

STATE OF CONNECTICUT
DEPARTMENT OF SOCIAL SERVICES
OFFICE OF LEGAL COUNSEL, REGULATIONS, AND ADMINISTRATIVE HEARINGS
55 FARMINGTON AVENUE
HARTFORD, CT 06105-3726

██████████ 2019
Signature Confirmation

Case ID # ██████████
Client ID # ██████████
Request # ██████████

NOTICE OF DECISION

PARTY

██████████

PROCEDURAL BACKGROUND

On ██████████ 2018, the Department of Social Services (the "Department") issued a Notice of Action/Service Budget Reduction stating that it was reducing the Community First Choice ("CFC") budget for ██████████ (the "Appellant") from \$48,178.56 to \$34,912.54 effective ██████████ 2018.

On ██████████, 2018, ██████████ (the "Appellant's Attorney") requested an administrative hearing to contest the Department's decision to reduce 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
██████████, The Appellant's Nephew and Care Provider
██████████, The Appellant's Attorney
Christine Weston, DSS, Community First Choice
Randall Wilson, Community Care Inc. Supervisor
Swati Sehgal, 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 34 hours per week.

FINDINGS OF FACT

1. The Appellant is [REDACTED] [REDACTED] years old, (DOB [REDACTED]), with a diagnosis of Hypertension, Intellectual Disability and Cerebral Palsy. (Hearing Summary; Appellant's Attorney's Statement)
2. The Appellant receives Medicaid services through the State of Connecticut Department of Social Services CFC plan and the Department of Developmental Services ("DDS") waiver program. (Hearing Summary; Exhibit 1: DDS Level of Need Assessment; dated [REDACTED] 2018)
3. The Appellant lives with his ailing father and sister. The Appellant's sister is his primary caregiver, due to their ailing father's medical condition she is not able to assist the Appellant with his needs, and therefore her son is helping temporarily in providing care for the Appellant. (Hearing Record)
4. The Appellant is totally dependent with bathing. (Hearing Summary; Exhibit 3: Notice of Action including Universal Assessment outcome Form, revised CFC budget sheet and Universal Assessment Budget Exception Form)
5. The Appellant needs extensive assistance with toileting and dressing. (Hearing Summary, Exhibit 3)
6. The Appellant needs limited assistance with eating. His meal needs to be cut in small portions. (Hearing Summary; Exhibit B)
7. The Appellant needs medication support beyond set-up and reminders. (Hearing Summary; Exhibit B: The Appellant's detailed Activity prepared by the Appellant's Attorney)
8. The Appellant needs overnight support, monitoring or assistance. (Exhibit 1: DDS Level of Need Assessment, and Exhibit B)
9. The Appellant needs supervision at all the time due to his bolting tendencies. (Exhibit 3)

10. The Appellant requires assistance with using the telephone, shopping, and meal preparation, requires assistance to pay bills or manage his money, needs monitoring, instructions to complete household chores. (Exhibit 1)
11. The Appellant was previously assessed for CFC services and was initially approved for a total allocation for services plan of \$48,178.56. This allowed 50 hours per week of Personal Care Attendant (“PCA”) support based on comprehensive assessments related to ADLs, IADLs and health related tasks. (Hearing Summary; Department’s Testimony; Exhibit 3; Hearing Record)
12. The Appellant participates at [REDACTED]. Day Program through the Department of Developmental Services (“DDS”), Monday, Wednesday, and Friday from 9:00 AM to 1:30 PM where he has a staff to help facilitate his needs. This includes but is not limited to assistance with ADLs and IADLs. (Exhibit 1, Hearing Summary; Department’s Testimony; Hearing Record)
13. The Group Day program provided to the Appellant through his DDS services, are services and supports related to the acquisition, improvement and/or retention of skills and abilities to prepare and support an individual for work and/or community participation and/or meaningful socialization, leisure and retirement activities. Supports include the development, maintenance or enhancement of independent functioning skills including but not limited to sensory-motor, cognition, personal grooming, hygiene, toileting, assistance in developing and maintaining friendships of choice and skills to use in daily interactions; the development of work skills; opportunities to earn money; opportunities to participate in community activities. (Hearing Summary; Hearing Record)
14. On [REDACTED], 2018, DDS completed an annual comprehensive assessment for Medicaid long term support and services received from DDS. (Hearing Summary; Exhibit 1, Hearing Record)
15. On [REDACTED] 2018, based on the fact that DDS completed a comprehensive assessment within prior twelve months, the CFC assessment included DDS comprehensive assessment on file and conducted a more detailed assessment of core ADLs. CFC assessment was conducted face to face by a social worker, who meets the qualifications as defined in Connecticut’s State Plan, from Community Care Inc. (Hearing Summary, Hearing Record)
16. The Department redesigned the eligibility for CFC services to meet new federal guidelines and to implement a revised Universal Assessment using the clinical criteria to determine the level of care and service needs budgets. (Hearing Record)
17. On [REDACTED] 2018, the Department conducted a reassessment of the Appellant’s level of need and service plan, and determined that the Appellant is totally dependent with bathing, needs extensive assistance with dressing and toileting,

