

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

██████████, 2024
SIGNATURE CONFIRMATION

CASE # ██████████
CLIENT ID # ██████████
REQUEST # ██████████

NOTICE OF DECISION

PARTY

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PROCEDURAL BACKGROUND

On ██████████ 2023, the State of Connecticut's Department of Developmental Services ("DDS"), sent ██████████ ("Appellant's mother") a Notice of Action ("NOA") denying the Appellant's application for the Autism Spectrum Disorder Waiver services due to not meeting the waiver's qualifications.

On ██████████ 2023, the Appellant's mother requested an administrative hearing on the Appellant's behalf to contest DDS decision to deny the Autism Waiver services.

On ██████████, 2023, the Office of Legal Counsel, Regulations, and Administrative Hearings (the "OLCRAH") issued a notice scheduling the administrative hearing to be held on ██████████, 2024.

On ██████████ 2024, the Appellant's mother requested the hearing be rescheduled to allow her time to obtain additional documentation to provide for the hearing.

On ██████████, 2024, the OLCRAH issued a notice scheduling the administrative hearing to be held on ██████████, 2024.

On [REDACTED] 2024, the hearing was held with the participation of the following individuals:

[REDACTED], Appellant's mother

[REDACTED], Appellant

Dr. Kathleen Murphy, Ph.D., DDS Director of Eligibility Unit

Michael Olensen, DDS Case Manager

Attorney Michael Slitt, Department of Social Services Representative

Joseph Alexander, Administrative Hearing Officer, DSS OLCRAH

STATEMENT OF THE ISSUE

The issue to be decided is whether the DDS decision to deny Autism Spectrum Disorder Waiver services was correct.

FINDINGS OF FACT

1. On [REDACTED] 2023, the Appellant applied for Home and Community-Based Services ("HCBS") for persons with Autism Spectrum Disorder Waiver. (Exhibit 1: HCBS Application, Exhibit 7: DDS Authorization for Release of Information)
2. On [REDACTED] 2023, Dr. Margaret Rudin Ph.D., a DDS Clinical Psychologist, reviewed the Appellant's application, medical records, Transition Planning Evaluation from [REDACTED], and the [REDACTED] Public Schools Planning and Placement Teams notes/summary. Dr. Rudin determined, based on the records provided/reviewed, "there are not concurrent deficits in both adaptive and cognitive abilities as Connecticut General Statute ?1-1g requires; therefore, this individual is not eligible for services from the Department of Developmental Services." (Exhibit 1: HCBS Application, Exhibit 6: Medical Records, Exhibit 8: Transition Planning Evaluation, Exhibit 9: Planning and Placement Notes)
3. A second review of the documents/records was conducted by the Director of DDS Eligibility Unit, Dr. Kathleen Murphy Ph.D. Dr. Murphy agreed with Dr. Rudin's determination that the Appellant did not meet the eligibility requirements to receive services. (Hearing Summary)
4. The following criteria must be met to receive Autism Waiver services under the HCBS Waiver: (1) A primary diagnosis of autism spectrum disorder, (2) residency in the state of Connecticut, (3) impairment prior to the age of 22, (4) impairment expected to continue indefinitely, (5) cognitive and adaptive functioning above the level of intellectual disability (i.e., IQ equal to or greater than 70), and (6) substantial functional limitations in two or more of the following areas of major life activity; self-care, understanding and use of language, learning, mobility, self-direction, capacity for independent living. (Hearing Summary, Exhibit 1: HCBS Application)

5. On [REDACTED], 2023, DDS issued a notice denying services under the Autism Spectrum Disorder Waiver as it was determined the Appellant did not meet the eligibility criteria for this program. The notices states, "In [REDACTED] when [REDACTED] was [REDACTED] years-old, his overall adaptive skills were rated average at home (92) and at school (91) on the Adaptive Behavior Assessment System-Third Edition (ABAS-3). His [REDACTED] IEP (age [REDACTED]) indicates an educational category of autism and age-appropriate ability to complete activities of daily living. Evaluations that contain results of standardized tests of autism were requested but are unavailable for review. Psychiatric records indicate he received medication management for autism." (Exhibit 5: DDS Denial Notice dated [REDACTED], 2023)
6. On [REDACTED], 2023, the Appellant's mother submitted a letter requesting an administrative hearing to dispute the denial of services. The letter presents the following four arguments: (1) "The Adaptive Behavior Assessment System-Third Edition (ABAS-3) by which [REDACTED] was evaluated is completely subjective, and interpretation vary", (2) "Margaret Rudin, Ph.D., has never met [REDACTED]. So she doesn't know that he can't keep a job, and can't drive, and actually can't tie his shoes, as would be age appropriate", (3) "Please indicate which evaluations that contain the results of standardized tests have not been received so that I may follow up", and (4) "Closer examination of our [REDACTED] years of IEPs, evaluations and experiences, would indicate so many deficits. Like when [REDACTED] gave the contents of his wallet to someone claiming he was also autistic. Or the time when [REDACTED] misinterpreted a job offer and insisted on showing up for work. Or the time [REDACTED] literally interpreted the expression "raining cats and dogs" and was terrified." (Appellant Exhibit A: Hearing Request Letter)
7. The issuance of this decision is timely under Connecticut General Statutes ("Conn. Gen. Stat.") §17b-61(a), which requires that a decision be issued within [REDACTED] days of the request for an administrative hearing. The administrative hearing was requested on [REDACTED] 2023. Due to the rescheduling of this hearing, an additional [REDACTED] days have been added to the decisions due date making this decision due no later than [REDACTED], 2024.

