

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

██████████
Request # 124073

NOTICE OF DECISION

PARTY

██████████
██████████
██████████

On ██████████ 2018, the Department of Social Services, (the "Department"), issued a Notice of Action ("NOA") to ██████████ (the "Appellant") reducing her Community First Choice ("CFC") budget from \$31,837.60 to zero based on a reassessed level of need.

██████████, 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:

██████████, Appellant
Deborah Fox, Department's Representative
Randell Wilson Jr. Manager, Connecticut Community Care
Shelley Starr, Hearing Officer

STATEMENT OF THE ISSUE

The issue to be decided is whether the Department's decision to reduce the Appellant's Community First Choice ("CFC") budget to zero was correct.

FINDINGS OF FACT

1. The Appellant is a participant in the Medicaid Husky C – Medically Needy for the Aged, Blind, Disabled program administered by the Department. (Hearing Record)
 2. The Appellant is [REDACTED] years old, [REDACTED], with diagnosis of Neuropathy, Diabetes Type 2, GERD and Neurosarcoidosis. (Hearing Summary; Department Representative's Testimony; Hearing Record)
- [REDACTED] The Appellant is legally blind and hearing impaired. She requires a hearing appliance for the ability to hear normal conversation and uses a walker with seat to assist with her mobility. (Appellant's Testimony; Exhibit 1: Universal Assessment [REDACTED])
4. The Appellant resides alone in her apartment. Her Mother, Daughter and Personal Care Assistant ("PCA") assists with helping her to remain independent in the community. (Appellant's Testimony; Hearing Record)
- [REDACTED], the Appellant was granted services under the Community First Choice ("CFC") program to provide support for her activities of Daily living ("ADLs"), instrumental activities of daily living ("IADLs") and Behavioral need factors. The Appellant's [REDACTED] budget included Personal Care Assistance based on the Appellant living independently in the community. (Department Representative's Testimony; Exhibit 6: Revised CFC Individual Budget dated [REDACTED])
6. In [REDACTED], the Appellant's budget was approved for \$31,837.60 which included \$21,689.28 (25 hours per week) for PCA services based on the Universal Assessment completed [REDACTED]. (Hearing summary, Exhibit 10: CFC Budget Approval)
 7. The Appellant was receiving services under an approved plan when the eligibility for the CFC services was redesigned to meet new federal guidelines to implement the revised Universal Assessment. (Department Representative's Testimony; Hearing Record)

- On [REDACTED], the Appellant participated in a comprehensive reassessment for CFC services. The assessment was conducted face to face by a qualified Department Representative. The assessment included evaluation of the physical, mental and functional status of the Appellant. (Hearing Summary; Exhibit 1: Universal Assessment dated [REDACTED])
9. On [REDACTED], 2018, a Department Representative from Connecticut Community Care (“CCC”) completed an annual face to face assessment of need specifically related to core ADLs, which included bathing, dressing, toileting, transferring and eating. (Hearing Summary, Exhibit 6: Universal Assessment Outcome Form dated [REDACTED])
- The Assessment determined that the Appellant is independent with the following Activities of Daily Living (“ADL’s”): bathing, toileting, transferring and eating. The Appellant needs limited assistance with dressing for donning and doffing shoes and socks. (Hearing Summary; Department’s Representatives [REDACTED])
11. On [REDACTED], the representative from CCC hand delivered a notice to the Appellant eliminating her budget for CFC services because she did not meet the Nursing Home level of care because she was independent with the completion of her ADLs. (Department’s testimony, Exhibit 7: Notice of Action Budget Reduction dated [REDACTED] 2018)
12. The Appellant testified at the hearing that her health has significantly declined since her [REDACTED] assessment. (Appellant’s Testimony; Hearing Record)
13. Since the [REDACTED] assessment, the Appellant has fallen twice and has been transported by ambulance to the local hospital for treatment. (Appellant’s Testimony; Hearing Record)
14. The Appellant testified that she needs personal care assistance for many aspects of her daily living and to maintain her independence. (Appellant’s Testimony; Hearing Record)
15. At the time of the hearing, it was determined that based on the Appellant’s testimony compared with her [REDACTED] assessment, it was completely different. (Department Representative’s Testimony; Hearing Record)
16. At the time of the hearing, it was determined by all parties at the hearing, that the Appellant should have a new assessment completed based on the reported changes in her health and functional needs. (Department Representative’s Testimony; 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. 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. 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 1902(a)(10)(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)

6. Connecticut General Statutes (“CGS”) § 17b-259b(a) provides that 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 provide 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 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.
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.

On [REDACTED], the Department completed a face-to-face assessment of the Appellant's functional needs for the services and supports provided under CFC.

The Appellant's functional needs and circumstances have significantly changed since the [REDACTED] assessment.

DISCUSSION

At the hearing, the Appellant advised that her health has declined since her [REDACTED] [REDACTED], assessment and that she has fallen twice since the assessment, resulting in transportation by ambulance for treatment. She advised that she needs a PCA to assist her with many ADL's and to help her remain independent in the community.

It was determined by all parties at the hearing that the Appellant should have a new assessment based on the presented testimony and evidence; specifically that the Appellant's testimony was completely different in comparison to her latest evaluation.

DECISION

The Appellant's appeal is **REMANDED TO THE DEPARTMENT** for further action.

ORDER

1. The Department will reassess the Appellant's eligibility for CFC services.
2. The Department will determine based on the new assessment, the eligibility allowed for CFC services .

3. The Department shall issue to the Appellant a new Notice of Action including the determined CFC budget and hours for the Appellant.
4. Compliance with this order shall be sent to the undersigned no later than [REDACTED], 2018.

Shelley Starr
Shelley Starr
Hearing Officer

cc: Sallie Kolreg, DSS – Central Office
Lisa Bonetti, DSS- Central Office
Dawn Lambert, DSS – Central Office
Christine Weston, DSS-Central Office
Deborah Fox- 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.