

STATE OF CONNECTICUT
DEPARTMENT OF SOCIAL SERVICES
OFFICE OF LEGAL COUNSEL, REGULATIONS, AND ADMINISTRATIVE HEARINGS
55 FARMINGTON AVENUE
HARTFORD, CT 06105-3726

██████████ 2018
Signature Confirmation

Client ID # ██████████
Request # 117429

NOTICE OF DECISION

PARTY

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PROCEDURAL BACKGROUND

On ██████████ 2018, the Department of Social Services (the "Department") issued a notice of action stating that it was reducing the Community First Choice ("CFC") budget for ██████████ (the "Recipient") from \$22,954.44 to \$0, effective ██████████ 2018.

On ██████████, 2018, ██████████ the Recipient's mother and Conservator (the "Appellant") requested an administrative hearing to contest the Department's decision to discontinue such benefits.

On ██████████ 2018 the Office of Legal Counsel, Regulations, and Administrative Hearings ("OLCRAH") issued a notice scheduling the administrative hearing for May 7, 2018.

On ██████████ 2018, 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. The following individuals were present at the hearing:

██████████, the "Appellant", the Recipient's mother and Conservator,
Dawn Lambert, DSS, Manager of Community Options
Dee Sepulveda, Assistant Director at the Area Agency on Aging of South Central with
Community First Choice
Melissa Mironick, Universal Assessor for Community First Choice with Agency on
Aging, South Central,

Maureen Foley-Roy, Hearing Officer

The hearing record remained open for the submission of additional evidence. The hearing officer received additional evidence and the hearing record closed on [REDACTED] 2018.

STATEMENT OF THE ISSUE

The issue to be decided is whether the Department's decision to reduce the Recipient's Community First Choice budget and effectively discontinue her benefits from the CFC program is correct.

FINDINGS OF FACT

1. The Recipient is twenty five years old and has a developmental disability since birth. She receives services Medicaid services through the State of Connecticut Department of Developmental Disabilities ("DDS") waiver program. (Hearing Summary and Appellant's testimony)
2. The Recipient can toilet and transfer herself without any assistance. (Exhibit 2: Universal Assessment)
3. The Recipient can feed herself if the food is prepared and presented to her. She cannot cook nor get herself something to eat. (Appellant's testimony)
4. The Recipient can dress herself with supervision, oversight and cuing. (Exhibit 2)
5. The Recipient can bathe herself but has hands on assistance getting in and out of the shower. She also requires supervision when bathing because she does not always bathe herself completely. (Appellant's testimony)
6. The Recipient cannot take her medication independently. (Appellant's testimony)
7. The Recipient cannot be left alone; she requires continual supervision to live safely. (Appellant's testimony)
8. Due to her cognitive deficits, the Recipient cannot use public transportation. (Appellant's testimony)
9. The Recipient attends a day program through the DDS waiver. The Appellant has been using the CFC services to hire a Personal Care Assistant ("PCA") to assist and

supervise the Recipient for the time when she is not in the program. (Appellant's testimony)

10. In 2015, the Department created the Community First Choice program to provide services in the home to a population who would otherwise require institutionalization. Because the Recipient receives services through the DDS waiver program, CFC has determined that she meets the institutionalized level of care standard for the Community First Choice program. (Representative's testimony)
11. In [REDACTED] of 2016, the Recipient was first assessed for CFC services and on [REDACTED], 2016 CFC approved an initial services plan of \$22,954. (Department's summary)
12. On [REDACTED], 2018, the Department visited the Appellant's home and delivered a notice advising that the Recipient's CFC Individual budget was being reduced from \$22,954.44 to zero effective [REDACTED] 2018 because the Appellant no longer met the level of care standard for CFC. (Exhibit 4: Notice of Action)

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.
2. Title 42 of the Code of Federal Regulations ("CFR") § 441.510 provides in part that to receive Community First Choice services under this section, an individual must meet the following requirements: (a) Be eligible for medical assistance under the State plan; (b) as determined annually: (1) Be in an eligibility group under the State plan that includes nursing facility services; or (2) if in an eligibility group under the State plan that does not include such nursing facility services, have an income that is at or below 150 percent of the Federal poverty level (FPL). In determining whether the 150 percent of the FPL requirement is met, States must apply the same methodologies as would apply under their Medicaid State plan, including the same income disregards in accordance with section 1902(r)(2) of the Act; and (c) Receive a determination, at least annually, that in the absence of the home and community-based attendant services and supports provided under this subpart, the individual would otherwise require the level of care furnished in a hospital, a nursing facility, an intermediate care facility for individuals with intellectual disabilities, an institution providing psychiatric services for individuals under age 21, or an institution for mental diseases for individuals age 65 or over, if the cost could be reimbursed under the State plan.
3. Title 42 CFR § 441.510 (e) provides that **individuals receiving services through Community First Choice will not be precluded from receiving other home and**

community-based long-term care services and supports through other Medicaid State plan, waiver, grant or demonstration authorities. (Emphasis added)

4. Title 42 CFR§ 441.505 provides for the definition of the Activities of Daily Living (“ADLs”) and states that ADL’s means basic personal everyday activities including, but not limited to, tasks such as eating, toileting, grooming, dressing, bathing, and transferring.
5. Title 42 CFR§ 441.505 also provides for the definition of Instrumental Activities of Daily Living and states that IADLs means activities related to living independently in the community, including but not limited to, meal planning and preparation, managing finances, shopping for food, clothing and other essential items, performing essential household chores, communicating by phone or other median and traveling around and participating in the community.
6. Title 42 CFR§ 441.520 (a) provides for included services and states that if a State elects to provide Community First Choice, the State must provide all of the following services: (1) Assistance with ADLs, IADLs, and health-related tasks through hands-on assistance, **supervision, and/or cueing.** (Emphasis added)
7. The Department was incorrect when it terminated the Recipient’s CFC benefits because she is in need of assistance with her ADL’s and IADL’s. The fact that much of the assistance she needs and receives is in the form of supervision and cueing rather than “hands on” does not make her ineligible for the benefit.

DISCUSSION

Community First Choice is a benefit available to Medicaid recipients to provide services in home to individuals who would be otherwise require institutionalization as determined by state standards. CFC determined that █████ met the institutional level of care standard by virtue of being a recipient of the DDS waiver. The hearing summary and testimony at the hearing indicated that █████ CFC benefits were terminated because she did not have the need for actual hands on assistance. However, the regulations are explicit in stating that supervision and cueing are included in services that CFC must provide. The Department maintains that █████ needs are being met by services she receives through the DDS waiver. In addition, the regulation states that individuals receiving services through Community First Choice will not be precluded from receiving other home and community-based long-term care services and supports through other Medicaid State plan, waiver, or grant, suggesting a recognition that individuals may receive support and service benefits from more than one program. There is nothing in the regulations that supports the Department’s position that █████ is no longer eligible for CFC services.

DECISION

The Appellant's appeal is **GRANTED.**

Maureen Foley-Roy

Maureen Foley-Roy,
Hearing Officer

ORDER

The Department is to reauthorize the Recipient's CFC budget of \$22,954.44 effective [REDACTED], 2018. Compliance with this order is due by [REDACTED], 2018 and shall consist of documentation that the Appellant's budget has been restored to the previous level.

Pc: Dawn Lambert, DSS, Community First Choice, Manager
Sallie Kolreg, DSS, C. O.
Lisa Bonetti, DSS, C. O.
Laurie Filippini, DSS, C. O.
Pam Adams, DSS, C. O.

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 06105-3730.

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, 55 Elm Street, 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.