

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

██████████ 2023
Signature Confirmation

Client ID ██████████
Case ID ██████████
Request # 204785

NOTICE OF DECISION

PARTY

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PROCEDURAL BACKGROUND

On ██████████ 2022, the Department of Mental Health and Addiction Services (“DMHAS”) issued ██████████ (“Appellant’s Mother”), Appellant’s Mother and Co-Conservator of the Person and Estate, a Notice of Action (“NOA”) denying ██████████ (the “Appellant”) application for services under the Mental Health Waiver (“MHW”) program.

On ██████████ 2022, the ██████████ ██████████ ██████████ ██████████ ██████████ (the “Appellant’s Attorney”) on behalf of the Appellant requested an administrative hearing to contest the DMHAS’s decision to deny the Appellant’s application for services under the MHW program.

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

On ██████████ 2022, OLCRAH received a request from DMHAS to reschedule the administrative hearing to ██████████ 2022, the date both parties and their witnesses were available to attend.

On ██████████ 2022, OLCRAH issued a notice scheduling the administrative hearing for ██████████ 2022.

On [REDACTED] [REDACTED] 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 were present at the hearing:

[REDACTED], Appellant
[REDACTED], Appellant's Mother and Co-Conservator
[REDACTED], Appellant's Father and Co-Conservator
[REDACTED] Attorney for the Appellant, [REDACTED]
[REDACTED]
[REDACTED] Residential Program Manager, [REDACTED]
Erin Leavitt-Smith, LPC, Director, Long Term Services and Support, DMHAS
Cindy Drost, LCSW, Waiver Clinician, DMHAS
Katie Daly, LCSW, Behavioral Health Clinician, Program Manager, DMHAS
Lisa Nyren, Fair Hearing Officer

STATEMENT OF THE ISSUE

The issue is whether DMHAS's [REDACTED] [REDACTED] 2022 decision to deny the Appellant's application for services under the MHW program was correct.

FINDINGS OF FACT

1. The DMHAS operates the MHW program for Medicaid beneficiaries with oversight from the Department of Social Services. The MHW program provides recovery based rehabilitative and support services to people 22 years of age or older with serious mental illnesses. (Hearing Record)
2. Services provided under the MHW program include coaching, prompting, educating, teaching, and Activities of Daily Living ("ADL") skills to help Medicaid beneficiaries enrolled in the MHW program successfully live independently in the community. These services are provided by a Recovery Assistant ("RA"), usually in 3-hour shifts. Additional services include peer support and supportive employment. Case management services occur once per week to teach bill pay, access resources, connecting with transportation resources. Such services are not companion services. (Ms. Daly's Testimony)
3. To qualify for services under the MHW program, applicants must meet the following set of clinical criteria:

Section 1

- Age 22 or older.

- Medicaid eligible.
- Meets criteria for nursing home level of care.
- Voluntary choice to participate in waiver; and
- Diagnosis of section mental illness as defined by State of Connecticut PASSRR policy.

Section 2

- Current resident of a nursing facility; or
- Participant in Money Follows the Person; or
- Psychiatric history, impairment and service needs as evidence by the following:
 1. Currently experiencing 2 or more of the following circumstances due to serious mental illness:
 - Recommended to take or currently use prescribed medication to control psychiatric symptoms
 - Is unable to work in full-time competitive employment situation.
 - Requires ongoing supervision and support to maintain a community living arrangement.
 - Is homeless or at risk of homelessness.
 - Has had or will predictably have repeated episodes of decompensation, such as increased symptoms of psychosis; self-injury, suicidal/homicidal ideation; or psychiatric hospitalization.
 2. Has level of risk to self or others that a Community Support Clinician has determined can be managed safely in the community.
 3. Has the following core services needs if living in the community:
 - One-on-one rehabilitative activities in the home or in other community settings to assist in managing psychiatric, substance use, or medical problems, and in meeting requirements of everyday independent living; and
 - Support coordination to assist in developing and implementing a Recovery Plan that ensure psychiatric and/or medical needs are met.