CONCLUSIONS OF LAW

1. Pursuant to section 1915(c)(1) of the Social Security Act, 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 of 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.”

The Medicaid Home and Community Based Services (HCBS) waiver program is the approved state plan intended to provide services to individuals diagnosed with autism spectrum disorder.

The purpose of the HCBS waiver is to provide assistance to Medicaid beneficiaries residing in the community in order to avoid institutionalization. In doing so, the state has broad discretion to design its waiver program to address the needs of the waivers target population.

2. 42 CFR § 440.150 provides for Intermediate care facility (ICF/IID services as follows.
 - (a) “ICF/IID services” means those items and services furnished in an intermediate care facility for individuals with Intellectual Disabilities if the following conditions are met: (1) The Facility fully meets the requirements for a State license to provide services that are above the level of room and board; (2) The primary purpose of the ICF/IID is to furnish health or rehabilitative services to persons with Intellectual Disability or persons with related conditions; (3) The ICF/IID meets the standards specified in subpart 1 of part 483 of this chapter; (4) The beneficiary with Intellectual Disability for whom payment is requested is receiving active treatment, as specified in § 83.440 of this chapter; (5) The ICF/IID has been certified to meet the requirements of subpart C of part 442 of this chapter, as evidenced by a valid agreement between the Medicaid agency and the facility for furnishing ICF/IID services and making payments for these services under the plan.”

The Department’s application to the Centers for Medicare & Medicaid Services (for approval of the HCBS Waiver) states that, “although these individuals will not have a 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” (as the purpose of the waiver is to avoid institutionalization).

3. Title 42, section 483.440 of the Code of Federal Regulations (“CFR”) provides for condition of participation; Active treatment services as follows. (a)(1) “Each client must receive continuous active treatment program, which includes aggressive, consistent implementation of a program of specialized and generic training, treatment, health services and related services described in this subpart, that is directed toward- (i) The acquisition of the behaviors necessary for the client to function with as much self-determination and independence as possible; and (ii) the prevention or declaration of regression or loss of current optimal functional status.”

DDS has determined the Appellant’s functional limitations are not substantial enough to meet the eligibility requirements for the Autism Spectrum Disorder Waiver. The documentation and records provided show the Appellants overall adaptive skills are rated average (92 at home and 91 at school) and his [REDACTED] IEP indicated an educational category of Autism and age-appropriate ability to complete activities of daily living.

DISCUSSION

The Appellant's mother's arguments as to why she feels the decision to deny services for the Appellant is incorrect are outlined in Finding of Fact #6. I will address each argument in the order they are listed in Finding of Fact #6.

1. "The Adaptive Behavior Assessment System-Third Edition (ABAS-3) by which [REDACTED] was evaluated is completely subjective, and interpretation vary."

With respect to this argument, the Appellant's mother has not provided any interpretation of the ABAS-3 which may contradict or otherwise lend credit to the claim that DDS's interpretation is incorrect.

2. "Margaret Rudin, Ph.D., has never met [REDACTED]. So, she doesn't know that he can't keep a job, and can't drive, and can't tie his shoes, as would be age appropriate."

Both Dr. Rudin Ph.D., and Dr. Murphy Ph.D. reviewed the Appellants application for services, the medical records submitted by the Hospital for Special Care (Autism Center), the Transition Planning Evaluation submitted by [REDACTED], and the Planning and Placement notes/meeting summary submitted by [REDACTED] to conclude the Appellant does not meet the requirements to be eligible for services.

3. "Please indicate which evaluations that contain the results of standardized tests have not been received so that I may follow up."


It was established during the hearing the Appellant's application was denied prior to certain documents being submitted. While this may have been incorrect from a procedural perspective, the documents which the Appellant's mother wanted to be included with the application and reviewed were ultimately submitted to and reviewed by DDS. The addition of these documents did not change DDS's determination that the Appellant does not meet the eligibility requirements necessary to receive services.

4. “Closer examination of our [REDACTED] years of IEPs, evaluations, and experiences, would indicate so many deficits. Like when [REDACTED] gave the contents of his wallet to someone claiming he was also autistic. Or the time when [REDACTED] misinterpreted a job offer and insisted on showing up for work. Or the time [REDACTED] literally interpreted the expression “raining cats and dogs” and was terrified.”

The undersigned Hearing Officer does not disagree with the Appellant’s mother in that Autism is a spectrum disorder which impacts everyone differently and necessitates varying degrees of support to meet the individuals’ specific needs. With regards to this specific hearing however, the documentation provided to DDS for review shows the Appellant’s deficits are not substantial enough to meet the eligibility requirements to receive services (Finding of Fact #4).

DECISION

The Appellant’s appeal is **DENIED.**


Joseph Alexander
Administrative Hearing Officer

CC: 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 §4-1181a (a) of the Connecticut General Statutes.

Reconsideration requests should include specific grounds for the request: for example, indicate what error of fact or law, 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 with **45** days of the mailing of this decision, or **45** days after the agency denies 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 06105-3725. 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 her 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.