

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

[REDACTED]
Signature Confirmation

Case ID# [REDACTED]
Client ID # [REDACTED]
Request # [REDACTED]

NOTICE OF DECISION
PARTY

[REDACTED]
[REDACTED]
[REDACTED]

On [REDACTED], the Department of Mental Health and Addiction Services, ("DMHAS"), issued a Notice of Action ("NOA") to [REDACTED] (the "Appellant"), discontinuing her services for Home and Community Based Services ("HCBS") under the Mental Health Waiver program.

On [REDACTED], the Appellant requested an administrative hearing to contest DMHAS' decision to discontinue such services.

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

On [REDACTED], the Appellant requested to reschedule her administrative hearing.

On [REDACTED] OLCRAH issued a notice rescheduling the administrative hearing for [REDACTED]

On [REDACTED], 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 telephonically. The following individuals were present at the hearing:

[REDACTED], the Appellant
 Erin Leavitt-Smith, Director, DMHAS
 Katie Daily, Clinical Supervisor, Advanced Behavioral Health
 Kari Nelson, Intensive Care Manager, Advanced Behavioral Health
 Sara Hart, Hearing Officer

STATEMENT OF THE ISSUE

The issue is whether the Department correctly terminated the Appellant's eligibility for the Home and Community Based Services ("HCBS") Mental Health Waiver program.

FINDINGS OF FACT

1. The Connecticut Mental Health Waiver is an approved waiver under Section 1915c of the Social Security Act. The Mental Health Waiver is administered by the Department of Social Services ("DSS") and DMHAS is the operational agency. *(Hearing Record)*
2. The HCBS Waiver program permits certain Medicaid beneficiaries to receive services in their own home in order to prevent institutionalization. The Appellant has been a participant under the Mental Health Waiver program since [REDACTED] *(Hearing Record, Ms. Nelson's testimony)*
3. The Appellant's Mental Health Waiver qualifying diagnosis is Bi-Polar Disorder current episode mixed, moderate. *(Ms. Leavitt-Smith's Testimony)*
4. To qualify for the Mental Health Waiver, individuals must meet nursing facility level of care criteria by requiring assistance with three or more Activities of Daily Living ("ADL's") or require assistance with two ADL's and have four cognitive deficits which include orientation, concentration, abstract reasoning, comprehension, planning, judgement, attention, and memory. *(Exhibit 5: Application for 1915(c) HCBS Waiver, Ms. Leavitt-Smith's Testimony, Ms. Nelson's Testimony)*
5. On [REDACTED] DMHAS completed an annual review with the Appellant via teleconference. A Level of Care Skills Assessment was completed indicating the Appellant was independent with all her ADL's. As a result of the review, DMHAS determined that the Appellant no longer met the level of care eligibility criteria for the Mental Health Waiver. *(Exhibit 1: LOC Skills Assessment [REDACTED] Exhibit 2: DMHAS Progress Notes)*

6. Due to COVID 19 protocols, the Appellant's participation in the Mental Health Waiver services was not terminated. (*Exhibit 2, Ms. Leavitt-Smith's Testimony*)
7. On [REDACTED], DMHAS completed an annual in person review with the Appellant. A Level of Care Skills Assessment was completed indicating the Appellant was independent with all her ADL's. (*Exhibit 3: LOC Skills Assessment [REDACTED]*)
8. The Appellant takes the following medications: Magnesium Oxide HCL, Valacyclovir HCL, Quetiapine Fumarate ER, Spironolactone, Propranolol HCL, Methadone. She utilizes a pill box organizer and is able to manage her medications and take them at the specified times. She receives twenty-seven doses of Methadone once a month and takes the medication daily as prescribed. All the Appellant's medications are taken orally. (*Appellant's Testimony*)
9. The Appellant's typical day consists of reading, watching television and completing errands. She makes meals for and visits her mother in a nursing home twice a week. The Appellant is able to drive and owns her own vehicle. (*Appellant's Testimony*)
10. The Appellant is visited by a Community Support Person provided through the Mental Health Waiver. This individual goes shopping, plays games, and keeps company with the Appellant. The Community Support Person does not provide medication management or meal preparation services to the Appellant. (*Appellant's Testimony*)
11. The Appellant was previously receiving assistance with meal preparation through the Mental Health Waiver. She is no longer receiving meal preparation assistance and has successfully learned how to utilize appliances such as a crock pot to make meals. The Appellant has recently declined meal delivery services in favor of preparing her own meals. (*Ms. Nelson's Testimony*)
12. The Appellant is independent with bathing, dressing, toileting, mobility, transferring, eating/feeding, medication administration, and meal preparation. (*Exhibit 1, Exhibit 3, Appellant's Testimony*)
13. On [REDACTED], DMHAS sent a Notice of Action to the Appellant notifying her that her eligibility for the Mental Health Waiver would be discontinued effective [REDACTED] because she did not meet the functional eligibility criteria to qualify for Mental Health Waiver Services. (*Exhibit 4: Notice of Action [REDACTED]*)
14. The issuance of this decision is timely under Connecticut General Statutes 17b-61(a), which requires that a decision be rendered within 90 days of the request for an administrative hearing. The Appellant requested an administrative hearing on [REDACTED]. On [REDACTED], the Appellant requested to

reschedule her administrative hearing, therefore, this decision is due no later than [REDACTED].

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 pursuant to Title XIX of the Social Security Act.

Section 17b-602(a) of the Connecticut General Statutes provides the Department, 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 and DMHAS have the authority to cooperatively implement and administer the HCBS Connecticut Mental Health Waiver.

2. Section 1915(c)(1) of the Social Security Act provides in relevant 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 the cost of which could be reimbursed under the State plan. For purposes of this subsection, the term "room and board" shall not include an amount established under a method determined by the State to reflect the portion of costs of rent and food attributable to an unrelated personal caregiver who is residing in the same household with an individual who, but for the assistance of such caregiver, would require admission to a hospital, nursing facility, or intermediate care facility for the mentally retarded.

"The department's uniform policy manual ("UPM") is the equivalent of 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)).

UPM § 2540.92(A) provides for coverage group description of individuals receiving home and community based services. This group includes individuals who:

1. would be eligible for MAABD 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. would, without such services, require care in an LTCF.

The Department correctly determined that the Appellant does not meet the required Level of Care necessary to receive services under the Mental Health Waiver.

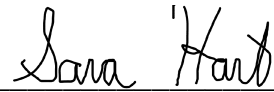
3. Section 17b-259b of the Connecticut General Statutes provides (a) For purposes of the administration of the medical assistance programs by the Department of Social Services, "medically necessary" and "medical necessity" mean those health services required to prevent, identify, diagnose, treat, rehabilitate 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.

DMHAS correctly determined that Mental Health Waiver services are not medically necessary for the Appellant. The Appellant is independent in all her ADL's and the services currently being provided to the Appellant serve primarily to offer convenience and companionship. The current provision of services provided by the Mental Health Waiver do not prevent the Appellant from requiring institutionalization.

The Department correctly terminated the Appellant's participation in the Mental Health Waiver.

DECISION

The Appellant's appeal is **DENIED**

A handwritten signature in cursive script that reads "Sara Hart".

Sara Hart
Hearing Officer

Pc: Erin Leavitt-Smith, Director, DMHAS
Mark Vanacore, DMHAS
Colleen Harrington, Director of Managed Services System, DMHAS
Roderick Winstead, 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 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, 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.

