

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

██████████ 2022
Signature Confirmation

Client ID ██████████6
Case ID ██████████
Request # 189127

NOTICE OF DECISION

PARTY

██████████
██████████
██████████

PROCEDURAL BACKGROUND

On ██████████ 2021, the Department of Developmental Services (the “Department”) sent ██████████ (the “Appellant”) a Notice of Ineligibility denying his application for services under the Home and Community Supports Waiver for Persons with Autism (“ASD Waiver Program”).

On ██████████ 2021, ██████████ (“AREP”), father and authorized representative for the Appellant, requested an administrative hearing to contest the Department’s decision to deny the Appellant’s application for the ASD Waiver Program.

On ██████████ 2022, the Office of Legal Counsel, Regulations, and Administrative Hearings (“OLCRAH”) issued a notice scheduling the administrative hearing for ██████████ 2022 via teleconference.

On ██████████ 2022, 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 called in for the hearing:

██████████, Appellant
██████████ Authorized Representative for the Appellant
██████████, Appellant’s Mother, Witness for the Appellant
Dr. Kathleen Murphy, PhD., Department of Developmental Services
Amy Dumont, LCSW, Department of Social Services
Lisa Nyren, Fair Hearing Officer

The record remained open for the submission of additional evidence from the Appellant and the Department. On [REDACTED] [REDACTED] 2022 after receiving additional evidence from the Department and the Appellant, the record closed.

STATEMENT OF THE ISSUE

The issue to be decided is whether the Department's [REDACTED] [REDACTED] 2021 decision to deny the Appellant's application for services under the Home and Community Supports Waiver for Persons with Autism ("ASD Waiver Program") was correct.

FINDINGS OF FACT

1. On [REDACTED] [REDACTED] 2021, the Appellant completed the Department of Developmental Services ("Department") Eligibility Application (the "DDS application") requesting services under the ASD Waiver Program. (Exhibit 1: DDS Application)
2. The Appellant is [REDACTED] years old, born on [REDACTED]. (Hearing Record)
3. The Appellant is disabled and receives SSI. (Hearing Record)
4. The Appellant lives in [REDACTED] with [REDACTED] ("AREP"), his father and authorized representative. (Exhibit 1: DDS Application)
5. The Appellant received support services in [REDACTED] under an Autism Waiver prior to moving to [REDACTED]. (AREP's Testimony)
6. [REDACTED], child psychiatrist, evaluated and treated the Appellant preadolescence. During this time, he was referred to [REDACTED] [REDACTED] ("PHP") to treat his diagnosis of bipolar disorder. While at PHP, he received the diagnosis of Asperger's Disorder in 2008. (Exhibit 1: DDS Application, Exhibit B: [REDACTED] Medical Letter, and AREP's Testimony)
7. Asperger's Syndrome is no longer a diagnosis under the Diagnostic and Statistical Manual of Mental Disorders, 5th Edition; it is part of a broad category under autism spectrum disorder. (Dr. Murphy's Testimony)
8. By 2010, the Appellant's diagnosis included bipolar I disorder, anxiety disorder, and Asperger's Syndrome. (Exhibit 3: 2013 Evaluation)

9. The ASD Waiver Program provides support services, such as but not limited to job skills coaching, life skills coaching, and behavioral interventions for individuals diagnosed with ASD who reside in the community. The Department of Social Services administers the ASD Waiver Program, but the Department determines an applicant's clinical eligibility for the ASD Waiver Program. (Ms. Dumont's Testimony and Dr. Murphy's Testimony)

10. To qualify for services under the ASD Waiver Program, an applicant must meet the following set of clinical criteria:

- Connecticut resident
- Medicaid eligible
- Primary diagnosis of ASD through standardized testing for ASD
- Impairment present prior to age 22
- Impairment must be permanent
- Impairment in adaptive functioning as reflected on standardized testing for adaptive skills
- Cognitive functioning on full scale IQ of 70 or above

(Dr. Murphy's Testimony and Exhibit 2: DDS Notice of Ineligibility)

