

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 # ██████████
Hearing # 121356

NOTICE OF DECISION

PARTY

██████████
██████████
██████████ ██████████
██

PROCEDURAL BACKGROUND

On ██████████, the Department of Social Services (the "Department") issued a notice of action stating that it was reducing the Community First Choice ("CFC") budget for ██████████ (the "Recipient") from \$50,833.37 to \$7,368.48 (equal to approximately 8.75 hours of Personal Assistance Care per week), effective ██████████, 2018.

On ██████████, ██████████, the Recipient's grandmother and Guardian (the "Appellant") requested an administrative hearing to contest the Department's decision to reduce such benefits.

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

On ██████████, ██████████, the Recipient's mother and authorized representative (the "Representative") requested a continuance of the hearing, which OLCRAH granted.

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

██████████, the Recipient's representative requested a continuance of the hearing

due to her illness, which OLCRAH granted.

On [REDACTED], OLCRAH issued a notice scheduling the administrative hearing for [REDACTED]

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], the Representative, the Recipient's mother and authorized representative

[REDACTED], Recipient

Christine Weston, DSS, Community First Choice Program,

Dee Sepulveda, South Central Area on Aging

Maureen Foley-Roy, Hearing Officer

The hearing record remained open at the request of the Appellant to give her an opportunity to review the hearing summary and accompanying material. The hearing record closed on [REDACTED], 2018.

STATEMENT OF THE ISSUE

The issue to be decided is whether the Department's decision to reduce the Recipient's Community First Choice ("CFC") from \$50,833.37 to \$7,368.48 (equal to approximately 8.75 hours of Personal Assistance Care per week), budget is correct.

FINDINGS OF FACT

1. The Recipient is twenty two years old and has diagnoses of autism and a secondary cognitive impairment. (Hearing Summary)
2. The Recipient lives at home with his mother, the Representative. (Hearing summary)
3. In [REDACTED], CFC first assessed the Recipient's needs and approved an initial services plan of \$50,833.37. (Exhibit 6: Outcome Assessment forms and Exhibit 7: Budget Reduction Notice dated [REDACTED])
4. The Recipient's mother does not work outside the home with the exception of occasional errand running for individuals. (Representative's testimony)
5. In [REDACTED] [REDACTED], the Recipient was approved for the Department of Developmental Services waiver. He participates in a day program which offers supported employment among other services. The hours of the program are 8:45 am through 3:45 pm Monday through Friday. The Recipient's current DDS budget is \$25,380.00. (Hearing request, Hearing Summary, and Recipient's testimony)
6. The Recipient needs extensive hands on assistance with bathing and limited

assistance with dressing. He is independent with toileting and transferring. (Exhibit 5: Universal Assessment Outcome Form)

7. The Recipient can feed himself but must be supervised. He is at risk of impulsive food ingestion. (Exhibit 4c: Participant Risk Agreement)
8. The Recipient is also at risk for wandering and physically abusive behavior. (Exhibit 4c)
9. The Recipient takes medication with monitoring, prompting and reminders. (Exhibit 3: DDS Level of Need Assessment)
10. The Recipient needs assistance with doing household chores, shopping and meal planning, meal preparation and cooking, budgeting and money management. (Exhibit 3)
11. The Recipient uses the telephone with prompting and instruction and encouragement. (Exhibit 3)
12. The Recipient is independent with mobility and likes to be out in the community. For example, he likes to go to gym. He needs to be supervised when he goes out for safety reasons. He cannot cross the street by himself and does not interact appropriately with strangers. (Representative's testimony)
13. The Recipient is dependent on his mother for all of his activities. She is in need of respite care. (Representative's testimony)
14. On [REDACTED], the Department sent the Recipient's legal guardian a notice advising that the Recipient's CFC Individual budget was being reduced from \$50,833.37 to \$7,368.48 (approximately 8.75 hours of care per week) effective [REDACTED]. (Exhibit 7: Notice of Action Service Budget Reduction)

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 § 441.520 (a) provides that If a State elects to provide Community First Choice, the State must provide all of the following services: 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 ADLs, IADLs, and health-related tasks, backup systems or mechanisms to ensure continuity of services and supports, as defined in § 441.505 of this subpart and voluntary training on how to select, manage and dismiss attendants.
5. Title 42 CFR § 441.505 provides for the definition of the Activities of Daily Living (“ADLs”) and states that ADLs means basic personal everyday activities including, but not limited to, tasks such as eating, toileting, grooming, dressing, bathing, and transferring.

The Department was correct when it determined that the Recipient needed hands on assistance with bathing, limited assistance with dressing (2 ADLs) and supervision with eating (1 ADL).

6. Title 42 CFR§ 441.505 also provides for the definition of Instrumental Activities of Daily Living (“IADLs”) and states that 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 median and traveling around and participating in the community.

The Department was correct when it determined that the Recipient needed assistance with all of his IADL’s.

7. Title 42 CFR § 441.540 (b)(5) provides that 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.

8. 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. It states that the Department assigns an overall budget based on need grouping that is determined by algorithm and that 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 was correct when it determined that the Recipient’s mother is a source of natural support for his ADLs and IADLs.

9. 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. Conn. Gen. Stat. § 17b- 259b (a).

The Department was correct when it determined that the Recipient has been awarded assistance from DDS to provide socialization and prepare the Recipient for work activities and other IADL’s. The day program provided through DDS, along with the 8.75 hours approved for CFC services, and the natural supports from his mother do not place the Recipient at risk of institutionalization.

Based on the evidence provided, the reduction in the Recipient’s weekly PCA hours to 8.75 hours per week is adequate to meet the Recipient’s functional

needs with regards to his medical condition and overall health; therefore, the Department was correct when it determined that additional hours of PCA through CFC services are not medically necessary for the Recipient because the type, frequency and duration of such services are not clinically appropriate, at this time, given the other services and natural supports that are currently in place.

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 hearing summary and testimony at the hearing indicated that additional benefits (in hours) are not medically necessary because [REDACTED] receives necessary services through the DDS waiver and natural supports from his mom. The DDS services were put in place after CFC's initial assessment and DDS is now providing socialization and community integration which was initially part of the CFC budget, as well as supported employment. CFC's decision that 8.75 hours of services to assist with bathing is medically necessary for [REDACTED] is correct given the natural supports and DDS services that he has in place at this time.

DECISION

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



Maureen Foley-Roy
Hearing Officer

PC: Dawn Lambert, DSS, Community First Choice Program
Sallie Kolreg, DSS, C. O.
Lisa Bonetti, DSS, C. O.
Christine Weston, DSS,

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.