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

Client ID # [redacted]
Request # [redacted]

NOTICE OF DECISION

PARTY

[redacted]

On [redacted], 2018, the Department of Social Services, (the "Department"), issued a Notice of Action ("NOA") to [redacted] (the "Appellant") reducing her Community First Choice ("CFC") budget from $19,954.14 to $0(zero) based on a reassessed level of need.

On [redacted] 2018, the Appellant requested a hearing to contest the reduction.

On [redacted] 2018, OLCRAH issued a notice scheduling the administrative hearing for August 23, 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], Appellant
[redacted], Appellant's mother
[redacted], Appellant's sister
[redacted], Department's representative, Community Nurse Coordinator
[redacted], Connecticut Community Care Inc.
[redacted], Hearing Officer

STATEMENT OF THE ISSUE

The issue to be decided is whether the Department was correct to reduce the Appellant's CFC budget to zero.

FINDINGS OF FACT

1. The Appellant receives Medicaid services through the State of Connecticut Department of Developmental Services ("DDS") Individual and Family Support Waiver program. (Hearing record)

2. The Appellant is attending a Group Supported Employment Program that includes sheltered workshops and day support options through the DDS Individual and Family Support Waiver program for four hours per week. (Hearing summary and Appellant's mother's testimony)

3. Connecticut Community Care Incorporated ("CCCI") is the Department's contractor for the purpose of assessing level of care and service needs for CFC services. (Hearing record)

4. The Appellant is 31 years old and has a diagnosis of Down Syndrome, Intellectual Disability, Sleep Apnea, Anxiety, a leaking heart valve, depression, and Concussion Syndrome. (Exhibit 1: CT DDS Level of Need assessment and screening tool dated [redacted]/2018, Mother's testimony and Hearing Summary)

5. In [redacted] 2017, the DDS completed an assessment at the Appellant's home to determine her eligibility for CFC program services. (Hearing summary)

6. In [redacted] 2017, the Department approved a CFC initial services plan for the Appellant in the amount of $20,297.18 ($19,954.14 PCA @ 23 hours per week + $343.04 support & planning coach). She was granted services under the CFC program to provide Personal Care Attendant ("PCA") services to support community participation activities that were primarily social and/or recreational in nature and unrelated to Activities of Daily Living ("ADLs"), Instrumental Activities of Daily Living (IADLs") or health-related tasks. (CCCI's representative's testimony and Hearing summary)

7. The Department recognizes the DDS assessment and level of need determination as a comprehensive assessment tool. The Department uses the DDS comprehensive assessment plus the 5 ADL functional assessment for determination of eligibility and budgeting for CFC services. (Hearing summary)

8. On [redacted] 2018, the DDS completed a face-to-face re-assessment at the Appellant's home to determine continuing eligibility for CFC Medicaid long-term supports and services. (Exhibit 1 and Hearing summary)

9. On [redacted] 2018, the DDS conducted a re-assessment which addressed the Appellant's needs specifically related to ADLs, which include bathing, toileting, transferring, eating and dressing, as well as IADLs, which include money management, meal preparation, transportation, shopping, medication management and housekeeping. (Exhibit 1 and Hearing summary)

10. On [redacted] 2018, the DDS determined that the Appellant requires hands on assistance with bathing and toileting, and requires supervision with dressing and transferring. The DDS also determined that she required supervision with meal preparation, shopping, medication management, housekeeping and money management. (Exhibit 1and Exhibit 3: CT DDS Level of Need summary report)

11. On [redacted] 2018, CCCI conducted an additional, more detailed face-to-face assessment of the Appellant's needs related to ADL's and determined that the Appellant requires cueing and supervision with bathing, dressing and toileting, but that she is independent with transferring and eating. (Exhibit 2: Universal Assessment Outcome form dated [redacted]/2018 and Hearing summary)

12. A registered nurse ("RN") from the Department reviewed the comprehensive assessment of needs as well as the detailed assessment of ADLs. The RN determined that the Appellant is independent with transferring and eating, but requires cueing and or supervision with dressing, bathing and toileting. The RN also determined that the Appellant requires assistance with the IADLs of meal preparation, housework, using the telephone, money management, and shopping. The RN concluded that the Appellant receives voluntary informal support in the home for her ADLs.and IADLs and has no unmet needs in the home. (Hearing Summary)

