

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

[REDACTED] 2024  
Signature Confirmation

Case ID # [REDACTED]  
Client ID # [REDACTED]  
Request # 227435

**NOTICE OF DECISION**

**PARTY**

[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

**PROCEDURAL BACKGROUND**

On [REDACTED] [REDACTED] 2023, the Department of Developmental Services (the "Department") sent [REDACTED] (the "Appellant") a Notice of Ineligibility denying his application for services under the Home and Community Based Supports Waiver for Persons with Autism ("ASD Waiver Program").

On [REDACTED] 2023, [REDACTED], the Appellant's sister, conservator and authorized representative ("AREP"), requested an administrative hearing to contest the Department's decision to deny the Appellant's application for the ASD Waiver Program.

On [REDACTED] [REDACTED], 2023, the Office of Legal Counsel, Regulations, and Administrative Hearings ("OLCRAH") issued a notice scheduling the administrative hearing for [REDACTED], 2023.

On [REDACTED] [REDACTED], 2023, the OLCRAH issued a notice rescheduling the administrative hearing for [REDACTED], 2024.

On [REDACTED] 2024, 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 by teleconference.

The following individuals called in for the hearing:

[REDACTED], Appellant's sister and Conservator

Dr. Kathleen Murphy, PhD., Department of Developmental Services  
Michael Olesen, Case Management Supervisor, Department of Social Services  
Michael Slitt, Staff Attorney, Department of Social Services  
Scott Zuckerman, Fair Hearing Officer

The Appellant was not present at the administrative hearing.

### **STATEMENT OF THE ISSUE**

The issue to be decided is whether the Department's [REDACTED] 2023, 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] 2023, 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 fifty-one (51) years old, born on [REDACTED] 1972. (Hearing Record)
3. The Appellant is disabled and receives monthly Social Security Disability benefits ("SSDI"). (Hearing Record)
4. The Appellant resides in S [REDACTED] CT in an Assisted Living facility. (AREP testimony and Exhibit 1: DDS Application)
5. In [REDACTED] 1991, the Appellant graduated from [REDACTED] in [REDACTED] [REDACTED] CT. [REDACTED] is a school that provides education to students with severe learning disabilities. The school no longer has any of the Appellant's educational records. (Exhibit 1: Application including Letter from the Appellant's AREP and Copy of the Appellant's diploma from [REDACTED])
6. The Appellant does not have any records of a primary diagnosis of Autism Spectrum Disorder prior to the age of twenty-two or thereafter. (Hearing Record)
7. The Appellant is employed at [REDACTED] working 15 hours weekly. (Conservator's testimony)

8. 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, respite, Live – In Companion, assistive technology, personal emergency response. The Department of Social Services administers the ASD Waiver Program, but the Department determines an applicant's clinical eligibility for the ASD Waiver Program. (Hearing Record)
9. 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)

10. On [REDACTED] 2023, the Appellant received a Neuropsychological Evaluation at the request of his primary care physician, Dr. [REDACTED], [REDACTED] to assess his current cognitive and emotional function due to concerns about memory changes. (Exhibit 4: Neuropsychological Report, [REDACTED]/23)
11. [REDACTED] a Staff Neuropsychologist at Hartford Hospital/Institute of Living completed the evaluation. The Appellant's age at the time he was evaluated was 51. The Appellant reported lifelong cognitive – difficulties. Current complaints included difficulty paying attention, distractibility, losing his train of thought, and slow processing speed. The Appellant reported full independence of his ADLs and manages his medications independently. The Appellant's medical history includes IBS, sleep apnea, diabetes, ulcerative colitis, atrial fibrillation, tachycardia, ileostomy, GI bleed, and overactive bladder. The Appellant can drive without difficulty. The Appellant indicated he is in treatment with a therapist and a psychiatrist and described his mood as depressed and anxious. The Appellant is employed but can only work "certain jobs due to my learning challenges." [REDACTED] performed a number of tests, interviewed the Appellant, and reviewed records. The Appellant scored a full-scale IQ of 82 on the WAIS-IV, placing him in the lower average range of intelligence. There were no autism tests completed. (Exhibit 4: Neuropsychological Report)

12. 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)
13. On [REDACTED], 2023, the Department sent the Appellant's conservator a Notice. The notice stated the Appellant was not eligible for services under the ASD Program due to the following reasons: The Appellant is independent with his activities of daily living (feeding, eating, toileting, bathing). He is independent in the management of his medications, driving, and working part-time. There was no autism testing conducted as part of the neuropsychological evaluation. There were no records available to review (medical, psychological, psychiatric, educational, and/or Social Security disability records) to support a prior diagnosis of ASD.
14. 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] 2023. However, the hearing scheduled for [REDACTED], 2023, was rescheduled for [REDACTED] 2024, which caused a 27 – day delay. Due to the 27-day delay the decision is due no later than [REDACTED] 2024, and is therefore timely. (Hearing Record)

### **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. *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, ██████████ 2023, p 4.

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. *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, ██████████ 2023, pp 19-20.

5. Section B-6 Evaluation / Reevaluation of Level of Care of Appendix B provides in part as follows:

d. Level of Care Criteria. There is reasonable indication that the person, but for the provision of waiver services would require placement in an ICF/IID. The person requires assistance due to one or more of the following:

1. Has a physical or medical disability requiring substantial and/or routine assistance as well as habilitative support in performing self-care and daily activities;
2. Has a deficit in self-care and daily living skills requiring habilitative training;
3. Has a maladaptive social and/or interpersonal patterns to the extent that he/she is incapable of conducting self-care or activities of daily living without habilitative training.

Department of Health and Human Services, Centers for Medicare and Medicaid Services. *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, ██████████, 2023, pp 33-34.

**The Department correctly determined the documentation submitted by the Appellant does not support a primary diagnosis of an autism spectrum disorder prior to the age of twenty-two as required by the Home and Community Based Services Waiver 00993.R01.00.**

The Department correctly determined that the Appellant does not meet the Level of Care Criteria in requiring assistance with performing self-care and daily living activities.

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

On [REDACTED] [REDACTED] 2023, the Department correctly issued the Appellant a Notice of Ineligibility informing him he was found ineligible for the ASD Waiver Program.

### **DECISION**

The Appellant's appeal is denied.

Scott Zuckerman  
Scott Zuckerman  
Fair Hearing Officer

### **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.