

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

██████████, 2021
SIGNATURE CONFIRMATION

Case ID # ██████████
Client ID # ██████████
Request #175184

NOTICE OF DECISION

PARTY

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PROCEDURAL BACKGROUND

On ██████████, 2021, the Department of Social Services (the "Department") Community Options Unit issued a Notice of Action to ██████████ (the "Appellant"), denying his request for payment for engine repair work to his 2004 Toyota Sienna van, under the Acquired Brain Injury ("ABI") Waiver Program.

On ██████████, 2021, the Appellant's mother and Authorized Representative, ██████████ ("Appellant's Mother"), requested an administrative hearing on behalf of the Appellant to contest the Department's denial of the Appellant's request for payment for engine repair to his van.

On ██████████ 2021, the Office of Legal Counsel, Regulations, and Administrative Hearings ("OLCRAH") issued a notice scheduling an administrative hearing for ██████████ 2021. The Hearing was scheduled to be held telephonically due to the COVID-19 pandemic. The Appellant did not appear for the hearing. The Appellant's mother requested a reschedule.

On ██████████ 2021, OLCRAH issued a notice rescheduling an administrative hearing for ██████████, 2021. The Hearing was scheduled to be held telephonically due to the COVID-19 pandemic. The Appellant did not appear for the hearing. The Appellant's mother requested a reschedule.

On ██████████ 2021, OLCRAH issued a notice rescheduling an administrative hearing for ██████████ ██████████ 2021. The Hearing was scheduled to be held telephonically due to the COVID-19 pandemic.

On [REDACTED], 2021, 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 teleconference for the hearing:

[REDACTED], Authorized Representative, Appellant's Mother
Beth Carangelo, Department Representative, Community Nurse Coordinator
Swati Sehgal, Hearing Officer

STATEMENT OF THE ISSUE

The issue to be decided is whether the Department's denial of the Appellant's request for payment for the engine repair work to his van is correct and in accordance with state law.

FINDINGS OF FACT

1. The Appellant is a recipient of the ABI waiver program and medical assistance under the Medicaid program. (Appellant's Representative's testimony; Hearing Summary)
2. In [REDACTED] of 2012, the Appellant sustained a traumatic brain injury ("TBI") and spinal cord injury in an automobile accident. (Appellant's Mother's testimony, Hearing Summary)
3. Because of the accident and the TBI, the Appellant uses an electric wheelchair to ambulate himself. (Appellant's Mother's Testimony, Hearing Summary)
4. The Appellant lives in the community on his own with 24/7 help from personal care providers. (Appellant's Mother's Testimony)
5. The Appellant is [REDACTED] years of age (DOB [REDACTED]). He is [REDACTED] feet [REDACTED] inches tall and weighs [REDACTED] pounds. (Appellant's Mother's Testimony)
6. The Appellant was utilizing State offered transportation from Logisticare to get to his medical appointments. On multiple occasions Logisitcare. left him waiting for the ride for hours outside the hospital and doctor's office. (Appellant's Mother's Testimony)
7. The Appellant's mother bought a van for him to commute to his doctor's appointments. The Department approved the Appellant's request to modify that van to fit his needs under ABI Waiver Operational Policy. (Hearing Summary)
8. [REDACTED], 2021, the Department received a quote from [REDACTED] INC. dba [REDACTED]s indicating the Appellant's van was broken down on the highway. It was towed from the highway to the [REDACTED]ay, Inc., and determined that its engine is seized, and requires a replacement. (Hearing Summary. Exhibit 1: Quote from [REDACTED]-[REDACTED], Inc.)

9. The Department reviewed the request and determined that request to repair or replace the engine was for the general utility of the vehicle and constituted regular upkeep and maintenance of a vehicle. (Hearing Summary and Department's testimony)
10. On [REDACTED] 2021, the Department denied the request to repair the engine and issued a Notice of Action denying the vehicle modification request. (Hearing Summary, Exhibit 3: Notice of Action; [REDACTED]/21)
11. 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's authorized representative requested an administrative hearing on [REDACTED], 2021. Therefore, this decision is due not later than [REDACTED] 2021. However, the hearing, which was originally scheduled for [REDACTED], 2021, was rescheduled for [REDACTED] 2021, at the request of the Appellant's Authorized Representative, which caused a 14-day delay, and again was rescheduled to [REDACTED] 2021 at the request of the Appellant's Authorized Representative, which caused 56-day delay. Because this 72-day (16+56) delay resulted from the Appellant's request, this decision is not due until [REDACTED], 2021, and is therefore timely

CONCLUSIONS OF LAW

1. Connecticut General Statutes (Conn. Gen. Stat.) § 17b-2 provides that the Department of Social Services is designated as the state agency for the administration of (10) the state social services plan for the implementation of the social services block grants and community services block grants pursuant to the Social Security Act the Medicaid program pursuant to Title XIX of the Social Security Act.
2. Conn. Gen. Stat. § 17b-260 provides in relevant part that the Commissioner of Social Services is authorized to take advantage of the medical assistance programs provided in Title XIX, entitled "Grants to States for Medical Assistance Programs", contained in the Social Security Amendments of 1965 and may administer the same in accordance with the requirements provided therein.
3. Conn. Gen. Stat. § 17b-260a. provides (a) The Commissioner of Social Services shall seek a waiver from federal law to establish a Medicaid-financed, home and community-based program for individuals with acquired brain injury. Such waiver shall be submitted no later than October 1, 1995 and shall be operated continuously to the extent permissible under federal law. Notwithstanding the addition of any new waiver program serving such individuals, the commissioner shall ensure that services provided pursuant to this subsection are not phased out and that no person receiving such services is institutionalized in order to meet federal cost neutrality

requirements for the waiver program established pursuant to this subsection.

