

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 ID # ██████████  
Request # ██████████

**NOTICE OF DECISION**

**PARTY**

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

**PROCEDURAL BACKGROUND**

On ██████████, 2018, 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 “Appellant”) from \$20,101.41 to \$0, effective ██████████ 2018.

On ██████████, 2018, the Appellant requested an administrative hearing to contest the Department’s decision to discontinue such benefits.

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

On ██████████ 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:

██████████, the Appellant  
Kari Echevarria, Social Worker, DSS Community Options  
Roberta Gould, Hearing Officer

## **STATEMENT OF THE ISSUE**

The issue to be decided is whether the Department's decision to reduce the Recipient's Community First Choice budget and effectively discontinue her benefits from the CFC program is correct.

## **FINDINGS OF FACT**

1. The Appellant is [REDACTED] years old and is a participant in the Medicaid program, as administered by the Department. (Hearing Summary and Appellant's testimony)
2. South Western Connecticut Agency on Aging ("SWCAA") is the Department's contractor for the purpose of assessing level of care and service needs for CFC services. (Hearing record)
3. On [REDACTED], 2017, SWCAA completed an assessment at the Appellant's home to determine her eligibility for CFC program services. (Exhibit 1: Universal Assessment form dated [REDACTED]/2017)
4. On [REDACTED], 2017, SWCAA's assessor determined that the Appellant was at risk for an adverse event due to side effects of her medication, forgetting to take her medication and required daily reminders to take medication, that she had fallen in the 30 days prior to the assessment, that she required supervision and cueing with bathing and dressing and could not be left unattended while bathing. (Exhibit 1)
5. The Department approved a CFC initial services plan for the Appellant in the amount of \$20,101.41. (Exhibit 7: Notice of action dated [REDACTED]/2018 and DSS representative's testimony)
6. The Appellant has been using the CFC services to hire a Personal Care Assistant ("PCA") to assist and supervise with bathing and dressing. (Department representative's testimony)
7. The Appellant has a diagnosis of Schizophrenia, Bipolar Disorder, Osteoarthritis, Asthma, COPD, GERD, Glaucoma, Sleep Apnea and Cataracts. (Hearing summary and Appellant's testimony)
8. The Appellant has pain in her back and numbness in her hands and down to her knees. (Appellant's testimony)
9. The Appellant has been prescribed Effexor, Allopurinol, Dexilent, Singulair, Amitiza, Lasix, Clonazepam, Potassium Chloride, Protonix, Creon, Gabapentin and Clonazepam, Oxycodone and Clozaril to treat her medical conditions. (Exhibit 8: Medication list and instructions and Appellant's testimony)

10. The Appellant can use the toilet, is continent, can transfer herself without any assistance, and can prepare and eat meals independently. ( Exhibit 5: Universal Assessment dated [REDACTED]/2018 and Exhibit 6: Universal Assessment outcome form)
11. The Appellant has a history of falls and requires hands on assistance getting in and out of the shower. She also requires assistance with dressing. (Hearing summary and Appellant's testimony)
12. The Appellant uses a walker and a cane to move around her home. (Appellant's testimony and Hearing Officer's observation)
13. The Appellant uses a walker and cane while outside and in the community. (Appellant's testimony)
14. The Appellant's PCA assists her with bathing, dressing, housework, and medical appointments. (Exhibit 5 and Appellant's testimony)
15. The Appellant could benefit from having grab bars installed in her bathroom. (Hearing summary and Department representative's testimony)
16. The Appellant could benefit from Physical and/or Occupational Therapy provided in the home to assist her in learning techniques for accessing the bathtub and shower. (Hearing summary and Department representative's testimony)
17. The Appellant requires assistance with managing her finances, grocery shopping and housework. (Appellant's testimony and Exhibit 5)
18. The Appellant requires assistance with medication management, but can take her medications independently using a medication box that is set up for her. (Hearing summary and Appellant's testimony)
19. The Appellant currently has nursing visits once a week to assist in administering her medications. (Exhibit 1 and Appellant's testimony)
20. The Appellant does not have any cognitive deficits. (Exhibit 6: Universal assessment outcome form and Hearing summary)
21. On [REDACTED], 2018, SWCAA completed a face-to-face re-assessment at the Appellant's home and delivered a notice advising that her CFC Individual Budget was being reduced from \$20,101.41 to \$0(zero) effective [REDACTED], 2018, because she no longer met the level of care standard for CFC. (Exhibit 7 and Hearing summary)
22. On [REDACTED] [REDACTED], 2018, SWCAA's assessor determined that the Appellant is independent with the following Activities of Daily Living ("ADL's"): bathing, dressing, toileting, transferring and eating. (Exhibit 6 and Hearing summary)

