

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 # ██████████
██████████

NOTICE OF DECISION

PARTY

██████████
██████████

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 "Appellant") from \$36,176.45 to \$0.00, effective ██████████, 2018.

On ██████████ 2018, 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 ██████████ 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:

██████████
██████████

Deborah Fox, Department's Representative, Community First Choice Program,
Michael Plummer, Care Manager, Colonial Cooperative Care
Thomas Monahan, Hearing Officer

On [REDACTED] 2018, at the hearing the Department determined a new universal assessment was necessary for the Level of Care determination.

On [REDACTED] 2018, the Department determined that the Appellant met the level of care for the Community Choice program. The Department determined that the Appellant is eligible for 19 hours of personal care assistance per week.

On [REDACTED] 2018 the Appellant requested a hearing to contest the Department's determination on the number of approved hours of personal care assistance.

On [REDACTED], 2018 the Department issued a Hearing summary addendum based on the new assessment.

The hearing record remained open for the submission of additional evidence from the Department and a response from the Appellant. The Department's evidence was forwarded to the Appellant who provided a response on [REDACTED] 2018. 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 Appellant's Community First Choice budget to 19 hours per week is correct.

FINDINGS OF FACT

1. In [REDACTED], CFC assessed the Appellant's needs and approved an initial services budget plan of \$36,176.45. (Exhibit 3: Budget reduction notice, [REDACTED])
2. Connecticut Community Care ("CCI") Incorporated is the contractor for purposes of assessing level of care and level of needs for the CFC program.
3. The Department redesigned the eligibility for CFC services to meet new federal guidelines and to implement a revised Universal Assessment. (Hearing record)
4. On [REDACTED], 2018, the Appellant was reassessed with a revised services budget by a Universal Care Manager ("UCM") from CCCI. The Department determined that the Appellant met the level of care for CFC services. (Exhibit 3A: Universal assessment [REDACTED]/18)
5. The Appellant is [REDACTED] years old ([REDACTED] /14/18)
6. The Appellant lives alone. (Hearing record, Exhibit 3A: Universal assessment [REDACTED] 18)
7. The Appellant's diagnosis includes: asthma, chronic low back pain, chronic obstructive pulmonary disease, mixed hyperlipidemia, diabetes, acid reflux and

nausea. She also has a history of anxiety and depression and sees a psychiatrist. (Appellant's exhibit 1: letters and medical records, Exhibit 3A: Universal assessment [REDACTED]/18)

8. The Appellant has exhibited symptoms of dizziness and an unsteady gate. She had one recent fall within the 30 days prior to her [REDACTED] 18 assessment. She has and uses a cane. (Exhibit 3A: Universal assessment, [REDACTED]/18)
9. The Appellant's medications include : Clonazepam (anti-anxiety), Baclofen (muscle relaxant), Escitalopram (depression, anxiety), Pravastatin Sodium, (Cholesterol), Nexium (acid reflux), Neurontin, Dicyclomine, and medical marijuana. (Exhibit 3A: Universal assessment, [REDACTED]/18)
10. The Appellant is attempting to get off her pain medication and is now in more severe pain because she is taking less medication. She recently returned home from rehabilitation after back surgery. (Appellant's Exhibit G: letter from Appellant and PCA, [REDACTED]/18)
11. The Appellant needs limited assistance with bathing for set up help only. The Appellant needs grab bars and a hand held shower for bathing. She is unable to turn the water on in the tub. The Appellant needs reminders to brush her teeth and do her hair. (Exhibit 3A: Universal assessment, [REDACTED]/18)
12. The Appellant needs guided maneuvering of limbs when dressing both her upper and lower body. (Exhibit 7A: Universal Assessment Outcome Form, Exhibit 3A: Universal assessment, [REDACTED]/18)
13. The Appellant is independent with toileting, transferring. (Exhibit 7A: Universal Assessment Outcome Form, Exhibit 3A: Universal assessment [REDACTED]/18)
14. The Appellant is able to eat independently but needs reminders to eat. (Exhibit 3A: Universal assessment, [REDACTED] 18)
15. The Appellant needs assistance in preparing meals. She no longer uses the stove because she forgets to turn the burners off. Her PCA and family bring or cook food for her. She uses a microwave oven. (Exhibit 3A: Universal assessment, [REDACTED]/18)
16. The Appellant requires supervision and cueing in managing her medications. She has and uses a medication reminder. (Exhibit 3A: Universal assessment, [REDACTED]/18)
17. The Appellant is totally dependent on others to perform household chores. (Exhibit 3A: Universal assessment, [REDACTED]/18)
18. The Appellant needs some assistance with managing her finances. She forgets to pay her bills and her PCA is now assisting her in paying them (Exhibit 3A: Universal assessment, [REDACTED]/18)
19. The Appellant requires others to do her shopping for food and household items.