11. The ASD Waiver Program is not an entitlement program with the following restrictions: financial cap for services under the ASD Waiver Program and limit to the number of individuals served. (Ms. Dumont's Testimony)

12. On [REDACTED] [REDACTED] 2021, the Department received the DDS application, 2013 School Neuropsychological Evaluation ("2013 evaluation"), and [REDACTED] [REDACTED] 2018 Psychological Evaluation ("2018 evaluation"). (Exhibit 1: DDS Application, Exhibit 3: 2013 Evaluation, and 2018 Evaluation)

13. [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] completed the 2013 evaluation of the Appellant at the request of the [REDACTED] [REDACTED] where the Appellant attended school. [REDACTED] medical credentials include Licensed Psychologist, Nationally Certified School Psychologist, Specialist in school neuropsychology, and Diplomate, American Board of School Neuropsychology. (Exhibit 3: 2013 Evaluation)

14. [REDACTED] met with the Appellant on [REDACTED] 2013, [REDACTED] 2013, and [REDACTED], 2013 to complete the 2013 evaluation. The Appellant's age for testing was [REDACTED]. On page 17, the doctor writes, "[The Appellant] is definitely 'unique and quirky' as his therapist describes him, but—in the interest of not over-pathologizing his behavior—I remain unconvinced that his presentation places him formally on the spectrum. Instead, I think that his anxiety interferes with his

executive abilities to remain flexible in his thinking.” On page 21, the doctor writes, “With regard to his diagnosis in 2010 as having Asperger’s Syndrome, there was little evidence in this testing to support that at this time. Uncharacteristic of AS children, [the Appellant] showed imagination, and (in testing) the ability to take another perspective. Although he demonstrated significant errors in ‘reading’ facial expressions (interpreting ‘sad’ and ‘angry’ expressions as portraying ‘neutral emotion), his performance on this test was within the expected range. [The Appellant] is definitely ‘unique’ and ‘quirky’; however, his profile is not completely consistent with what we might expect with a diagnosis of Asperger’s Syndrome. It is suspected that at least some of his disinterest in socializing is related to his insufficient motor coordination that places him at risk for ridicule among his peers. A diagnosis of Avoidant Personality Disorder—in which social contact incites a fear of humiliation and extreme sensitivity to criticism or rejection—may better describe his behavior. It should be noted that his socialization interest is different in music contexts where his skills are more highly valued.” The doctor determined a diagnosis of Unspecified Anxiety Disorder as clinically appropriate replacing an earlier diagnosis of separation anxiety. (Exhibit 3: 2013 Evaluation)

15. [REDACTED] completed the 2018 psychological evaluation of the Appellant at the request of the Appellant’s parents. [REDACTED] [REDACTED]’ medical credentials include Licensed Clinical Psychologist and Certified School Psychologist. (Exhibit 4: 2018 Evaluation)
16. On [REDACTED] 2018, [REDACTED] met with the Appellant to conduct a psychological evaluation of the Appellant. The Appellant’s age for testing was [REDACTED] [REDACTED]. The evaluation included numerous assessment methods listed below. (Exhibit 4: 2018 Evaluation)
 - Record Review
 - Interview with Student, Parent, and School Staff
 - Weschler Adult Intelligence Scale, Fourth Edition (WAIS-IV)
 - Conners Continuous Performance Test (CCPT)
 - Delis Kaplan Executive Function System (D-KEFS) – selected subtests
 - Wide Range Assessment of Memory and Learning (WRAML-2)
 - Autism Diagnostic Observation System (ADOS)
 - Million Adolescent Clinical Inventory (MACI)
 - Incomplete Sentence Form
 - Beck Youth Inventory, Second Edition
 - Rorschach Inkblot Test
 - Roberts Apperception Test
 - Behavior Assessment System for Children, Third Edition (BASC-3) – Parent and Teacher Report