13. On [redacted] 2018, the Department issued the Appellant a notice revising her budget for CFC services from $19,954.14 to $0(zero) because she no longer met the level of need for CFC services. (Exhibit 4: Notice of Action for service budget reduction dated [redacted]/18 and Hearing summary)

14. The Appellant's mother and sister currently manage her finances, provide supervision with bathing, dressing and toileting, transportation, shopping and housework. (Appellant's mother's testimony)

15. The Appellant is incapable of avoiding financial or sexual exploitation. (Exhibit 1)

16. The Appellant is severely limited in her ability to communicate verbally, uses modified sign language and is difficult to understand. (Exhibit 1)

17. The Appellant requires assistance to take part in community activities for recreation. (Exhibit 1 and Appellant's mother's testimony)

18. The Appellant requires close supervision in the community as she is at risk of wandering away. (Exhibit 1)

19. The Appellant can physically complete her ADLs but will not do so without supervision. (Appellant's mother's testimony)

20. The Appellant's mother, her primary caregiver, has had two back surgeries, neck surgery, and will require another back surgery. (Exhibit 1 and Appellant's mother's testimony)

21. The Department determined the Appellant's level of need from the DDS assessment as well as the RN's detailed assessment of ADLs. (Department's testimony)

22. The Department determined that the DDS Group Supported Employment Program plus regular Medicaid services and informal supports are adequate in meeting the Appellant's needs. (Hearing summary)

23. The Department determined that the Appellant's budget is reduced to zero because she has no unmet needs for the CFC program. (CCCI's representative's testimony)

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 191S(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 l 902(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. 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 a face-to-face assessment of the Appellant's needs, strengths, preferences, and goals for the services and supports provided under CFC at least every twelve months.

7. 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. Acquisition, maintenance and enhancement of skills necessary for the individual to accomplish ADL's, IADL's, and health related tasks.

8. Title 42 CFR § 441.520(b) provides that the State may provide permissible services and supports that are linked to an assessed need or goal in the individual's person-centered service plan.

9. 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®(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.

10. Title 42 CFR § 441.540(b)(5) provides for the person-centered service plan. 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.

11. Connecticut State Plan Amendment ("SPA") No 15-012, pursuant to section 1915(k) of the Social Security Act, section 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 an 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 correctly determined that the Appellant requires supervision and/or cueing with the ADL's of bathing, dressing and toileting, as well as with the IADL's of meal preparation, money management, shopping, housekeeping and medication management.

The Department correctly determined that the Appellant's service plan accurately reflects the services and supports that are being provided including natural and unpaid supports being provided voluntarily by her parent and sibling.

12. Section § 17b-259b of the Connecticut General Statutes provides that (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.

    The Department correctly determined that the Appellant's informal natural supports in the home provide appropriate supervision and/or cueing with the ADL's of bathing, dressing and toileting, as well as with the IADL's of meal preparation, money management, shopping, housekeeping and medication management.

    On [redacted] 2018, the Department was correct in its determination that it is not medically necessary for her to receive community-based long-term health services and supports for community participation activities because they are not considered clinically appropriate 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 for CFC services. There is no dispute that the Appellant requires supervision and support with ADL's and IADL's and cannot function independently. However, the Department's summary, CCCI's representative's testimony and the Appellant's mother's testimony indicated that the services and supports being provided through the CFC program were primarily social and/or recreational in nature and unrelated to Activities of Daily Living ("ADLs"), Instrumental Activities of Daily Living (IADLs") or health-related tasks.

After reviewing the evidence and testimony presented at this hearing, I find that although the Appellant has needs related to cueing and supervision of ADLs and IADLs, these supports are being provided while she is at home through informal natural supports that were identified during the person-centered service planning process as voluntary unpaid care provided on a regular and consistent basis by her parent and sibling. Although her mother has medical issues it is clear that both are able to provide the supervision and cueing the Appellant needs in the home.
The Department was correct when it determined that the services provided for the Appellant through the CFC program were not medically necessary based on Federal and State regulations.

DECISION

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

Roberta Gould
Hearing Officer

Pc: Dawn Lambert, Community First Choice, Manager
Christin Weston, 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.