

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

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

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

NOTICE OF DECISION

PARTY

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PROCEDURAL BACKGROUND

On, ██████████, 2018, the Department of Social Services (the "Department") sent ██████████ (the "Appellant") a Notice of Action ("NOA) reducing the Community First Choice budget from \$20,790.86 to \$ 7,368.48.effective ██████████ 2018.

On ██████████ 2018, ██████████, the parents and guardians of the Appellant requested an administrative hearing to contest the Department's decision to reduce such benefits.

On ██████████ 2018, the Office of Legal Counsel, Regulations, and Administrative Hearings ("OLCRAH") issued a Notice scheduling the administrative hearing for ██████████, 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:

- ██████████, Appellant
- ██████████, Father and guardian of ██████████
- ██████████, Mother and guardian of ██████████
- Samantha Calgani, Universal Care Manager Agency on Aging So. Central CT.
- Diomali Selpulveda, Asst. Director, Agency on Aging So. Central CT
- Christine Weston, DSS, Community First Choice program
- Almelinda McLeod, Hearing Officer

STATEMENT OF THE ISSUE

The issue to be decided is whether the Department's decision to reduce the Appellant's Community First Choice budget was correct.

FINDINGS OF FACT

1. In 2015, the Department implemented the Community First Choice option under its Medicaid State Plan to provide in home services to a population who would otherwise require institutionalization. (Department's testimony)
2. On [REDACTED], 2016, the Appellant applied for the Community First Choice ("CFC") program. (hearing summary)
3. On [REDACTED] 2016, the Appellant was first assessed for the CFC program. (Hearing summary)
4. On [REDACTED], 2017, the Appellant's initial service plan was approved. The initial budget was approved for \$20, 790.86. (Hearing record)
5. On [REDACTED] 2018, the Department re-assessed the Appellant in order to determine unmet needs regarding her Activities of Daily Living ("ADL's). (Exhibit 4, Functional Universal Assessment, Exhibit 5, Outcome of Universal Assessment and Hearing Summary)
6. On [REDACTED], 2018, The Appellant's CFC budget was reduced from \$20,790.86 to \$7,368.48. (Exhibit 2, Notice of Action)
7. The recipient is [REDACTED] years old and has a diagnosis of Down syndrome. She receives Medicaid services through the Department of Developmental Services ("DDS") waiver. (Hearing record)
8. The Appellant is considered to meet level of care ("LOC") because she is receiving services under the DDS waiver. (Hearing record)
9. The Appellant requires extensive assistance with bathing as evidenced by the score of 4 on the Universal Assessment (UA) . Accordingly, the Department authorized 8.5 hours per week in Personal Care Assistant ("PCA") services. (Exhibit 2, Notice of Action, Exhibit 4, Universal Assessment, Functional status of ADL'S)

10. The Appellant has issues with dressing herself; specifically, she has difficulty with zippers and buttons and has worn her clothes backwards and/or inside out. She can dress herself but it is not always appropriate clothing. (Appellant testimony)
11. The Appellant requires limited assistance with dressing. The Department assessed the Appellant at a score of 3 on the UA which means guided maneuvering of limbs and physical guidance without taking weight. The Department provides adjustments of clothing; such as assistance with zipping and buttoning, tying of shoes and guidance into garments. (Exhibit 4, Universal Assessment, functional status of ADLs)
12. The Appellant is independent with toileting, transferring and eating and does not need hands on assistance in these areas. (Exhibit 4, Universal Assessment, functional status of ADLs)
13. Although the Appellant is independent with the physical act of eating, she requires set-up assistance and cutting of her food which falls under meal preparation, an Instrumental Activity of Daily Living ("IADLs"). (Exhibit 4)
14. The Appellant attends a day program and the transportation to the day program is provided by the DDS waiver. (Testimony from the parents and guardians of the Appellant)
15. Other than the assistance with transportation to the day program, the DDS waiver does not provide any other IADLs. The Appellant does not have meal preparation, financial management, medicine management or telephone use assistance provided through the DDS waiver. (Testimony from the parents and guardians of the Appellant)

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") §441.500 (a) provides that this subpart implements section 1915 (k) of the Act, referred to as the Community First Choice Option (hereafter Community First Choice), to provide home and community based attendant services and supports through a State plan.