- Behavior Rating Inventory of Executive Functioning (BRIEF) – Parent and Teacher Report
 - Connors3 Rating Scale – Parent and Teach Report
 - Autism Spectrum Rating Scale (ASRS) – Parent and Teacher report
 - Social Responsiveness Scale, Second Edition (SRS-w) – Parent and Teacher report
 - Vineland Adaptive Rating Scale – Parent and Teacher report
 - Summary: “Based on the quality of his above mentioned communication and social interaction skills, [REDACTED] score (Total Score=6) fell just under the cutoff for an autism spectrum classification.”
17. [REDACTED] evaluation included the administration of the Autism Diagnostic Observation System (“ADOS-2”) to assess the presence of an ASD diagnosis. The ADOS is gold standard for the diagnosis of ASD because the evaluation is very thorough, supported by research for its reliability and validity, and it does not rely on the subjective ratings of raters. It is a test which relies on the interaction between the subject and the evaluator. The ADOS-2 is a standardized assessment of communication, social interaction, play, and restricted and repetitive behaviors presenting various activities that elicit behaviors directly related to a diagnosis of ASD. It does not rely on ratings. (Dr. Murphy’s Testimony)
18. [REDACTED] administered the ADOS-2 to “further assess the presence of an autism-spectrum diagnosis. ... It presents various activities that elicit behaviors directly related to a diagnosis of ASD. By observing and coding these behaviors, one can obtain information that informs diagnosis, treatment planning and educational placement.” (Exhibit 4: 2018 Evaluation)
- Language and Communication: “[The Appellant] primarily exhibited complex, non-echoed speech that demonstrated no idiosyncratic use of language or speech abnormalities.”
 - Reciprocal Social Interaction: “He showed some insight into typical social situations and relationships but tended to be more focused on his own experience than understanding the perspectives of other. [The Appellant] exhibited a somewhat limited range of emotional expression during conversation but expressed more apparent enjoyment while completing creative tasks.”
 - Imagination: “[The Appellant] demonstrated increased engagement in less structured activities with good imagination.”
 - Stereotyped Behaviors and Restricted Interest: “No apparent sensory-seeking behaviors were observed during the interaction.”
 - Other Abnormal Behaviors: “[The Appellant] exhibited a mild level of psychomotor agitation including manipulating objects on the table. No overt irritability or negative behaviors were demonstrated. Mild anxiety

was suggested by his rapid speech and possible discomfort with some of the activities presented.”

19. ██████ administered the Social Responsiveness Scale (“SRS”) to the Appellant’s parents and teacher to assess the Appellant’s capacity for appropriate social functioning and communication. This is a written test where the Appellant’s parents and teacher rate his behavior. It is atypical for behavior to be significantly different in one setting than another, specifically school versus home settings. It is unusual for a teacher’s rating to show no elevation for a diagnosis of ASD with parent’s ratings as moderate to severely autistic as demonstrated in the outcomes of this test. (Dr. Murphy’s Testimony and Exhibit 4: 2018 Evaluation)
20. ██████ administered the Autism Spectrum Rating Scale (“ASRS”) to the Appellant’s parents and teacher. “The ASRS is a norm-referenced assessment based on a nationally representative sample, which is designed to identify symptoms, behaviors, and associated features of the full range of Autism Spectrum Disorders in children and adolescents aged 2 to 18.” Outcome reported a significant discrepancy of the Appellant’s behavior between the parents’ ratings and the teacher rating where the parents scored in the elevated and very elevated range while the teacher’s score indicated a slightly elevated range. There is a big discrepancy in the Appellant’s behavior while in the school setting versus the home setting. (Dr. Murphy’s Testimony and Exhibit 4: 2018 Evaluation)
21. ██████ administered the Vineland Adaptive Behavior Scales (“Vineland II”) which measures the adaptive skills and behaviors of the subject. Adaptive skills and behaviors measure the daily tasks one completes for themselves to include communication, daily living, and motor skills and socialization skills. School finds adaptive behavior in the low range, the father finds the Appellant’s behavior in the intellectually disabled range, and the mother finds the Appellant’s behavior in the moderately low range/borderline. There is a big discrepancy in the parental ratings and the behaviors seen in the school setting. (Dr. Murphy’s Testimony and Exhibit 4: 2018 Evaluation)
22. In conclusion, ██████ writes, “Both Autism Spectrum Disorders and Nonverbal Learning Disorders (NLD) are neurologically-based developmental disorders which impact on the way in which the brain processes information, although NLD is not formally recognized in the current manual of established psychiatric disorders. ... Although [the Appellant’s] current presentation may be most concordant with either the NLD profile or with a somewhat a typical profile of Autism Spectrum Disorder that is suggestive of the now retired Asperger’s diagnosis, it is suggested here that the Autism diagnosis remains the most appropriate for Anthony as he moves into a world of increased expectations for

