

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

[REDACTED], 2019
Signature Confirmation

**Client ID # [REDACTED]
Request # 143702**

NOTICE OF DECISION

PARTY

[REDACTED]
[REDACTED] [REDACTED]
[REDACTED]

PROCEDURAL BACKGROUND

On [REDACTED] 2019, the Department of Social Services (the "Department") issued a notice to [REDACTED] (the "Recipient") advising her that it was reducing her Community First Choice ("CFC") budget from \$70,122.95 annually to \$43,750.39 annually or approximately 43.75 hours of attendant care per week.

On [REDACTED] 2019, [REDACTED], the Recipient's mother and plenary co-guardian (the "Appellant") requested an administrative hearing to contest the Department's decision to reduce such benefits.

On [REDACTED] 2019 the Office of Legal Counsel, Regulations, and Administrative Hearings ("OLCRAH") issued a notice scheduling the administrative hearing for [REDACTED] 2019.

On [REDACTED], 2019, the Appellant requested a continuance of the hearing, which OLCRAH granted.

On [REDACTED] 2019, OLCRAH issued a notice rescheduling the administrative hearing for [REDACTED], 2019.

On [REDACTED], 2019, 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 plenary co-guardian
Karri Filek, Public Assistance Consultant, DSS Community Options Unit
Randall Wilson, Connecticut Community Care
Maureen Foley-Roy, Hearing Officer

The hearing record remained open by mutual agreement of the Appellant and the Department to provide the Appellant with an opportunity to obtain additional evidence from the Department of Developmental Services (“DDS”). No additional evidence was received and the hearing record closed on [REDACTED] 2019.

On [REDACTED] 2019, the hearing officer reopened the hearing record due to the receipt of the information from DDS that the Appellant had wished to be considered. The Appellant and the Department were given an opportunity to review and comment on the newly submitted evidence. The hearing record closed on [REDACTED] 2019.

STATEMENT OF THE ISSUE

The issue to be decided is whether CFC’s determination that 43.75 hours of care per week and corresponding budget is appropriate to meet the Recipient’s needs.

FINDINGS OF FACT

1. The Recipient is twenty three years old and has been diagnosed with a mild intellectual disability. She was born with spinal bifida and also has the following medical diagnoses: asthma, recurrent kidney infections, digestive issues, recurrent skin breakdown, neurogenic bladder, complex congenital disease, VA canal heart defect, reflux, esotropia, dysfunctional uterine bleeding, speech articulation disorder, dysphasia, telangiectasia, decubitus ulcer of the sacral region, dermatitis, vision problems and knee pain. The recipient uses a wheelchair, catheter, and is tube fed. (Exhibit 1: DDS Person Centered Plan and Exhibit 2: DDS Level of Need Assessment and Screening Tool)
2. The Recipient is medically frail. At the present time, she has an infection and is scheduled for surgery on [REDACTED], 2019. (Appellant’s testimony)
3. The Recipient is totally dependent with 4 of her activities of daily living (“ADL’s) (bathing, dressing, toileting, and transferring). She needs extensive assistance with eating. (Exhibit 4e: 2019 CFC documents, Universal Assessment Outcome form)
4. The Recipient needs assistance with taking her medication, household chores, financial management, shopping, and meal preparation. (Exhibit 2)
5. The Recipient lives with her mother, who represents her and is responsible for her care. (Appellant’s testimony and Hearing summary)
6. On [REDACTED] 2018, CFC authorized and approved a budget of \$70,143.75 equaling approximately 72.50 hours of personal care assistance (“PCA”) per week. (Exhibit 5: 2018 CFC Notice of Action)

7. In ██████████ 2019, the Recipient began a day program through the Department of Developmental Services (“DDS”). DDS authorized 30 hours a week plus transportation to CCARC, the day program. The program is located in New Britain and the Recipient resides in Hartford. (Exhibit 1)
8. The DDS day program provides assistance with the Recipient’s ADL’s as well as a broader range of services related to life skills, such as socialization. (Department representative’s testimony)
9. The Recipient does not attend the day program 30 hours a week due to illness and her fragile medical condition. At the present time, she only attends 3 hours a day twice a week for a total of 6 hours per week. After the Recipient’s surgery, it is not known when she will be able to return to the program. (Appellant’s testimony)
10. The Recipient is not always on time for the program at CCARC, because it can take up to three hours for the transportation to get her to New Britain. (Appellant’s testimony)
11. The Appellant was told that the Recipient cannot continue in the program if she is not going to attend regularly and be on time. The Appellant also understood from DDS that if she declined their services, she would be unable to obtain them for the Recipient in the future. (Appellant’s testimony)
12. DDS has the option to provide some of the Day program hours as self-directed hours to be used in the home. (Department representative’s testimony)
13. On ██████████ 2019, CFC conducted an assessment and determined that the Recipient was in need of approximately 43.75 hours of PCA care per week, and authorized a budget of \$43,721.42. This determination was made based on the fact that the Recipient was receiving 30 hours a week in services from DDS. (Exhibit 4: 2019 CFC Documents and Department’s representative’s testimony)
14. On ██████████ 2019, CFC informed the Appellant that the Recipient’s budget would be reduced to \$43,750.39 or approximately 43.75 hours of care per week. (Exhibit 4a: CFC Notice of Action dated ██████████ 2019)
15. On ██████████ 2019, CFC staff conferred with DDS staff regarding the need to allow the Recipient to use some of the Day program resources as self-directed hours to be used in the home. (Hearing Summary)
16. On ██████████ 2019, DDS confirmed that the Recipient was contracted for 12 hours per week at the day program CCARC and 15.5 hours per week of self-directed Individual Day supports. (Appellant’s Exhibit A: DDS letter dated ██████████ 2019)
17. 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 ██████████, ██████████, 2019. Therefore, this decision was due no later than ██████████ 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 and the Appellant requested that the hearing record remain open until [REDACTED] 2019 for the submission of additional evidence. DDS did not provide the additional evidence until [REDACTED] 2019. The hearing record was reopened on [REDACTED] 2019 and the hearing officer kept the record open until [REDACTED], 2019 to provide all parties an opportunity to review and comment on the newly submitted evidence. Because of this 45-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 (“C.F.R.”) § 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 is totally dependent with bathing, dressing, toileting and transferring and extensive assistance with eating.

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/or community participation and other IADL's. The day program provided through DDS, along with the 43.75 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 43.75 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 DDS and natural support from her mom. CFC's decision that 43.75 hours of services is medically necessary for the Recipient is correct given the natural supports and the 27.5 hours of individual day supports from DDS that she has in place at this time.

CFC recognized the Recipient's extensive needs and that her mom needs a great deal of assistance to care for [REDACTED]. Hence the \$70,000+ budget authorized last year. But since that budget was approved, [REDACTED] has been authorized to receive individual day supports from DDS. These services go beyond what CFC had offered, in that they include socialization and community participation as well as assistance with ADL's. There were issues with [REDACTED] being able to access the DDS program benefits, due to her medical frailty and transportation problems. [REDACTED] is now using most of her DDS Day Supports

in her home. Given those supports and the natural support provided by her mom, CFC's determination that 43.75 hours of services are medically necessary for [REDACTED] is correct.

DECISION

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

Maureen Foley Roy

Maureen Foley-Roy
Hearing Officer

PC: Dawn Lambert, DSS, Community First Choice Program
Sallie Kolreg, DSS, C. O.
Lisa Bonetti, DSS, C. O.
Karri Filek, 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.