(Exhibit 1: HCBS Waiver application CT, Ms. Drost Testimony, and Ms. Daly Testimony)

4. The Appellant is age [REDACTED]. The Appellant's Mother and Father are the Appellant's Co-conservators of the Person and Estate. (Hearing Record)
5. The Appellant's diagnoses include Schizoaffective Disorder, Autism Spectrum Disorder, and Traumatic Brain Injury sustained in 2016. (Hearing Record)
6. In [REDACTED] 2019, [REDACTED] admitted the Appellant to a residential group home which provides 24-hours of support services to individuals

- with mental health issues. At any given time, the group home can house a maximum of six (6) residents with several staff members on site to provide for residents. Prior to this admission, the Appellant resided at home with his parents and two younger sisters. (Residential Program Manager Testimony and Appellant Mother Testimony)
7. The Appellant received voluntary services from Department of Children and Families while growing up which ended prior to his admission to the group home. For an eight-to-ten-year period, such services were provided by one provider. (Appellant Mother Testimony)
 8. On [REDACTED] [REDACTED] 2022, the DMHAS received a referral from [REDACTED] [REDACTED] requesting services on behalf of the Appellant under the MHW program. The Appellant seeks to return home where he will reside with his parents with ongoing supports provided by his family and caregivers authorized under the MHW program. (Hearing Summary, Appellant Testimony, Appellant Mother Testimony, and Appellant Father Testimony)
 9. On [REDACTED] [REDACTED] 2022, Ms. Cynthia Drost, LCSW, MHW program clinician reviewed the medical records listed below and data collected through interviews with the Appellant, Appellant's Mother and [REDACTED] [REDACTED] Staff to complete a review of eligibility for services under the MHW program. Based on this information, Ms. Drost determined that DHMAS could not reasonably ensure the Appellant's health and safety in the community with services under the MHW program and denied the Appellant's request for services under the MHW program.
 - 2018 Triannual evaluation by [REDACTED] Public Schools
 - Adaptive Behavior Assessment System Third Edition (ABAS-3)
 - General Adaptive Composite (GAC)
 - Wechsler Adult Intelligence Scale 4th edition (WAIS-IV)
 - Behavior Rating Inventory of Executive Function (BRIEF)
 - Behavior Assessment System for Children 2nd edition (BASC-2)
 - [REDACTED] Records
 - [REDACTED] Behavior Plan
 - [REDACTED] Behavioral Support Clinician and Residential Program Manager: data collection and history
 - [REDACTED] Confidential Diagnostic Report 11/16/11
 - Exit Planning and Placement Team (PPT) 2022
 - Psychoeducational Evaluation [REDACTED] Public Schools [REDACTED] 2021
 - [REDACTED] 2019 Occupational Therapy evaluation
 - Appellant's Mother: data collection and history
 - Psychosocial Assessment [REDACTED] [REDACTED] 2022
 - Level of Care Skills Assessment [REDACTED] [REDACTED] 2022

(Exhibit 3: Summary of Findings, Exhibit 4: Notice of Action, Exhibit 5: Psychosocial Assessment, and Ms. Drost Testimony)

10. Since January 2019, the Appellant has demonstrated aggressive behaviors while a resident at the group home.

- ■■■/■■■/2019 – Verbal threats toward staff, property damage (broken chairs, turned over tables, holes in walls);
- ■■■/■■■/2020 – Verbally aggressive, kicked holes in wall, kicked in apartment door of peer and threatened peer;
- ■■■/■■■/2020 - Threatened staff, kicked holes in wall;
- ■■■/■■■/2020 - Kicked hole in wall;
- ■■■/■■■/2020 - Verbal and Physical aggression: punched holes in wall, threw pieces of sheetrock at staff, reports of torture & gun held to his head;
- ■■■/■■■/2020 - Kicked hole in wall after told no by parent, verbal aggression, derogatory terms;
- ■■■/■■■/2020 - Punched hole in wall and left;
- ■■■/■■■/2020 - Rammed head into door, slamming his body against wall, threw himself down a short flight of stairs, verbal aggression toward staff;
- ■■■/■■■/2020 - Name calling, derogatory terms, threw himself down the stairs after being told to wait for a Band-Aid;
- ■■■/■■■/21 - Frustrated after losing video game, threw video game controller at TV and window seeking to break them, broke controller, tore down curtain;
- ■■■/■■■/2021 – Triggered by peer speaking with mother, manic-like behavior, verbal aggression and derogatory slurs toward staff, threw himself on floor, property destruction;
- ■■■/■■■/21 – threw himself down a short flight of stairs resulting in a hole in the wall;
- ■■■/■■■/2021 – cursing at staff, slamming doors, jumping on washer & dryer resulting in damages over \$1,000.00;
- ■■■/■■■/2022 – Kicking walls, derogatory slurs toward staff;

(Exhibit 3: Summary of Findings)