limited assistance with eating and he was independent with transferring. (Hearing Summary; Exhibit 3: Notice of Action, Universal Assessment outcome Form)

18. The Appellant's reassessed CFC services have been approved for 8.75 hours per week for bathing, toileting, and dressing which equals 26.25 hours of services (8.75x3) per week. (Hearing Summary; Revised CFC budget, Department's Testimony)
19. On [REDACTED] 2018, the Department approved 34 hours of PCA services for the Appellant due to exception request and subsequent clinical review, although the Appellant was found to have three extensive or greater hands on ADL needs, which equates to approximately 26.25 hours per week of PCA services, in addition to informal family support and the DDS Group Day Program. (Hearing Summary, Exhibit 3, Department's Testimony)
20. On [REDACTED] 2018, the Department completed a Revised CFC Individual Budget that states that based on the reassessment of the Recipient's level of need; the personal care assistance budget would be reduced to \$34,912.54 equal to 34 hours of PCA per week, effective [REDACTED] 2018. (Exhibit 3, Revised CFC Budget, Department'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 (ADL's), 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. 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.
6. 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 and 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. (4) Voluntary training on how to select, manage and dismiss attendants.
7. The Department correctly determined that the Appellant is totally dependent with bathing, needs Extensive Assistance with toileting and dressing, limited assistance with Eating, and is independent with Transferring.
8. The Department correctly determined that his needs related to IADLS include the need for assistance with taking medications, using the telephone, household chores, budgeting, meal preparation and shopping.
9. 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 services 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.

10. The Department correctly completed a functional needs assessment, including its DDS contractor's assessment, to determine the Appellant's service plan and budget.
11. 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.
12. Connecticut State Plan Amendment ("SPA") no 15-012, pursuant to section 1915(k) of the Social Security Act, (5)(A) provides for included 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 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.
13. The Department correctly determined that the Appellant receives natural supports primarily from his sister and temporarily from her son with his ADLs and her IADLs.
14. Title 42 CFR § 441.510(d) & (e) provides that (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)(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.

15. The Department correctly determined that the Appellant's DDS waiver provides services and support for improvement and retention of her IADLs in an employment or community environment, including assistance with her ADLs, while in the day program.
16. The Department incorrectly determined that the Recipient is not permitted to receive duplication of services through waiver supports.
17. 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, "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. [Emphasis added]
18. Based on the CFC services review of the Appellant's physical, mental and functional assessment and supports, including informal supports, the Department correctly determined that the Appellant required only 26.25 hours of CFC services per week, for total dependence with bathing and Extensive Assistance with toileting and dressing. The Department correctly changed the number of hours of CFC services to 34 hours per week due to an exception request and subsequent clinical review stating the Appellant requires supervision and cuing at all the times due to his bolting tendencies.

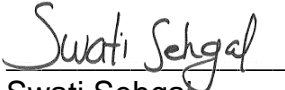
19. The Department was correct when it determined that the Appellant has been awarded assistance from DDS to provide socialization and prepare the Appellant for work activities and other IADL's. The day program provided through DDS, along with the 34 hours approved for CFC services, and the natural supports from his family do not place the Recipient at risk of institutionalization.

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. The hearing summary and testimony at the hearing indicated that additional hours are not medically necessary because The Appellant receives necessary services through the DDS waiver and natural supports from his family. The DDS is providing socialization and community integration which was initially part of the CFC budget, as well as supported employment. CFC's decision that 34 hours of services to assist with bathing, toileting and dressing is medically necessary for the Appellant is correct given the natural supports and DDS services that he has in place at this time.

DECISION

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


Swati Sehgal
Hearing Officer

Pc: Sallie Kolreg, DSS, CO
Dawn Lambert, DSS, CO
Christine Weston, DSS, CO

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.