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

Case ID# [redacted]
CL ID# [redacted]
Request# [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") indicating that the Appellant's Community First Choice ("CFC") Individual Budget amount would be reduced from $57,037.00 to $0.00 per year, effective [redacted] 2018, based on a reassessment of the Appellant's level of need.

On [redacted] 2018, the Appellant's conservator (the "Conservator") requested an administrative hearing to contest the Department's to take such action.

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

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's Conservator and Mother
[redacted] CFC Assessor
Christine Weston, Department's Representative

Sybil Hardy, Hearing Officer

The hearing record remained open for the submission of the Appellant's latest CFC Individual Budget from the Department. On [redacted], the hearing record closed with no additional information received.

STATEMENT OF THE ISSUE

The issue is whether the Department correctly reduced the Appellant's CFC service budget based on the Appellant's current level of need.

FINDINGS OF FACT

1. During [redacted] the Department conducted an assessment of the Appellant's level of need and determined that the Appellant required assistance with his activities of daily living ("ADLs") and his instrumental activities of daily living ("IADLs"). (Department Representative's Testimony)

2. On [redacted] 2016, the Department authorized a CFC Individual Budget of $57,037.00 allowing him to receive 65 hours per week of PCA services. (Department Representative's Testimony, Exhibit 1: Revised CFC Individual Budget, Exhibit 4: NOA, [redacted]8)

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 Connecticut Community Care Inc. ("CCCI") to determine level of care needs and service plan budgets. (Hearing Record, Exhibit 3: Disclosure Information, [redacted]18)

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's revised CFC Individual Budget would be reduced from $57,035.00 to $0.00. (Exhibit A: Appellant's Hearing Request)

6. On [redacted]2018, the Conservator requested an administrative hearing on the reduction of the Appellant's budget to $0.00. (Hearing Record, Exhibit A)

7. On [redacted]2018, CCCI conducted another reassessment of the Appellant's level of need and service plan, and determined that the Appellant does not need extensive assistance with any of the activities of daily living. The Appellant needs cueing and

supervision for bathing and limited assistance with toileting. The Appellant is independent with dressing, eating and transferring. (Exhibit 1)

8. On [redacted] 2018, the Department issued a NOA to the Appellant informing him that the revised funding appropriate to his level of need was $12,369.55 per year, effective [redacted] 2018, because his PCA hours were reduced from 65 hours per week to 13 hours per week. (Exhibit 4: NOA, [redacted]18)

9. On [redacted] 2018, the Department withdrew their NOA dated April 25, 2018. (Hearing Record)

10. On [redacted] 2018, at the time of the hearing the Department verbally presented a new budget of $24,501.23. (Hearing Record)

11. On [redacted] 2018, the hearing officer requested written notification of the change made to the Appellant's revised CFC Individual Budget. This information was due back to the Appellant and the hearing officer by [redacted] 2018. (Hearing Record)

12. Written notification of the new budget and its justifications were not received by the hearing officer. (Hearing Record)

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 § 441.510 address eligibility for the CFC 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.

5. 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 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.

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 as assessment through its contractor to determine a revised CFC Individual Budget, but failed to provide the Appellant with a revised budget and NOA.

Based on the evidence provided for the hearing the hearing officer is unable to make a decision regarding the reduction of the Appellant's CFC budget because the Department did not provide the necessary information for the Appellant's revised budget and the NOA that should have followed the change.

DECISION

The Appellant's appeal is **REMANDED** back to the Department for further action.

ORDER

1. The Department is ordered to provide to the Appellant a new revised CFC Individual Budget and issue a signed NOA explaining the new changes.

2. Compliance of this order is due back to the undersigned no later than August 25, 2018.

Sybil Hardy
Hearing Officer

Pc: Dawn Lambert, DSS, Central Office
Christine Weston, 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.