

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

██████████
Request # 119306

NOTICE OF DECISION

PARTY

██████████
██████████
██████████, CT ██████████

On ██████████, 2018, the Department of Social Services, (the "Department"), issued a Notice of Action ("NOA") to ██████████ (the "Appellant") reducing his Community First Choice ("CFC") budget from \$50,484.00 to zero based on a reassessed level of need.

On ██████████ 2018, the Appellant requested a hearing to contest the reduction. The Manager of the Office of Legal Counsel, Regulations, and Administrative Hearings ("OLCRAH") granted the Appellant good cause for not submitting the hearing request timely.

On ██████████ 2018, OLCRAH issued a notice scheduling the administrative hearing for ██████████ 2018.

On ██████████, 2018, the Appellant's mother requested a continuance of the administrative hearing because she and the Appellant would be out of town.

On ██████████ 2018, OLCRAH granted the continuance.

On ██████████, 2018, OLCRAH issued a notice rescheduling the administrative hearing for ██████████ 2018.

On [REDACTED] 2018, the Appellant's mother requested the hearing be moved to another venue due to construction at her home.

On [REDACTED] 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 at the Elmwood Community Center in [REDACTED]

The following individuals were present at the hearing:

[REDACTED], Appellant's mother

[REDACTED], Appellant's father

Christine Weston, Department's representative, Community First Choice

Debbie Fox, Department's representative, Community Nurse Coordinator

Randell Wilson, Connecticut Community Care

Donna Grieder, Connecticut Community Care

Thomas Monahan, Hearing Officer

STATEMENT OF THE ISSUE

The issue to be decided is whether the Department was correct to reduce the Appellant's CFC budget to zero.

FINDINGS OF FACT

1. The Appellant receives Medicaid services through the State of Connecticut Department of Developmental Disabilities ("DDS") waiver program. The Appellant is [REDACTED] years old and has a diagnosis of Down Syndrome, Mild Intellectual Disability, Anxiety, Dysphagia, Social Phobia, and Aortic Ring around the esophagus. (Hearing Summary, Department's testimony, Exhibit 8: DDS Level of Need Assessment tool, [REDACTED], Exhibit 13: DDS Individual plan, [REDACTED])
2. In [REDACTED], the Appellant was granted services under the Community First Choice ("CFC") program to provide support for his activities of Daily living ("ADLs"), instrumental activities of daily living ("IADLs") and Behavioral need factors. The Appellant's [REDACTED] budget included Personal Care Assistance for [REDACTED] hours per week based on the Appellant living independently in the community. (Hearing Summary, Exhibit 10: CFC Budget Approval)
3. In [REDACTED], the Appellant's DDS budget was [REDACTED].00 for home and community based services. (Hearing summary, Exhibit 10: CFC Budget Approval)

