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

[redacted] 2018
SIGNATURE CONFIRMATION

REQUEST #119373

CLIENT ID [redacted]
CASE ID #[redacted]

NOTICE OF DECISION

PARTY

[redacted]

PROCEDURAL BACKGROUND

On [redacted] 2018, the Department of Social Services (the "Department") issued a Notice of Action ("NOA") to [redacted] (the "Appellant"). The Notice stated that the Appellant's Community First Choice ("CFC") Individual Budget amount would be reduced from $67,730.24 to $34,526.59 per year, or from 45 hours per week of Personal Care Assistance ("PCA") to 37 hours per week of PCA, effective [redacted] 2018, based on a reassessment of the Appellant's level of need.

On [redacted] 2018, the Appellant requested an administrative hearing to contest the Department's reduction in her level of care.

On [redacted] 2018, the Office of Legal Counsel, Regulations, and Administrative Hearings ("OLCRAH") issued a notice scheduling an administrative hearing for [redacted] 2018 @ 10:00 AM.

On [redacted] 2018, in accordance with sections 17b-60, 17b-61, and 4-176e to 4-189, inclusive, of the Connecticut General Statutes, the OLCRAH held an administrative hearing.

The following individuals were present at the hearing:

[redacted] Appellant
[redacted] Witness for the Appellant
Deborah Fox, Community Nurse Coordinator for the Department

Rachel Lalanne, Representative for South West Community Action Agency ("SWCAA")
Hernold C. Linton, Hearing Officer

The hearing record remained open for the submission of additional evidence from the Department and the Appellant. The Appellant submitted her final response on [redacted] 2018. The hearing record was closed on [redacted] 2018.

STATEMENT OF THE ISSUE

The issue to be decided is whether the Department correctly reduced the Appellant's CFC service budget based on a reduction in the Appellant's level of need.

FINDINGS OF FACT

1. On [redacted] 2016, the Department conducted an assessment of the Appellant's level of need and determined that the Appellant needs assistance with her activities of daily living ("ADLs") and her instrumental activities of daily living ("IADLs"). (Hearing Summary)

2. On [redacted] 2016, the Department approved the Appellant's service plan of $67,730.24 allowing her to receive 45 hours per week of PCA. (Appellant's testimony; Hearing Summary)

3. The Department redesigned the eligibility for CFC services to meet new federal guidelines and to implement a revised Universal Assessment. The Department contracted with the SWCAA to determine level of care needs and service plan budgets. (Hearing Summary)

4. The Department's revised Universal Assessment guidelines standardized the assessment process by linking clinical responses to assessment questions and using clinical criteria to determine the level of care and service needs budgets. (Hearing Summary)

5. On [redacted] 2018, the Department conducted a reassessment of the Appellant's level of need and service plan, and determined that the Appellant needed extensive assistance with bathing and dressing, limited assistance with toileting, transferring and eating. Her Level of Need was scored at 4 and she was determined to need nursing facility ("NF") level of care. (Dept.'s Exhibit #1: Universal Assessment Outcome Form)

6. On [redacted] 2018, the Department sent a Notice of Action to the Appellant informing her that the revised funding appropriate to her level of need was $34,526.59 per year, effective [redacted] 2018, as her PCA hours were being reduced from 45 hours per week to 37 hours per week. (Dept.'s Exhibit #3: [redacted]18 Notice of Action)

7. The Appellant is [redacted] years of age. (Appellant's testimony; Hearing Summary)

8. The Appellant receives Social Security ("SSA") benefits as a disabled individual. (Appellant's testimony)

9. The Appellant lives with her sister from whom she is renting a room, and her sister is also one of her PCA. (Appellant's testimony)

10. The Appellant is diagnosed with Breast Cancer and with having a disabled right arm from her elbow to her hand due to the cancer. The Appellant performs all of her ADLs and IADLs with her upper left arm causing increased pain from the constant over use for everything from feeding to showering, and needs assistance with all routine tasks. The Appellant is getting multiple overuse musculoskeletal pain in her left arm making it difficult for her to complete her ADLs. (Appellant's testimony; Dept.'s Exhibit #1; Appellant's Exhibit A: [redacted]18 Letter from Norwalk Hospital; Appellant's Exhibit B: [redacted]18 Letter from Dr. Ryan)

11. The Appellant requires an aide in her home to assist her with completing her ADLs, such as bathing, dressing, and with her IADLs, such as cooking, cleaning, and shopping. (Appellant's Testimony; Appellant's Exhibit B)

12. The Appellant's cognitive status is alert and oriented. (Dept.'s Exhibit #1)

13. The Appellant has no behavioral concerns. (Dept.'s Exhibit #1)

14. The Appellant does not need medication support beyond set-up and reminders. (Dept.'s Exhibit #1)

15. The Appellant allocates her weekly PCA hours between two aides who take turns daily to assist her in the home with completing her ADLs and IADLs. (Appellant's testimony)

16. There is no evidence that with the reduction of the Appellant's PCA hours to 37 hours per week in her home, the Appellant's frequency of hospitalization has increased. (Hearing Summary)

17. There is no evidence that with only receiving 37 hours per week of PCA in her home to assist with her functional needs, the Appellant is at risk of institutionalization. (Hearing Summary)

CONCLUSIONS OF LAW

1. The Department is the state agency for the administration of the Medicaid program pursuant to Title XIX of the Social Security Act. The Commissioner may make such regulations as are necessary to administer the medical assistance program. [Conn. Gen. Stat. § 17b-2; Conn. Gen. Stat. § 17b-3]

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. 42 of the Code of Federal Regulations ("CFR"), Part 441.510 address eligibility for the program as follows:

> To receive Community First Choice services and supports 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. The

State administering agency may permanently waive the annual recertification requirement for an individual if:

(1) It is determined that there is no reasonable expectation of improvement or significant change in the individual's condition because of the severity of a chronic condition or the degree of impairment of functional capacity; and

(2) The State administering agency, or designee, retains documentation of the reason for waiving the annual recertification requirement.

(d) For purposes of meeting the criterion under paragraph (b) of this section, individuals who qualify for 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 meet all section 1915(c) requirements and receive at least one home and community-based waiver service per month.

(e) 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.

6. 42 CFR § 441.520 provides for included services as follows:

(a) 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 determined that the Appellant needs extensive assistance with bathing and dressing, and limited assistance with toileting, transferring, and eating.

7. 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 an assessment through its contractor to determine the Appellant's service plan and service budget.

8. 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 provides that:

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 l 902(a)(lO)(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.

The Department correctly determined the Appellant meets the eligibility requirements for CFC Services.

9. Based on the evidence provided, the reduction in the Appellant's weekly PCA hours from 45 hours per week to 37 hours per week is adequate to meet the Appellant's functional needs with regards to her medical condition and overall health.

10. 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.

11. The Department correctly determined that with the reduction in the Appellant's weekly PCA hours from 45 hours to 37 hours, still provides for the welfare and safety of the Appellant in her home, and the Appellant is not at risk of institutionalization.

DECISION

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

Hernold C. Linton

Hernold C. Linton
Hearing Officer

Pc: **Dawn Lambert,** DSS, Central Office

Rachel Lalanne, SWCAA

Deborah Fox, Community Nurse Coordinator

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.