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

[redacted]
Signature Confirmation

Client ID # [redacted]
Request # [redacted]

NOTICE OF DECISION

PARTY

[redacted]

PROCEDURAL BACKGROUND

On [redacted], the Department of Social Services (the "Department") notified [redacted] that it was reducing the Community First Choice ("CFC") budget for [redacted] (the "Recipient") to 23.25 hours per week of attendant care.

On [redacted], the Recipient's mother and caretaker (the "Appellant") requested an administrative hearing to contest the Department's decision to reduce such benefits.

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

On [redacted], the Appellant requested a continuance of the hearing because she had not received the Department's summary.

On [redacted], OLCRAH issued a notice rescheduling the administrative hearing for [redacted].

On [redacted], 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 "Appellant", the Recipient's mother and caretaker
[redacted], Appellant's witness
[redacted], the Recipient,
Christine Weston, DSS Community Options Unit
Maureen Foley-Roy, Hearing Officer

STATEMENT OF THE ISSUE

The issue to be decided is whether the Department's proposed CFC budget of 23.25 hours of care per week is correct.

FINDINGS OF FACT

1. The Recipient is [redacted] years old and has a developmental disability since birth. She also had diagnoses of autism, GERD, asthma, liver disorder and high cholesterol. She receives services Medicaid services through the State of Connecticut Department of Developmental Disabilities ("DDS") waiver program. (Hearing Summary , Exhibit 1: Hearing Decision and Appellant's testimony)

2. The Recipient lives with her mother and her two brothers, who also are on the autism spectrum. The Recipient's mother does not work outside the home and has not for the past [redacted] years. (Appellant's testimony)

3. The Recipient needs constant supervision because of her attempts to run away. Her physician has recommended security alarms for their family home and an ID bracelet. (Appellant's Exhibits A and B: Letter from physician and prescription)

4. The Appellant has not had the alarms installed. (Appellant's testimony)

5. The Recipient was receiving services through CFC since the inception of the program. She had been granted services to provide support for her activities of daily living ("ADL's"), instrumental activities of daily living ("IADL's") and health related tasks. (Department representative's testimony)

6. After an assessment conducted in [redacted], the Recipient was approved for 64 hours weekly of PCA services within an annual budget of $56,809.45 under the CFC program. (Exhibit 1)

7. The Recipient receives 20 hours a week of day supports through DDS. These supports are provided by her mother, the Appellant, from Monday through Friday from 8 am to noon. These hours are authorized for the Recipient to develop independent living skills and vocational preparation. (Exhibit 1 and Appellant's testimony)

8. In [redacted], the Department proposed reducing the CFC budget and the Appellant requested a hearing on the reduction. (Exhibit 1)

9. On [redacted], a hearing was held on the Department's proposal to reduce the CFC budget. The Department testified at the hearing that they had miscalculated the hours needed because they were using an incorrect number of hours that the Recipient was receiving services through DDS. The hearing record remained open for the Department to correct its calculation error and to evaluate evidence that the Appellant provided on the day of the hearing. (Exhibit 1)

10. The Department did not provide calculations or respond to the evidence that the Appellant submitted on the day of the hearing to the Hearing Officer who held the hearing on [redacted]. (Exhibit 1)

11. On [redacted], OLCRAH sent a notice of decision remanding the Appellant's appeal back to the Department for the purpose of reviewing the additional medical documentation and the hours allocated for services from DDS. The decision directed the Department to recalculate the hours of service and budget and to issue a new notice to the Appellant's Legal Guardian with a detailed explanation of the calculation.(Exhibit 1)

12. There is no evidence in the hearing record that the Department complied with the hearing decision order. (Hearing record)

13. After the hearing decision was remanded back to the Department, the Department reviewed the information that the Appellant had submitted at the hearing and determined that additional services were not medically necessary. The Department recalculated the budget to correct the hours that the Recipient was receiving services through DDS. The Department determined that the Recipient was eligible for 23.25 hours of services per week under the CFC program. The Department contacted the Appellant by telephone and advised her that the new plan of care called for 23.25 hours of care. Because the Appellant advised the Department that she would not sign a care plan with 23.25 hours of care per week, the Department took no further action and did not send the Appellant any additional notices. (Department's representative's testimony)

14. The Recipient is independent with transferring and eating. She needs cuing and supervision for toileting, extensive assistance with dressing, and maximum assistance with bathing. (Hearing summary, Appellant's testimony)

15. The Department's proposed budget authorizes 2.5 hours a day, 17.5 hours per week, of PCA assistance to assist with the Recipient's bathing and dressing needs. (Department's representative's testimony)

16. The Recipient needs assistance with taking her medication, household chores, financial management, shopping, meal preparation and using the telephone. (Hearing Summary)

17. The Appellant has been using the CFC services to hire PCA's for the Recipient from noon to 5pm and 5pm to 9pm each weekday. (Exhibit 1 and Appellant's testimony)

18. The Appellant uses CFC services to pay herself as a PCA for the Recipient, her daughter, on the weekends. (Appellant's testimony)

19. On [redacted], the Appellant submitted a hearing request stating that the Recipient needed 24/7 care because she had tried to run away from home. (Hearing request)

20. The issuance of this decision is timely under Connecticut General Statutes § 17b-61(a), which requires that a decision be issued within 90 days of the request for an administrative hearing. The Appellant requested an administrative hearing on [redacted] 2019. Therefore, this decision was due not later than [redacted] 2019. However, the hearing record, which had been anticipated to close on [redacted] 2019, did not close until [redacted] 2019 because the Appellant requested a continuance of the hearing. Because of this 26 day delay in the close of the hearing record, the final decision is not due until [redacted] 2019, and is therefore timely.

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 maximum assistance with bathing, extensive assistance with dressing (2 ADLs) and supervision with toileting (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 her 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 her 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 23.5 hours approved for CFC services, and the natural supports from her 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 23.5 hours per week is adequate to meet the Recipient's functional needs with regards to her 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 the Recipient receives necessary services through the DDS waiver and natural supports from her mom. (Note: The Appellant, the Recipient's mother, has chosen to be the DDS support worker to provide her with the independent living skills and vocational preparation.) CFC's decision that 17.5 hours of services to assist with bathing and dressing is medically necessary for the Recipient is correct given the natural supports that she has in place at this time. In addition, CFC is providing an additional 5 hours a week to

supplement the 20 hours of DDS individual day supports.

The Appellant argues that the Recipient needs additional hours because she has attempted to run away. However, this need can be addressed by the use of house alarms, which the Recipient's medical provider has already prescribed.

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.