

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 # 119156

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 Timothy Carr (the "Appellant") from ██████████, effective ██████████.

On ██████████, ██████████ the Recipient's mother and Guardian, 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:

- ██████████ the Appellant
- ██████████ the Appellant's mother and guardian
- Allison Weingart, DSS, Community First Choice, Community Options
- Randell Wilson Jr., Community First Choice Assessor
- Thomas Monahan, 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 and effectively discontinue his CFC services is correct.

FINDINGS OF FACT

1. The Appellant is twenty two years old and has diagnoses of [REDACTED] and [REDACTED]. He receives Medicaid services through the Department of Developmental Services ("DDS") waiver. (Exhibit 3: Assessment Documents)
2. The Appellant has a Vagus Nerve Stimulator device to prevent seizures. (Hearing summary)
3. The Appellant requires supervision for Activities of Daily Living ("ADL's") including bathing, dressing, grooming and eating. (Exhibit 2: Universal Assessment Outcome)
4. The Appellant needs assistance with shopping, meal preparation, using the telephone and household chores. (Exhibit 6)
5. The Appellant needs monitoring and reminding to take his medications. He may need assistance to set up a daily or weekly pill box. (Exhibit 3: DDS Assessment)
6. The Appellant requires prompting and support in crossing the street, crosswalks, and parking lots to ensure safety. (Exhibit 3: DDS Assessment)
7. The Appellant lives with his mother, father, sister, and grandfather. (Appellant's mother's testimony)
8. The Appellant's mother is not employed. She supervises the Appellant's daily ADL's and does the family shopping and meal preparation.
9. On [REDACTED] 2018, DDS conducted a Level of Need Assessment for the Appellant. (Ex. 3: DDS Assessment)
10. DDS granted group supported employment services and transportation services to and from a vocational program and employment. (Appellant's testimony, Exhibit 5: Individual plan)
11. As part of his services under the DDS waiver, the Appellant participates with the [REDACTED] program for help with job skills and employment. (Appellant's mother's testimony)
12. Transportation to [REDACTED] and employment locations is funded under the DDS waiver. (Appellant's mother's testimony)
13. The DDS waiver lists support from the Appellant's parents for the following activities: improvement with ADLs, maintenance of health through medical appointments and following doctors' orders, exercise activity, support to be safe in the event of a seizure, making healthy food choices, and improving interpersonal skills. (Exhibit 4:

DDS individual plan)

14. On [REDACTED] 2017, the Department approved CFC services of [REDACTED] yearly. The goal of the services was for the Appellant to gain independence in the community. The PCA was approved for the Appellant for the following activities: accompany the Appellant in shopping activities, recreational activities, and volunteer activities to help improve job skills. The services never started as the family did not complete the training and hiring of the PCAs prior to the Appellant's reassessment. (Ex. 6: CFC service plan, [REDACTED]/17)
15. On [REDACTED] 2018, an assessor from Connecticut Community Care conducted a reassessment of the Appellant reviewing his functional ADL needs. The Assessor found that the Appellant requires supervision for bathing, dressing, grooming and eating. Supervision is provided on a daily basis primarily by his mother. (Hearing record, Exhibit 2: Assessment of ADLs)
16. On [REDACTED] 2018, issued the Appellant a notice revising the Appellant's budget from [REDACTED] because the Department determined he no longer met the level of need for CFC services. (Appellant's Exhibit A: Hearing request and budget reduction notice)

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 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 of the CFR § 441.500(b) provides that the 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 of the CFR § 441.505 defines *activities of daily living (ADLs)* as basic personal everyday activities, including but not limited to, tasks such as eating, toileting, grooming, dressing, bathing, and transferring.
5. Title 42 of the CFR § 441.505 defines *instrumental activities of daily living (IADLs)* as 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.

