3, NOA)

14. In order for the Appellant to be eligible for the CFC program the Appellant must live in an independent apartment which does not involve services and supports provided by the actual facility or current building that he is currently residing in; such as what the RCA at ██ ████ facility currently provides. (Department testimony)

15. The issuance of this decision under Connecticut General Statutes 17b-61 (a) which requires that a decision be issued within 90 days of the request for an administrative hearing has been extended to "not later than 120 days " after a request for a fair hearing pursuant to Section 17b-60 by order of Department of Social Services Commissioner dated April 13, 2020. The Appellant requested an administrative hearing on █████ 2020; However, the Appellant requested to reschedule the

administrative hearing and the close of the hearing record was delayed further. Because of the day delay in the close of the hearing record, this final decision is not due until 2020, and is therefore timely.

CONCLUSIONS OF LAW

1. Section 17b 2 (6) of the Connecticut General Statutes ("Conn. Gen. Stat.") authorizes the commissioner of the Department of Social Services to administer the Medicaid program pursuant to Title XIX of the Social Security Act.

2. Conn. Gen. Stat. § 17b-259b provides (a) 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. (b) Clinical policies, medical policies, clinical criteria or any other generally accepted clinical practice guidelines used to assist in evaluating the medical necessity of a requested health service shall be used solely as guidelines and shall not be the basis for a final determination of medical necessity. (c) Upon denial of a request for authorization of services based on medical necessity, the individual shall be notified that, upon request, the Department of Social Services shall provide a copy of the specific guideline or criteria, or portion thereof, other than the medical necessity definition provided in subsection (a) of this section, that was considered by the department or an entity acting on behalf of the department in making the determination of medical necessity.

3. Section 42 of the Code of Federal Regulations ("CFR") § 441.530 (a) provides that States must make available attendant services and supports in a home and community-based setting consistent with both paragraphs (a) (1) and (a) (2) of this section.

4. Section 42 of the Code of Federal Regulations ("CFR") § 441.530 (a) (1) (A) provides that home and community based settings must have **all** of the following qualities, and such other qualities as the Secretary determines to be appropriate, based on the needs of the individual as indicated in their person centered service plan.

    (i) The setting is integrated in and supports full access of individuals receiving Medicaid HCBS to the greater community, including opportunities to seek employment and work in competitive integrated settings, engage in community life, control personal resources, and receive services in the community, to the same degree of access as individuals not receiving Medicaid HCBS.

    (ii) The setting is selected by the individual from among setting options, including non-disability specific settings and an option for a private unit in a residential setting. The setting options are identified and documented in the person-centered service plan and are based on the individual's needs, preferences, and, for residential settings, resources available for room and board.

    (iii) Ensures an individual's rights of privacy, dignity and respect, and freedom from coercion and restraint.

    (iv) Optimizes but does not regiment individual initiative, autonomy, and independence in making life choices, including but not limited to, daily activities, physical environment, and with whom to interact.

    (v) Facilitates individual choice regarding services and supports, and who provides them.

    (vi) In a provider-owned or controlled residential setting, in addition to the above qualities at paragraphs (a)(1)(i) through (v) of this section, the **following additional conditions** must be met:

    (A) The unit or dwelling is a specific physical place that can be owned, rented or occupied under a legally enforceable agreement by the individual receiving services, and the individual has, at a minimum, the same responsibilities and protections from eviction that tenants have under the landlord tenant law of the State, county, city or other designated entity. For settings in which

landlord tenant laws do not apply, the State must ensure that a lease, residency agreement or other form of written agreement will be in place for each participant and that the document provides protections that address eviction processes and appeals comparable to those provided under the jurisdiction's landlord tenant law.

(B) Each individual has privacy in their sleeping or living unit:

(*1*) Units have entrance doors lockable by the individual, with only appropriate staff having keys to doors as needed.

(*2*) Individuals sharing units have a choice of roommates in that setting.

(*3*) Individuals have the freedom to furnish and decorate their sleeping or living units within the lease or other agreement.

(C) Individuals have the freedom and support to control their own schedules and activities and have access to food at any time.

(D) Individuals are able to have visitors of their choosing at any time.

(E) The setting is physically accessible to the individual.

(F) Any modification of the additional conditions, under paragraphs (a)(1)(vi)(A) through (D) of this section, must be supported by a specific assessed need and justified in the person-centered service plan. The following requirements must be documented in the person-centered service plan:

(*1*) Identify a specific and individualized assessed need.

(*2*) Document the positive interventions and supports used prior to any modifications to the person-centered service plan.

(*3*) Document less intrusive methods of meeting the need that have been tried but did not work.

(*4*) Include a clear description of the condition that is directly proportionate to the specific assessed need.

(*5*) Include regulation collection and review of data to measure the ongoing effectiveness of the modification.

(*6*) Include established time limits for periodic reviews to determine if the modification is still necessary or can be terminated.

(*7*) Include the informed consent of the individual.

(*8*) Include an assurance that interventions and supports will cause no harm to the individual.

5. Section 42 CFR § 441.530 (a) (2) provides Home and community-based settings <u>do not include the following:</u>

   (i) A nursing facility;

   (ii) An institution for mental diseases;

   (iii) An intermediate care facility for individuals with intellectual disabilities;

   (iv) A hospital providing long-term care services; or

   (v) provides that home and community-based settings **do not include** any other locations that have qualities of an institutional setting, as determined by the Secretary. Any setting that is located in a building that is also publicly or privately operated facility that provides inpatient institutional treatment, or in a building on the grounds of, or immediately adjacent to, a public institution, or any other setting that has the effect of isolating individuals not receiving Medicaid HCBS will be presumed to be a setting that has the qualities of an institution unless the Secretary determines through heightened scrutiny, based on information presented by the State or other parties, that the setting does have the qualities of home and community based settings.

6. Section 42 U.S. Code § 1396n- (k) (A) (ii) regarding the State plan option to provide home and community-based attendant services and supports and provides for availability. The State shall make available home and community based attendant services and supports to eligible individuals, as needed, to assist in accomplishing activities of daily living, instrumental activities of daily living, and health related tasks through hands on assistance, supervision, or cueing in a home or community setting, which does not include a nursing facility, institution for mental diseases, or an intermediate care facility for the mentally retarded.

7. The Department correctly determined that the Appellant did not meet both CFR 441.530 (a) (1) and (a) (2) as is required for the state to make available attendant services and supports in a home and community-based setting.

8. The Department correctly determined that the Appellant's services and supports are not independent of the facility, which despite living in the ████████ ████████ within ████████ ████ facility also have qualities of an institutional setting.

9. The Department correctly determined that the Appellant resides in a Residential Care Home within the ██ ████ ████ facility. Regulations specify that a building on the grounds of, or immediately adjacent to, a public institution, will be presumed to be a setting that has the qualities of an institution, therefore the Appellant does not qualify for home and community-based attendant services and supports.

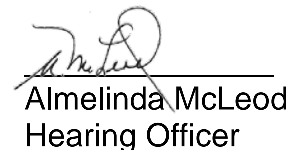
10. The Department correctly determined that the Appellant did not qualify for the CFC program.

DISCUSSION

There was no dispute between the parties attending this hearing today that the Appellant needs and would benefit with bathing and dressing services through the CFC program. However, the actual residence within the ████ ████ facility as a residential care home does not comply with the standards for a Home and community-based services per regulations. The Department is affirmed.

DECISION

The Appellant's appeal is DENIED.



Almelinda McLeod
Hearing Officer

CC: hearings.coomops@ct.gov

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.