(Exhibit 3A: Universal assessment, [REDACTED] 18)

20. The Appellant is dependent on others for transportation in the community. The Appellant gets lost if she drives on her own. (Exhibit 3A: Universal assessment, [REDACTED] 18)
21. The Appellant has exhibited behaviors that include anxiety, sadness and little interest in things she normally enjoys. (Exhibit 3A: Universal assessment, [REDACTED] /18)
22. A mini-cognitive assessment completed by the assessor suggests that the Appellant likely has cognitive impairment. The Appellant needs cues and supervision as to when to have meals, which clothes to wear or activities to do; her decisions are poor and unsafe and she gets confused and forgetful. Sometimes the Appellant can be left alone most of the day. (Exhibit 3A: Universal assessment, [REDACTED] /18)
23. The Appellant receives occasional assistance from her son who is her Power of Attorney. The Appellant received two hours of assistance from family and or friends in the three days prior to the assessment. (Hearing record, Exhibit 3A: Universal assessment, [REDACTED] /18)
24. The Department's Assessment Finalization scored the Appellant's level of need as a three. A level of need of three indicates that the Appellant has some cueing and supervision needs for her ADL's but also needs cueing and supervision of some IADL's (Exhibit 3A: Universal assessment, [REDACTED] /18, Exhibit 7A: Universal Outcome Form, [REDACTED] /18, Exhibit 8A: Department's email)
25. Since the initial assessment in [REDACTED], the Appellant has improved function in her ADL's but now suffers from a moderate cognitive decline. (Exhibit 3A: Universal assessment, [REDACTED] /18, Exhibit 9A: Department's letter, [REDACTED] /18)
26. The Appellant's expressed goals of care are: A PCA to assist her with life management and to remind her to eat and take medications daily. (Exhibit 3A: Universal assessment, [REDACTED] /18)
27. On [REDACTED] 2018, the Department hand delivered a Notice of reduction of CFC Services. The notice stated that effective [REDACTED] 2018 the Appellant's CFC budget would be reduced from \$36,176.45 annually to \$18,078.58 annually. (Exhibit 6A: Notice of Action CFC Service Budget Reduction, [REDACTED] /18)
28. On [REDACTED], 2018 the Appellant and CCCI completed a CFC Individual Service Budget. The budget is for 19 hours per week costing \$18,078.58 annually. CCCI's UCM and the Appellant signed the CFC budget approval page for 19 hours per week of Personal Care Attendant ("PCA") services. (Exhibit 7A: CFC budget approval page)

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. State Plan Under Title XIX of The Social Security Act states: Community First Choice State Plan Option Pursuant to Section 1915(k) of the Social Security Act

1. Eligibility

A. The State determines eligibility for Community First Choice (CFC) services in the manner prescribed under 42CFR § 441.510. To receive CFC services and supports under this section, an individual must be eligible for medical assistance under the State plan and must be in an eligibility group that includes nursing facility services or must have income below 150% of the Federal Poverty Level (FPL) if they are in an eligibility group that does not include Nursing Facility services.