6. Title 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.

7. 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.
8. 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 and (2) acquisition, maintenance, and enhancement of skills necessary for the individual to accomplish ADLs, IADLs, and health-related tasks.
9. Title 42 CFR § 441.520(b) provides that the state may provide permissible services and supports that are linked to an assessed need or goal in the individuals person-centered service plan.
10. Title 42 CFR § 441.535(b) 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: 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.

The Department correctly determined that the Appellant needs supervision for his ADLs and enhancement of the skills needed to accomplish his ADLs, IADLs and health related tasks.

11. Title 42 CFR § 441.540(b)(5) provides for the person centered service plan. 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 are unpaid supports that are provided voluntarily to the individual in lieu of an attendant.

12. Connecticut State Plan Amendment (“SPA”) no 15-012, pursuant to section 1915(k) of the Social Security Act, (5)(A) provides for included limits on amount, duration or scope of included services and states that the Department assigns an overall budget based on need grouping that is determined by algorithm. Natural supports are based on the individual’s functional assessment, which will take into consideration the availability of natural supports. Natural supports are identified during the person centered service planning process and utilized when available to the individual. Natural supports are defined as voluntary unpaid care provided on a regular and consistent basis by a parent, spouse or other person.

The Department correctly determined that the Appellant receives natural supports from his parents in the supervision of his ADLs and enhancement of his IADLs.

13. Section § 17b-259b of the Connecticut General Statutes provides that:

(a) For purposes of the administration of the medical assistance programs by the Department of Social Services, "medically necessary" and "medical necessity" mean those health services required to prevent, identify, diagnose, treat, rehabilitate or ameliorate an individual's medical condition, including mental illness, or its effects, in order to attain or maintain the individual's achievable health and independent functioning provided such services are: (1) Consistent with generally-accepted standards of medical practice that are defined as standards that are based on (A) credible scientific evidence published in peer-reviewed medical literature that is generally recognized by the relevant medical community, (B) recommendations of a physician-specialty society, (C) the views of physicians practicing in relevant clinical areas, and (D) any other relevant factors; **(2) clinically appropriate in terms of type, frequency, timing, site, extent and duration and considered effective for the individual's illness, injury or disease;** (3) not primarily for the convenience of the individual, the individual's health care provider or other health care providers; (4) not more costly than an alternative service or sequence of services at least as likely to produce equivalent therapeutic or diagnostic results as to the diagnosis or treatment of the individual's illness, injury or disease; and (5) based on an assessment of the individual and his or her medical condition. [Emphasis added]

The Department correctly determined that the Appellant's DDS waiver provides services to enhance his IADLs skills with job coaching, employment opportunities and transportation to and from those activities.

The Department correctly determined that the Appellant does not qualify for CFC services at this time because the services are not medically necessary pursuant to Section § 17b-259b(a)(2) of the Connecticut General Statutes.

DISCUSSION

Community First Choice is a benefit available to Medicaid recipients under the State Plan to provide services in home to individuals who would be otherwise require institutionalization as determined by state standards. The Appellant meets the institutional level of care standard. There is no dispute that the Appellant needs supervision and support and cannot function independently. The hearing summary and testimony at the hearing indicated that the Appellant's CFC benefits were determined to be not medically necessary because he receives the necessary services through the DDS waiver and natural supports from his mother with occasional help from his father. The Appellant was not receiving DDS services at the time of his initial assessment in [REDACTED] 2017.

At the hearing the Appellant's mother expressed an interest in seeking employment for herself and receiving CFC services while she is employed. The Department agreed that a new determination would be necessary and agreed to work with the Appellant's mother throughout the process of obtaining and setting up CFC services while searching for and obtaining employment.

DECISION

The Appellant's appeal is **DENIED**



Thomas Monahan
Hearing Officer

PC: Allison Weingart, DSS, Community First Choice
Sallie Kolreg, DSS, Community First Choice
Lisa Bonetti, DSS, Community First Choice
Laurie Filippini, DSS, Community First Choice
Pam Adams, DSS, Community First Choice

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.