## 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 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.
3. Title 42 of the Code of Federal Regulations (“CFR”) § 441.510 provides 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. 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;
    - (2) The State administering agency, or designee, retains documentation of the reason for waiving the annual re-certification 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.
- 4. **On [REDACTED], 2018, SWCAA incorrectly determined that the Appellant no longer requires the level of care furnished in a nursing facility. In the absence of home and community-based attendant services and supports the Appellant does require the level of care furnished in a nursing facility.**
- 5. 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.
  - (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.
- 7. **On [REDACTED] 2018, SWCAA was incorrect when it determined that the Appellant has the physical ability to complete all of her ADLs and reduced her CFC benefits to \$0 (zero). The Appellant does require supervision or cueing with the ADL's of bathing and dressing. She also requires assistance with IADLs of food shopping, managing finances and performing essential household chores.**
- 8. 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
  - 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 I 902(a)(IO)(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)

9. Section 17b-259b of the Connecticut General Statutes states that “Medically necessary” and “medical necessity” defined. Notice of denial of services. Regulations.

(a) For purposes of the administration of the medical assistance programs by the Department of Social Services, “medical 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.

(b) Clinical policies, medical policies, clinical criteria or any other generally accepted clinical practice guidelines used to assist in evaluating the medical necessity of a requested health service shall be used solely as guidelines and shall not be the basis for a final determination of medical necessity.

10. **On [REDACTED], 2018, SWCAA was incorrect in its determination that it is not medically necessary for her to receive community-based long-term health services and supports because they are not considered clinically appropriate and effective for her condition.**

## **DISCUSSION**

Community First Choice is a benefit available to Medicaid recipients to provide services in home to individuals who would otherwise require institutionalization as determined by state standards. In 2017, CFC determined that the Appellant met the nursing facility level of care standard because she required PCA assistance with the ADL's of bathing and dressing. Federal regulations are explicit in stating that if a State elects to provide Community First Choice, the State must provide assistance with ADLs, IADLs, and health-related tasks through hands-on assistance, supervision, and/or cueing, as well as the acquisition, maintenance, and enhancement of skills necessary for the individual to accomplish ADLs, IADLs, and health-related tasks.

After reviewing the evidence and testimony presented at this hearing, I find that the Department incorrectly determined that the Appellant no longer requires the level of care furnished in a nursing facility. In the absence of home and community-based attendant services and supports, the Appellant would require such a level of care. She requires the use of a walker or a cane and has a history of falls and it is clear that the Appellant still requires PCA assistance with the ADL's of bathing and dressing. Therefore, it is medically necessary and clinically appropriate for her to receive community-based long-term health services and supports that are considered effective for her condition. Federal and State regulations do not support the Department's position that she is no longer eligible for CFC services.

## **DECISION**

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

  
Roberta Gould  
Hearing Officer

## ORDER

1. The Department will consider that the Appellant meets the Level of Care for CFC and will direct SWCAA to reassess the Appellant's needs and issue an updated CFC budget based on her needs.
2. Compliance with this order is due by [REDACTED] 2018 and shall consist of documentation of the Appellant's updated budget.

Pc: Dawn Lambert, DSS, Community First Choice, Manager  
Sallie Kolreg, DSS, C. O.  
Christine Weston, DSS, C. O.



### **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.