independent, minimally-scaffolded work demands, novel social demands, and increased scrutiny by those with whom he is not already acquainted.”
██████ diagnostic impressions of the Appellant include Bipolar I disorder, Generalized anxiety disorder, Autism spectrum disorder, Level 1, and Specific learning disorder with impairment in mathematics (by history). (Exhibit 4: 2018 Evaluation)

23. The Appellant’s behavior differs from school and home. The Appellant’s Support team at school allowed the Appellant to develop, mature, and develop coping strategies to regulate his behaviors while at school. The Appellant seeks support services to continue to pursue gainful employment, obtain a driver’s license, and locate suitable housing. (AREP’s Testimony, Parent Testimony, and Appellant’s Testimony)
24. As children age, symptoms can change resulting in a change in diagnosis. As an individual ages, the manifestations, characteristics, and symptoms of an individual are seen more clearly. As a child ages, the complexity of their behavior is seen (transparent). “What was thought to be present in 2010 is not necessarily consistent with a diagnosis of autism now (2013).” Kids change, not static, IQ changes, personality traits characteristics and behaviors become clear and may not be representative of what was diagnosed at the age of █████ (Dr. Murphy’s Testimony)
25. To be eligible for the ASD Waiver Program there needs to be consistency and clarity in the applicant’s diagnosis. Consensus confirmed the Appellant has an anxiety disorder which is consistent with the 2013 evaluation and the diagnosis of bi-polar I disorder. However, the inconsistencies between the Appellant’s behaviors in the school setting and home setting, the inconsistencies in the autism test results and adaptive test results, and the outcome of the ADOS-2 which does not support a diagnosis of ASD, the Department determined the Appellant ineligible for services under the ASD Waiver program. A diagnosis of ASD is consistent across settings; it cannot be turned off for school and turned on at home. There was not confirmatory evidence through testing to support a diagnosis of autism. Without the primary diagnosis of ASD through testing, a criterion of eligibility, the Appellant does not qualify for services under the ASD Waiver Program. The Appellant does not meet the ASD criteria under the ASD Waiver Program as demonstrated by the results of the 2013 and 2018 standardized testing evaluations reviewed by the Department. (Dr. Murphy’s Testimony)
26. The Department determined the Appellant ineligible for services under the ASD Waiver Program because the evidence submitted by the Appellant with his application for the ASD Waiver Program does not support a primary diagnosis of ASD. (Hearing Record)

27. 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] 2021. However, the close of the hearing record, which had been anticipated to close on [REDACTED], 2022, did not close for the admission of evidence until [REDACTED] 2022 to allow both parties an opportunity to comment on the additional evidence submitted by the Appellant and the Department. Due to the [REDACTED]-day delay in the close of the hearing record, the final decision is not due until [REDACTED] 2022 and is therefore timely.

CONCLUSIONS OF LAW

1. Section 17a-215d(i) of the Connecticut General Statutes provides as follows: The Commissioner of Social 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 diagnosed with autism spectrum disorder but not with intellectual disability.

2. Title 42 Section 441.300 of the Code of Federal Regulations provides as follows:

Section 1915(c) of the Act permits States to offer, under a waiver of statutory requirements, an array of home and community-based services that an individual needs to avoid institutionalization. Those services are defined in [§ 440.180 of this subchapter](#). This subpart describes what the Medicaid agency must do to obtain a waiver.

