

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

██████████  
██████████  
██████████

On ██████████, 2018, the Department of Social Services, (the "Department"), issued a Notice of Action ("NOA") to ██████████ (the Appellant's mother and legal guardian) reducing the Community First Choice ("CFC") budget for her daughter ██████████ (the "Appellant") based on a reassessed level of need.

On ██████████, 2018, the Appellant's mother requested a hearing to contest the reduction.

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

On ██████████ 2018, the Appellant requested a continuance of the administrative hearing and requested it be held at the regional office and not at her home.

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

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

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.

The following individuals were present at the hearing:

[REDACTED]  
[REDACTED], for the Appellant  
Christine Weston, Department's representative, Community First Choice  
Thomas Monahan, Hearing Officer

The Hearing Record remained open for the submission of additional documentation from the Department and comment from the Appellant. The Department submitted an email comment on [REDACTED], 2018 and the Appellant's response was received [REDACTED] 2018. The record closed [REDACTED] 2018.

### **STATEMENT OF THE ISSUE**

The issue to be decided is whether the Department was correct to reduce the Appellant's CFC budget to 17.5 hours per week.

### **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] and has an intellectual disability. She has also been diagnosed with cerebral palsy, epilepsy, migraines and is legally blind [Prosthetic eye and cataract]. (Exhibit 7: DDS level of need assessment tool)
2. On [REDACTED], the Appellant was assessed for her needs and approved for 30 hours per week of PCA services with an annual budget of \$25,663.36 under the CFC program. (Ex. 6: Budget worksheet and approval form, [REDACTED])
3. On [REDACTED], DDS completed an annual comprehensive assessment for Medicaid long term supports and services received from DDS. (Hearing Summary)
4. 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. (Hearing record)

5. On [REDACTED], 2018, a Department representative from Area Agency of South Central Connecticut (AASCC) completed an annual face to face assessment of need specifically related to core ADLs, which included bathing, toileting, transferring, eating and dressing. ((Hearing Summary, Exhibit 1: Universal Assessment Functional Status of ADLs, Exhibit 2: Universal Assessment Outcome Form)
6. The Department determined the Appellant's ADL needs are: maximum assistance with bathing, extensive assistance with toileting, limited assistance with dressing, and that she is independent with eating and transferring. (Hearing Summary, Exhibit 1: Universal Assessment Functional Status of ADLs, Exhibit 2: Universal Assessment Outcome Form)
7. On [REDACTED] 2018, the representative from AASCC hand delivered a notice to the Appellant and his mother reducing her budget for CFC services because she needed extensive assistance with toileting and maximum assistance with bathing. The Department determined that limited assistance for dressing does not qualify for additional CFC services because it is not an extensive need. The budget was reduced from 30 hours to 17.5 hours. (Hearing record, Exhibit 4: Notice of Action Budget Reduction, [REDACTED]/18)
8. The Department calculated the Appellant's new CFC hours in the following manner based on the core ADL needs of the Appellant. The Department allows for 1.25 hours daily for each ADL need that is extensive or totally dependent. The Department did not budget for any ADL that required limited assistance or less. The calculation was two ADL needs daily, 1.25 hours x 2 = 2.50 hours x 7 days = 17.50 weekly hours. (Department's testimony)
9. DDS provides group day services including transportation for the Appellant Monday through Friday from 8:00am to 2:30pm. (Testimony)
10. The Appellant's current CFC services are a PCA from 2:30-6:30 Monday to Friday for a total of 20 hours. The Appellant's mother arrives home at 6:30 from her employment. The Appellant's prior budget also included hours for the weekend but the Appellant has not been able to find a PCA for the limited number of weekend hours. (Testimony)
11. The Appellant's [REDACTED] has no informal supports at home to assist in the care of the Appellant. The DDS universal assessment erroneously lists an aunt and a sister. (Testimony)
12. The Appellant needs assistance in taking medications. (Exhibit 7: DDS level of need assessment tool)
13. The Appellant can walk by herself but may require assistance from another person. The Appellant is legally blind, has cognitive and balance issues that

make walking in the community or home by herself a risk. (Exhibit 7: DDS level of need assessment tool, Appellant's Exhibit B: Attorney's brief)

14. The Appellant requires assistance with meal preparation and shopping. Her meal must be prepared by a caregiver and often cut up into small pieces. (Appellant's Exhibit B: Attorney's brief, Exhibit 7: DDS level of need assessment tool)
15. The Appellant needs assistance using the telephone. (Exhibit 7: DDS level of need assessment tool)
16. The Appellant is unable to manage her finances. (Exhibit 7: DDS level of need assessment tool)
17. At the Appellant's home she needs continuous support and cannot be left alone. She is a safety risk if left unattended. (Exhibit 7: DDS level of need assessment tool, Exhibit 8: DDS assessment and screening tool summary report )
18. DDS does not provide for the Appellant's ADL or IADL needs at the Appellant's home. (hearing record)
19. There is no evidence that the Appellant's needs have changed. (Hearing Record)

### **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 § 441.510 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.

4. 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.

**The Appellant is eligible for the DDS waiver and CFC services.**

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 completed an assessment of the Appellant's needs.**

6. 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.
7. 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.
8. 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 failed to consider the Appellant's other ADLs and IADLs in her CFC budget. The CFC budget calculation was based solely on the Appellant's extensive ADL needs of toileting and bathing.**

9. Connecticut State Plan Amendment ("SPA") no 15-012, pursuant to section 1915(k) of the Social Security Act, (5)(A) provides for 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 failed to consider the work hours of the Appellant's natural support (her [REDACTED]), when calculating the CFC budget.**

**The 17.5 hours approved for CFC services does not allow for the Appellant's mother to maintain her employment because there is not**

enough PCA hours allotted in the Appellant's CFC budget for continuous supervision and other IADLS such as 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 failed to prove why it reduced the Appellant's CFC budget to 17.5 hours weekly; therefore, the Appellant is entitled to her previous budget of 30 hours per week.

### **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. The Appellant needs continuous supervision and extensive assistance with bathing and toileting and some assistance with dressing. The Appellant needs assistance with all of her IADL's. The Department's CFC budget allowed for 17.5 hours Monday through Friday. The Appellant's mother needs 20 hours of coverage (four hours daily) to maintain her employment and still have continuous supervision for the Appellant during the work week. The DDS waiver is only providing for services in the community and is not providing any in home services.


The Appellant's [REDACTED] is the only natural support for the Appellant. The Department's calculation did not allow any weekend hours for the Appellant's mother to do the necessary shopping and other responsibilities outside of the home to maintain a household for the Appellant. The only explanation of the Department's CFC budget calculation is the Appellant two extensive ADL needs which are calculated at 2.50 hours per day. The DDS assessment tools states that the Appellant cannot be left alone and is a safety risk, which does not appear to be considered in the Appellant's budget calculation. It is not possible for the Appellant to maintain her work hours and provide for the Appellant with only 17.5 hours per week when she is the only natural support for the Appellant.

### **DECISION**

The Appellant's appeal is **GRANTED**

**ORDER**

1. The Department will rescind its notice to reduce the Appellant's CFC budget and continue her budget of 30 hours per week.
2. Compliance with this order should be forwarded to the undersigned no later than 15 days from the date of 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.