4. Conn. Gen. Stat. § 17b-602a (a) provides that the Department of Social Services, in consultation with the Department of Mental Health and Addiction Services, may seek approval of an amendment to the state Medicaid plan or a waiver from federal law, whichever is sufficient and most expeditious, 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 has the authority to administer an acquired brain injury waiver following federal law.

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

5. The Acquired Brain Injury (ABI) waiver program is established pursuant to sections 17b-260a(a) and 17b-260a(b) of the Connecticut General Statutes and 42 USC 1396n(c). The ABI waiver program provides, within the limitations described in sections 17b-260a-2 to 17b-260a-18, inclusive, of the Regulations of Connecticut State Agencies, a range of nonmedical, home and community-based services to individuals 18 years of age or older with an ABI who, without such services, would otherwise require placement in a hospital, nursing facility (NF), or Intermediate Care Facility for Individuals with Intellectual Disabilities (ICF/IID). The intention of the ABI waiver program is to enable such individuals, through person-centered planning, to receive home and community-based services necessary to allow such individuals to live in the community and avoid institutionalization. Conn. Agencies Regs. Section 17b-260a-1.
6. Sections 17b-260a-1 to 17b-260a-18, inclusive, of the Regulations of Connecticut State Agencies set forth the requirements for eligibility and payment of services to eligible individuals participating in the ABI waiver program. These regulations also describe program requirements; services available; service requirements; department, provider and individual responsibilities; residential setting requirements; and limitations under the ABI waiver program. Conn. Agencies Regs. Section 17b-260a-2.
7. As used in sections 17b-260a-1 to 17b-260a-18, inclusive, of the Regulations of Connecticut State Agencies: (1) "Acquired brain injury" or "ABI" means the combination of focal and diffuse central nervous system dysfunctions, immediate or delayed, at the brainstem level or above. These dysfunctions may be acquired through physical trauma, oxygen deprivation, infection, or a discrete incident that is toxic, surgical, or vascular in nature. The term "ABI" does not include disorders that are congenital, developmental, degenerative, associated with aging, or that meet the definition of intellectual disability as defined in section 1-1g of the Connecticut General Statutes. Conn. Agencies Regs. Section 17b-260a-3(1).

8. An applicant may be eligible to receive coverage for the cost of the services specified in section 17b-260a-8 of the Regulations of Connecticut State Agencies, through the Department's ABI waiver program, if: (1) The applicant's countable income is less than 300% of the benefit amount that would be payable under the federal Supplemental Security Income program to an applicant who lives in the applicant's own home and has no income or resources; (2) The applicant is otherwise eligible to participate in the department's Medicaid program, including any applicable asset requirements, under either the working disabled or long-term care eligibility criteria; (3) The applicant meets the programmatic requirements of subsection (c) of this section; and (4) The applicant is not ineligible for coverage under subsections (d) or (e) of this section. Conn. Agencies Regs. Section 17b-260a-5(a).
- 9. The Department has correctly determined that the Appellant is a current recipient of Medicaid and ABI services.**
10. Home and community-based services available under the ABI waiver Program. (a) General principles. (1) ABI waiver services shall be furnished under a written service plan that is based on a person centered planning process, as described in section 17b-260a-6 of the Regulations of Connecticut State Agencies, and subject to approval by the department. (2) Except as set forth in subsection (b) of this section, ABI waiver services may be provided alone or in combination with other services, in accordance with the specific functional needs of the individual. Conn. Agencies Regs. Section 17b-260a-8(a)(1)(2).
11. Home and community-based services available under the ABI waiver program provide vehicle modification services, which are alterations to a vehicle when such alterations are necessary to improve the individual's independence and inclusion in the community and to enable the individual to avoid institutionalization. (A) The vehicle shall be the individual's primary means of transportation. (B) The vehicle shall be owned by the individual, a relative with whom the individual lives or has consistent and ongoing contact or a non-relative who provides primary long-term support to the individual and is not a paid provider of such services. (C) All modifications and adaptations shall be provided in accordance with applicable federal and state vehicle codes. (D) Vehicle modification services do not include: adaptations or improvements to a vehicle that are of general utility and not of direct medical or remedial benefit to the individual; payments for the purchase or lease of a vehicle; or regularly scheduled upkeep and maintenance of a vehicle, except for upkeep and maintenance of the modifications. Conn. Agencies Regs. Section 17b-260a-8(b)(24).
- 12. The Department correctly determined that the replacement or the repair of the engine of the Appellant's vehicle is not a covered service in the ABI waiver program.**
- 13. The Department correctly denied authorization for engine replacement as vehicle modification services do not include costs associated with the general**

maintenance or upkeep of the vehicle owned by ABI waiver participant or family member.

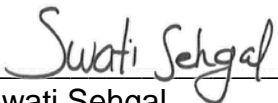
DISCUSSION

The Appellant's mother argued that the Appellant needs his van to commute to his medical appointments, she also explained how he was left at the hospital after a surgery for hours waiting for his ride from Transportation Services. She further stated that on multiple occasions, his ride from Transportation Services never arrived and he had to miss his important medical appointments.

Unfortunately, general maintenance or upkeep of the vehicle is not covered under ABI waiver program. Regulations clearly state that Vehicle modification services do not include adaptations or improvements to a vehicle that are of general utility and not of direct medical or remedial benefit to the individual; payments for the purchase or lease of a vehicle; or regularly scheduled upkeep and maintenance of a vehicle, except for upkeep and maintenance of the modifications.

DECISION

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


Swati Sehgal
Hearing Officer

hearings.commops@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 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, 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, 165 Capitol Avenue, 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.