3. Title 42 CFR § 441.500 (b) provides that Community First Choice is designed to make available home and community–based attendant services and supports to eligible individuals, as needed, to assist in accomplishing activities of daily living (“ADLs”) instrumental activities of daily living (“IADLs”), and health–related tasks through hands-on assistance, supervision, or cueing.
4. Title 42 CFR § 441.505 provides for definitions and states in part that *Activities of daily living* (“ADLs”) means basic personal everyday activities including, but not limited to, tasks such as eating, toileting, grooming, dressing, bathing, and transferring. *Instrumental activities of daily living* (“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 media, and traveling around and participating in the community.
5. 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 ADL’s, IADL’s, and health –related tasks through hands-on assistance, supervision, and/or cueing.
6. Title 42 CFR § 441.510 (e) provides to receive Community First Choice services and supports under this section, an individual must meet the following requirements: **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)
7. The Department incorrectly reduced the Appellant’s CFC budget based on other home and community–based services which could be provided by the DDS waiver.

DISCUSSION

The Department asserts that it was required to redesign the CFC program in light of federal guidance issued by the center for Medicare and Medicaid Services (CMS) on [REDACTED], 2016.

The Department determined the Appellant met the institutional level of care by virtue of being active on a DDS waiver. The results for CFC services re-assessment revealed that the Appellant needed hands on assistance with one ADL and was scored a 4- "Extensive assistance" with bathing in the Universal Assessment ("UA"); thus approved 8.5 hours per week for Personal Care Assistant ("PCA") services. The Appellant needed "Limited Assistance" with dressing and was scored a 3 in the UA. The Department stated that she required guidance with putting on her garments and adjustment of clothing like zippering, buttoning and tying of shoes but did not require handling of any limbs. The Department's explanation of the "limited assistance" makes it impossible for the limited assistance to be completed independent from supervision and/ or cueing. Federal regulation 42 CFR § 441.510 (e) clearly states that CFC must provide assistance with all ADLs, IADLs and health related tasks through hands-on assistance, supervision, and /or cueing.

The parents of the Appellant testified that outside of the day program and transportation to her day program, none of the other IADLs was being provided by the DDS waiver. Specifically addressed was the meal preparation. Although, the Appellant can accomplish the physical act of eating, she could not prepare her own food and could not use a stove or microwave. Meal preparation is not provided by the DDS waiver.

The hearing summary and testimony indicated that because the Appellant has services under the DDS waiver, CFC had to reduce the budget from \$20,790.86 to \$7,368.48 because they could not duplicate services. There is no evidence provided that any of her IADLs were being duplicated. Federal regulation 42 CFR § 441.510 (e) provides that Individuals receiving services through CFC 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. Thus, the Department was not correct in its decision to reduce the Appellant's CFC budget from \$20,790.86 to \$7,368.48.

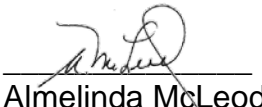
DECISION

The Appellant's appeal is GRANTED.

ORDER

The Department is to reauthorize the Appellant's CFC budget of \$20,790.86 effective [REDACTED] 2018.

Compliance with this order shall be provided to the undersigned by [REDACTED], 2018.



Almelinda McLeod
Hearing Officer

CC: Christine Weston, DSS, Community First Choice
Samantha Calgani, Agency on Aging, South Central CT.
Diomali Sepulveda, Agency of Aging, South Central CT.
Sallie Kolreg, DSS- CFC – CO
Lisa Bonetti, DSS CFC- CO
Laurie Filippini, DSS CFC - CO
Pam Adams, DSS- CFC, CO

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 Legal Counsel, Regulations, and Administrative Hearings, 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, 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 his 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.