4. In [REDACTED] 2018, the Appellant participated in an annual comprehensive reassessment for Medicaid long term supports and services by DDS. (Hearing Summary, Exhibit 8: DDS Level of Need Assessment tool, [REDACTED])
5. DSS acknowledges the DDS assessment and level of need determination as a comprehensive assessment. DSS uses the DDS comprehensive assessment plus the 5 ADL functional assessment for determination of eligibility and budgeting for CFC services. (Department's testimony)
6. On [REDACTED], 2018, a Department representative from Connecticut Community Care (CCC) completed an annual face to face assessment of need specifically related to core ADLs, which included bathing, toileting, transferring, eating and dressing. The core ADLs were not assessed in the DDS reassessment. (Hearing Summary, Exhibit 11: Universal Assessment-Functional Status of ADLs)
7. On [REDACTED], 2018, the representative from CCC hand delivered a notice to the Appellant and his mother eliminating his budget for CFC services because he was physically capable of completing his ADLs. (Department's testimony, Exhibit 12: Notice of Action Budget Reduction, [REDACTED]/18)
8. A registered nurse from DSS reviewed the comprehensive assessment of needs and assessment of ADLs and determined that the Appellant is independent with toileting and transferring but needs cueing and or supervision with dressing, bathing and eating. The DSS nurse determined that the Appellant receives informal voluntary support from his family which provides for cueing and supervision for the Appellant needs of dressing and bathing. He receives support for eating from his family at home and in the community through his DDS day support services. (Hearing Summary, Exhibit 8: DDS Level of Need Assessment tool, [REDACTED]5/18, Exhibit 11: Universal Assessment- Functional Status of ADL's)
9. The Appellant needs prompting or encouragement for grooming and personal care. (Exhibit 8: DDS Level of Need Assessment tool, [REDACTED]/18)
10. The Department determined that for IADLs the Appellant requires assistance with taking medications, meal preparation, shopping, household chores, and money management. (Hearing Summary)
11. The Appellant's mother currently manages his finances, is the payee for his Social Security ("SSA") benefits and completes DSS and SSA redeterminations on his behalf. (Exhibit 13: DDS individual plan, revised [REDACTED]/18)
12. The Appellant is incapable of avoiding financial or sexual exploitation. (Exhibit 13: DDS individual plan, revised [REDACTED]18)

13. The Appellant requires close supervision in the community as he is easily distracted and can wander away. (Exhibit 8: DDS Level of Need Assessment tool, [REDACTED]/18)
14. The Appellant receives individual day supports through the DDS waiver. The Appellant receives day supports at [REDACTED], where he is employed [REDACTED] and [REDACTED] from [REDACTED]:00am to [REDACTED]:30 pm. (Appellant's mother's testimony)
15. The Appellant is also employed at the [REDACTED]. He receives informal support from other employees and does not receive DDS services at that job. (Appellant's mother's testimony)
16. The Appellant can physically complete his ADLs but will not do so without being told. (Appellant's mother's testimony)
17. The Appellant can be left alone at home for up to two hours. (Appellant's mother's testimony, Exhibit 13: DDS individual plan, revised [REDACTED]/18)
18. The Appellant no longer has support at home from his sister who is now attending college and does not live in the home. (Appellant's mother's testimony)
19. The Appellant has behavioral concerns that have resurfaced since his sister has returned to college. He hits people in public. (Appellant's mother's testimony)
20. DSS determined the Appellant's level of need from the DDS assessment plus the functional status of the ADLs' assessment. (Department's testimony)
21. The Appellant meets the level of need to qualify for CFC services. (Department's testimony)
22. For the months of [REDACTED] 2018, CFC granted PCA services for the Appellant at home because his mother is transitioning back to full time employment and the Appellant works less hours in the [REDACTED]. The funding for the services was taken from the Appellant's unused DDS allocation. (Department and Appellant's mother's testimony)
23. The Appellant's mother will be returning to full time employment on [REDACTED] 2018, and will be out of the home approximately twelve hours per day. She will not be able to provide transportation to work for the Appellant or be home for family support. (Appellant's mother's testimony)
24. The DDS individual plan does not provide for IADL support at the Appellant's home. (Hearing record, Exhibit 13: DDS Individual plan, [REDACTED] 18)

25. The Department determined that the DDS waiver, plus regular Medicaid services and informal supports provide for the Appellant's needs and that CFC will only pay for extensive hands on care that the DDS waiver and Medicaid do not cover. (Department's testimony)
26. The Department determined that the Appellant's budget is reduced to zero because he has no unmet needs for the CFC program. (Department's testimony)

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. 42 CFR § 441.500 (b) provides Community First Choice is designated 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. 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. State Plan Under Title XIX of The Social Security Act states: Community First Choice State Plan Option Pursuant to Section 191S(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)

6. 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 completed a face-to-face assessment of the Appellant's needs, strengths, preferences, and goals for the services and supports provided under CFC.

The Appellant's home situation has changed since the [REDACTED] 2018 assessment which has resulted in a change in his need for services in the home. The Appellant's needs will further change in [REDACTED] 2018.