11. The Appellant's social and vocational skills improved between ■■■■■■ 2019 and ■■■■■■ 2022 after enrolling in the ■■■■■■ School Work program before graduating from high school. The Appellant worked with ■■■■■■ three days per week, packing, sorting, and delivering meals. The Appellant attended transition classes two days per week building individualized employment skills. Behaviors improved and anxiety reduced while enrolled. Continued placement at ■■■■■■ for one-on-one services to improve time management, hygiene and skills needed

- for employment were recommended by the [REDACTED] School System upon graduation. (Exhibit B: Exit PPT)
12. The Level of Care Skills Assessment completed by DHMAS evaluates an applicant's ability to complete activities of daily living and instrumental activities of daily living such as bathing, dressing, transferring, toileting, feeding, meal preparation, medication administration, memory deficits, cognitive functioning, safety, living skills, communication skills, health, coping skills, money management and transportation. DHMAS determined the Appellant independent transferring, toileting, feeding, and mobility and supervision is needed for bathing and dressing. DHMAS determined the Appellant required maximum assistance with medication administration, cognitive functioning, communication skills, health awareness, money management and transportation and moderate assistance with meal preparation, safety, independent living skills and coping strategies. Maximum assistance includes step by step cueing and coaching with physical demonstrations and directions. Moderate assistance includes cueing and coaching with hints and/or verbal directions. (Exhibit 2: Level of Care Assessment)
 13. The Appellant can prepare limited meals such as a bowl of cereal, cook a fried egg stovetop, cook chicken using the oven, and limited use of the microwave. The Appellant relies on the group home or his parents to administer and manage his medication. In one incident, the group home administered the Appellant the incorrect medication resulting in hospitalization; the Appellant has never self medicated. Additional unscheduled medication (PRN) has been administered in the group home setting due to overstimulation, however never administered while at home with his parents. (Exhibit 2: Level of Care Assessment, Appellant's Mother Testimony, Appellant's Father Testimony and Residential Program Manager Testimony)
 14. Under the MHW program eligibility criteria, the Appellant meets the Level of Care criteria, the cost cap, and qualifying independent setting, however DMHAS cannot reasonably assure his health and safety under this program. DHMAS cannot guarantee the safety of beneficiaries of services. Concerns arise for "what ifs" and unplanned situations. Cost caps prevent the MHW program from providing live in staff or one to one support. (Ms. Daly Testimony)
 15. On [REDACTED] [REDACTED] 2022, the DMHAS issued the Appellant's Mother a Notice of Action denying the Appellant's application for MHW services citing regulation Application for 1915(c) HCBS Waiver CT 0653.R03.00 2017 and listing the reason for denial as "even with mental health waiver services we cannot reasonably ensure [the Appellant's] health and safety." (Exhibit 4: Notice of Action)

16. While a resident at the group home, the Appellant learned money management skills, how to access public transportation independently and earned unsupervised time in the community. The Appellant worked part time at [REDACTED] and learned to be a responsible employee. The Appellant can learn new skills. Also, while a resident at the group home, the Appellant learned coping skills to deescalate a situation with staff and/or residents. These skills are transferable in the community. (Appellant's Mother Testimony, Residential Program Manager Testimony, Appellant's Father Testimony, Exhibit 2: LOC Assessment, and Exhibit 5: Psychosocial Evaluation)
17. The Appellant transitioned out of IEP services on [REDACTED] birthday, [REDACTED] [REDACTED] and received a full-time job offer while a resident of the group home. Because he believed he was moving back home, the Appellant declined the job offer. The Appellant wants to work. (Appellant Mother Testimony, Appellant Testimony, and Residential Program Manager Testimony)
18. The Appellant's Mother and Appellant's Father currently reside in a one family home which they own in [REDACTED] [REDACTED] and building a separate home approximately one half mile away where they will move. A security system with cameras is installed at home and installed in the Appellant's childhood home. The Appellant never activated this system. The Appellant's aunt and uncle reside directly across the street from their current home. The Appellant will remain in the current home. However, the Appellant's Mother and Appellant's Father will ensure the Appellant is never alone and provide overnight supervision daily to ensure his safety and wellbeing. Additionally, the Appellant's parents own their own business. Being self-employed allows them the flexibility to leave work or work from home in order to support the Appellant as needed. For example, if a RA does not show up, either parent can be available to cover the RA's shift. (Appellant's Mother Testimony and Appellant's Father Testimony)
19. 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] [REDACTED] 2022. However, the hearing which was originally scheduled for [REDACTED] [REDACTED] 2022 was rescheduled to [REDACTED] [REDACTED] 2022 causing a [REDACTED]-day delay. Therefore, this decision is not due until [REDACTED] [REDACTED] 2023 and therefore timely.