Individuals who are receiving medical assistance under the special home and community-based waiver eligibility group defined at section 1902(a)(10)(A)(ii)(VI) of the Act must continue to meet all 1915(c) requirements and must receive at least one home and community-based waiver service per month. Individuals receiving services through CFC will not be precluded from receiving other home and community-based long-term services and supports through the Medicaid State plan, waiver, grant or demonstration but will not be allowed to receive duplicative services as between CFC and any other available source of Medicaid coverage for home and community-based services. (Attachment 3.1-K, Page 1 of 23)

4. 42 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.

5. 42 CFR § 441.535 provides for Assessment of functional need. States must conduct a face-to-face assessment of the individual's needs, strengths, preferences, and goals for the services and supports provided under Community First Choice in accordance with the following: (a) states may use one or more processes and techniques to obtain information, including telemedicine, or other information technology medium, in lieu of a face-to-face assessment if the following conditions apply:
 - (1) The health care professional(s) performing the assessment meet the provider qualifications defined by the State, including any additional qualifications or training requirements for the operation of required information technology;
 - (2) The individual receives appropriate support during the assessment, including the use of any necessary on-site support-staff; and
 - (3) The individual is provided the opportunity for an in-person assessment in lieu of one performed via telemedicine.
 - (b) Assessment information supports the determination that an individual requires Community First Choice and also supports the development of the person-centered service plan and, if applicable, service budget.
 - (c) The assessment of functional need must be conducted at least every 12 months, as needed when the individual's support needs or circumstances change significantly necessitating revisions to the person-centered service plan, and at the request of the individual.
 - (d) Other requirements as determined by the Secretary.

The Department correctly reassessed the Appellant on [REDACTED] 2018, to determine her new CFC budget.

6. 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.

The Department correctly determined the Appellant's needs with her ADLs and IADLs.

7. 42 CFR § 441.520(a) 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. (2) Acquisition, maintenance, and enhancement of skills necessary for the individual to accomplish ADLs, IADLs, and health-related tasks. (3) Backup systems or mechanisms to ensure

continuity of services and supports, as defined in § 441.505 of this subpart. (4) Voluntary training on how to select, manage and dismiss attendants.

The Department correctly established a CFC budget which includes assistance with the Appellant's ADLS and IADLs and health-related tasks through hands-on assistance, supervision, and/or cueing.

8. Title 42 CFR § 441.540(b)(5) provides that the person-centered service plan must reflect the services and supports that are important for the individual to meet the needs identified through an assessment of functional need, as well as what is important to the individual with regard to preferences for the delivery of such services and supports. Commensurate with the level of need of the individual, and the scope of services and supports available under Community First Choice, the plan must reflect the services and supports (paid and unpaid) that will assist the individual to achieve identified goals, and the providers of those services and supports, including natural supports. Natural supports cannot supplant needed paid services unless the natural supports that are provided voluntarily to the individual in lieu of an attendant.

The Department correctly included natural supports from family members when establishing her CFC budget.

Based on the evidence provided, the reduction in the Appellant's weekly PCA hours to 19 hours per week is adequate to meet the Appellant's functional needs with regards to her ADL's and IADL's and her moderate cognitive decline.

The Department correctly determined that there is no medical evidence that the reduction in the Appellant's weekly PCA hours and budget service plan places the Appellant at immediate risk of institutionalization.

DISCUSSION

Based on the evidence provided, the reduction of the Appellant's weekly PCA hours is adequate to meet the Appellant's functional needs in completing her ADL's and IADL's. The Appellant needs limited assistance of supervision and cueing for bathing and some limited physical assistance in dressing. The Appellant needs supervision and cueing for all her IADL's. Her PCA assists with her shopping, and preparing of her meals. The PCA is responsible for all her household chores and assists her with medication management and paying her bills. Her son who is her POA is available for some natural supports including taking the Appellant places when she leaves the home.

DECISION

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

Handwritten signature of Thomas Monahan in black ink, written in a cursive style.

Thomas Monahan
Hearing officer

C: Deborah Fox, Nurse Coordinator, DSS
Sallie Kolreg, DSS, C. O.
Dawn Lambert, DSS, C. O.
Christine Weston, 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.