7. 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. Acquisition, maintenance and enhancement of skills necessary for the individual to accomplish ADL's, IADL's, and health related tasks.
8. 42 CFR § 441.525 provides that Community First Choice may not include the following: (a) Room and board costs for the individual, except for allowable transition services described in §441.520(b)(1) of this subpart. (b) Special education and related services provided under the Individuals with Disabilities Education Act that are related to education only, and vocational rehabilitation services provided under the Rehabilitation Act of 1973. (c) Assistive devices and assistive technology services, other than those defined in §441.520(a)(3) of this subpart, or those that meet the requirements at §441.520(b)(2) of this subpart. (d) Medical supplies and medical equipment, other than those that meet the requirements at §441.520(b)(2) of this subpart. (e) Home modifications, other than those that meet the requirements at §441.520(b) of this subpart.

Cueing, and supervision of ADL's; enhancement of skills to complete ADL's, IADL's or health related tasks are not excluded services pursuant to 42 CFR § 441.520 and 42 CFR § 441.525.

The Department did not provide evidence that the cueing and supervision of the Appellant's ADLs and IADLs are currently being provided in the Appellant's home or that they must be provided by the DDS waiver.

The Department did not provide evidence that the acquisition, maintenance and enhancement of skills necessary for the individual to accomplish ADL's, IADL's, and health related tasks in the Appellant's home is being or must be provided by the DDS waiver.

DISCUSSION

The Department argued that in the Appellant's case the CFC budget can only be used for extensive hands on ADLs needs, which the Appellant does not have at this time. They argued that supervision and cueing of ADLs and assistance with IADLs is the responsibility of the DDS waiver. They further argued that the money in the DDS budget is for ADL and IADL assistance. DDS did not have a representative at the hearing and the services they currently supply the Appellant with, which include ADLs, and IADLs, are strictly outside the home. The Appellant's mother stated that DDS representatives told her that the in home supports are provided by the CFC program. The Department did grant the home supports for [REDACTED] and August through the CFC program but used the dollars in the DDS waiver budget.

Regulation states that the state must provide assistance with ADLs, IADLs and health-related tasks through hands-on assistance, supervision, and/or cueing. It is clear from the record that the Appellant has needs related to cueing and supervision of ADLs and IADLs that are not being met at his home. There was no evidence provided that because DDS is providing day supports, CFC cannot provide in home ADL supervision and cueing as well as IADL supports. These services would not be a duplication of services.

Since the last assessment, the Appellant's home situation has changed and his needs in the home will further change in [REDACTED]. The evidence in the hearing record states that the Appellant can be home alone for two hours at a time. With his mother returning to work full time the Appellant will be home alone for more than two hours. An updated assessment is necessary to adjust the Appellant's budget. The record is not clear on the responsibilities of services and budgeting between the DDS waiver program and the CFC program. DDS and DSS do not agree on the coverage or budgeting of services in the home and the Appellant's family is unable to get clear direction on how to proceed. The Department did not establish with clear and convincing evidence that the Appellant is not eligible CFC services related to cueing and supervision of ADLs and IADLs.

DECISION

The Appellant's appeal is **REMANDED TO THE DEPARTMENT** for further action.

ORDER

1. The Department will reassess the Appellant's eligibility for CFC services.
2. The Department will recalculate the Appellant's budget and number of hours allowed under the Connecticut State Plan and Code of Federal Regulations for CFC services allowing for cueing and supervision under the CFC program.
3. Once the Department makes a decision regarding the budget and CFC hours for the Appellant, a new notice shall be issued to the Appellant with a detailed explanation of the calculation.
4. Compliance with this order should be forwarded to the undersigned no later than 15 days from this decision.



Thomas Monahan
Hearing Officer

C: Christin Weston, DSS – Central Office
Dawn Lambert, DSS – Central Office
Sallie Kolreg, DSS – Central Office

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 06105-3725.

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.