CONCLUSIONS OF LAW

1. Section 17b-2(6) of the Connecticut General Statutes provides as follows:

The Department of Social Services is designated as the state agency for the administration of the Medicaid program pursuant to Title XIX of the Social Security Act.

2. Title 42 Section 441.300 of the Code of Federal Regulations (“C.F.R.”) 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.

Federal regulation provides as follows:

“Home or community-based services” means services, not otherwise furnished under the State's Medicaid plan, that are furnished under a waiver granted under the provisions of [part 441, subpart G of this chapter](#).

1. These services may consist of any or all of the services listed in [paragraph \(b\)](#) of this section, as those services are defined by the agency and approved by CMS.
2. The services must meet the standards specified in [§ 441.302\(a\) of this chapter](#) concerning health and welfare assurances.
3. The services are subject to the limits on FFP described in [§ 441.310 of this chapter](#).

42 C.F.R. § 440.180(a)

3. The Home and Community Based Services (HCBS) Waiver 0653.R03.00 under Section 1915(c) of the Social Security Act provides for adult day health, community support program, supported employment, assisted living, assistive technology, brief episode stabilization, chore services, home accessibility adaptations, home delivered meals, interpreter, mental health counseling, non-medical transportation, overnight recovery assistant, peer supports, personal emergency response systems, recovery assistant, specialized medical equipment, and transitional case management for individuals with mental illness ages 22 to no max age
4. Federal regulation provides as follows:

If the agency furnishes home and community-based services, as defined in § 440.180 of this subchapter, under a waiver granted under this subpart, the waiver request must – limited to one or more of the following target groups or any subgroup thereof that the State may define:

- i. Aged or disabled, or both
- ii. Individuals with Intellectual or Developmental Disabilities, or both.
- iii. Mentally ill.

42 CFR § 441.301(b)(6).

Application for 1915(c) HCBS Waiver CT 0653.R03.00, Appendix B: Participant Access and Eligibility, B-1 Specification of the Waiver Target Groups. (a) and (b) provides as follows:

Waiver participant must meet all the requirements of Section 1 and one of the requirements of Section 2

Section 1 (all the following five requirements)

- o An adult, 22 years of age or older.
- o Who is Medicaid-eligible.
- o Meets criteria for nursing home level of care.
- o Voluntarily chooses to participate in the waiver.
- o Has a diagnosis of serious mental illness as defined by State of Connecticut PASRR policy.

Section 2 (one of the following three requirements)

- o Is currently a resident of a nursing facility.
- o Is a participant in Money Follows the Person (MFP).
- o Psychiatric history, impairment and service needs as evidenced by the following:

1. Is currently experiencing 2 or more of the following circumstances due to serious mental illness:

- Has been recommended to take, or currently uses prescribed medication to control psychiatric symptoms.
- Is unable to work in a full-time competitive employment situation.
- Requires ongoing supervision and support to maintain a community living arrangement.
- Is homeless, or at risk for homelessness.
- Has had, or will predictably have, repeated episodes of decompensation, such as increased symptoms of psychosis; self-injury; suicidal/homicidal ideation; or psychiatric hospitalization.

2. Has level of risk to self or others that a Community Support Clinician has determined can be managed safely in the community.

3. Has the following core services needs if living in the community:

- One-on-one rehabilitative activities in the home or in other community settings to assist in managing psychiatric, substance use, or medical

problems, and in meeting requirements of everyday independent living;
and

- Support Coordination to assist in developing and implementing a Recovery Plan that ensures psychiatric and/or medical needs are met.

DMHAS incorrectly denied the Appellant's application for services under the MHW program. Testimony provided by the Appellant, Appellant's Parents and Residential Program Manager, the decline in the Appellant's inappropriate behaviors, and the Appellant's improved social, vocational, employment, and coping skills learned while a resident at the group home demonstrate the Appellant's ability to return home with supports in place ensuring the Appellant's level of risk to self and others can be safely managed.

DECISION

The Appellant's appeal is granted.

ORDER

1. DMHAS shall grant the Appellant's request for services under the MHW program.
2. Compliance is due within 14-days of the date of this decision.

Lisa A. Nyren

Lisa A. Nyren
Fair Hearing Officer

CC:

[REDACTED]

Erin Leavitt-Smith, LPC, Director, Long Term Services and Support, DMHAS
Katie Daly, LCSW, Behavioral Health Clinician Manger, DMHAS
Cindy Drost, LCSW, Waiver Clinician, DMHAS

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.