3. Section 2 of the Connecticut Home and Community Supports Waiver for Persons with Autism (00993.R01.00) provides for a Brief Waiver Description as follows:

Connecticut Home and Community Supports Waiver for Persons with Autism will serve persons who are at least 3 years of age with a diagnosis of autism spectrum disorder who live in a family or caregiver's or one's own home. Although these individuals will not have the diagnosis of intellectual disability, they have substantial functional limitations which negatively impact their ability to live independently. These individuals and their caregivers need flexible and necessary supports and services to live safe and productive lives. This waiver will support and encourage the use of consumer-direction to maximize choice as well as control and efficient

use of state and federal resources. This waiver will cap waiver services at \$50,000.00 annually.

Department of Health and Human Services, Centers for Medicare and Medicaid Services. (2018). *Application for a 1915(c) Home and Community Based Services Waiver: Request for a Renewal to a 1915(c) Home and Community Based Services Waiver*. (00993.R01.00) Department of Social Services, December 20, 2017, p 3.

4. Section B-1 Specification of the Waiver Target Group(s) of Appendix B: Participant Access and Eligibility Provides for the Target Groups under the Waiver as follows:
 - a. Under the waiver of Section 1902(a)(1)(B) of the Act, the State limits waiver services to one or more groups or subgroups of individuals. Please see the instruction manual for specific regarding age limits. *In accordance with 42 CFR 441.301(b)(6), select one or more waiver target groups, check each of the subgroups in the selected target group(s) that may receive services under the waiver, and specify the minimum and maximum (if any) age of individual services in each subgroup:* Intellectual Disability or Developmental Disability, or Both. Autism.
 - b. Additional Criteria. The State further specifies its target group(s) as follows: Each Waiver participant must meet the following criteria:
 - A primary diagnosis of an Autism Spectrum Disorder;
 - Residency in the State of Connecticut;
 - Impairment prior to age 22;
 - Impairment expected to continue indefinitely;
 - Cognitive and adaptive functioning above the level of intellectual disability (i.e. IQ equal to or greater than 70); and
 - Substantial functional limitations in two or more of the following areas of major life activity:
 - a. Self-care,
 - b. Understanding and use of language,
 - c. Learning,
 - d. Mobility,
 - e. Self-direction
 - f. Capacity for independent living.

Department of Health and Human Services, Centers for Medicare and Medicaid Services. (2018). *Application for a 1915(c) Home and Community Based Services Waiver: Request for a Renewal to a 1915(c) Home and Community Based Services Waiver*. (00993.R01.00) Department of Social Services, December 20, 2017, pp 16-17.

- 5. The Department correctly determined the medical documentation submitted by the Appellant does not clearly support a primary diagnosis of an Autism Spectrum Disorder as required by the Home and Community Based Services Waiver 00993.R01.00.**

The Department correctly determined the child's diagnosis does not meet the waiver criteria of a primary diagnosis of an Autism Spectrum Disorder as established by the Home and Community Based Services Waiver 00993.R01.00.

The Department was correct to deny the Appellant's application for services under the ASD Waiver Program.

On [REDACTED] [REDACTED] 2021, the Department correctly issued the Appellant a Notice of Ineligibility informing him he was found ineligible for the ASD Waiver Program.

DISCUSSION

The clinical and medical documentation provided by the Appellant does not support a primary diagnosis of ASD, a key component of eligibility under the ASD Waiver Program. Although the Appellant was diagnosed with Asperger's Syndrome at an early age, the 2013 Evaluation and 2018 Evaluation demonstrate changes in the Appellant's diagnosis as he developed and matured.

Dr. Murphy testified the ADOS-2 as the gold standard in the diagnosis of ASD. The AREP provided articles from the internet disputing Dr. Murphy's testimony. However, both the 2013 and 2018 evaluations included numerous diagnostic tests in which the Appellant participated in. The Appellant's diagnosis of anxiety and bipolar remain primary upon review of the clinical and medical evidence with a borderline diagnosis of ASD.

The hearing record does not support the Appellant's primary diagnosis as ASD which is a criterion under the ASD Waiver Program in Connecticut.

DECISION

The Appellant's appeal is denied.

Lisa A. Nyren
Lisa A. Nyren
Fair Hearing Officer

CC: hearings@commops@ct.gov
Amy Dumont, Department of Social Services
Dr. Kathleen Murphy, Department of Developmental Services

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.